

Federal Public Defender  
Southern District of Florida

**CJA PLAN**

**United States District Court  
For the Southern District of Florida**

**REVISED PLAN FOR FURNISHING REPRESENTATION  
PURSUANT TO THE CRIMINAL JUSTICE ACT  
18 U.S.C. § 3006A**

**I. AUTHORITY**

Under the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and Guide to Judiciary Policy (Guide), Volume 7A, the judges of the United States District Court for the Southern District of Florida adopt this Plan, as approved by the Eleventh Circuit Court of Appeals, for furnishing representation in federal court for any person financially unable to obtain adequate representation consistent with the CJA.

**II. STATEMENT OF POLICY**

**A. Objectives**

The objectives of this Plan are:

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

This Plan must therefore be administered so that those accused of a crime, or otherwise eligible for services under the CJA, will

not be deprived of the right to counsel, or any element of representation necessary to an effective defense, due to lack of financial resources.

## **B. Compliance**

1. The court, its clerk, the Federal Public Defender, and private attorneys appointed under the CJA must comply with Guide, Vol. 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, and with this Plan.
2. The court will ensure that a current copy of the CJA Plan is made available on the court's website and provided to CJA counsel upon the attorney's designation as a member of the CJA panel of private attorneys (CJA Panel). A current copy of the CJA Plan also will be available on the Federal Public Defender's website.

## **III. DEFINITIONS**

### **A. Representation (Plan)**

"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, and the Federal Public Defender and staff attorneys of the Federal Public Defender.

### **C. CJA Administrator**

The administration of the CJA Panel is shared by the court and the Federal Public Defender.

## **IV. DETERMINATION OF ELIGIBILITY FOR CJA REPRESENTATION**

### **A. Subject Matter Eligibility**

#### **1. Mandatory**

Representation must be provided for any financially eligible person who:

- a. is charged with a felony or with a Class A misdemeanor;
- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
- c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
- d. is under arrest, when such representation is required by law;
- e. is entitled to appointment of counsel in parole proceedings;
- f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
- g. is subject to a mental condition hearing under 18 U.S.C. chapter 313;
- h. is in custody as a material witness;

- i. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255;
- j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;
- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary

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

- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
- b. is seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 other than to set aside or vacate a death sentence;
- c. is charged with civil or criminal contempt and faces loss of liberty;
- d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;

- e. has been advised by the United States attorney or a law enforcement officer that they are the target of a grand jury investigation;
- f. is proposed by the United States attorney for processing under a pretrial diversion program; or
- g. is held for international extradition under 18 U.S.C. chapter 209.

### 3. Ancillary Matters

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

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

belonging to the CJA client, which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f).

## **B. Financial Eligibility**

1. Presentation of Accused for Financial Eligibility Determination
  - a. Duties of Law Enforcement
    - (i) Upon arrest, and where the defendant has not retained counsel, federal law enforcement officials must promptly notify, telephonically or electronically, the appropriate court personnel, who in turn will notify the Federal Public Defender of the arrest of an individual in connection with a federal criminal charge.
    - (ii) Employees of law enforcement agencies should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.
  - b. Duties of United States Attorney's Office
    - (i) Upon the return or unsealing of an indictment or the filing of a criminal information, and where the defendant has not retained counsel, the United States attorney or their delegate will promptly notify, telephonically or electronically, appropriate court personnel, who in turn will notify the Federal Public Defender.
    - (ii) Upon issuance of a target letter, and where the individual has not retained counsel, the United

States attorney or their delegate must promptly notify, telephonically or electronically, the appropriate court personnel, who in turn will notify the Federal Public Defender, unless the United States Attorney's Office is aware of an actual or potential conflict with the target and the federal public defender, in which case they must promptly notify the court.

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

c. Duties of Federal Public Defender Office

- (i) In cases in which the Federal Public Defender may be appointed, the office will:
  - immediately investigate and determine whether an actual or potential conflict exists; and
  - in the event of an actual or potential conflict, promptly notify the court to facilitate the timely appointment of other counsel.
- (ii) When practicable, the Federal Public Defender will discuss with the person who indicates that he or she is not financially able to secure representation the right to appointed counsel and, if appointment of counsel seems likely, assist in the completion of a financial affidavit (Form CJA 23) and arrange to have the person promptly presented before a magistrate judge or district judge of this court for determination



of financial eligibility and appointment of counsel.

d. Duties of Pretrial Services Office

- (i) When practicable, the pretrial services officer will not conduct the pretrial service interview of a financially eligible defendant until counsel has been appointed, unless the defendant consents to a pretrial service interview without counsel.
- (ii) When counsel has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release or detention hearing.

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 consistent with the general provisions of this Plan.

## **V. TIMELY APPOINTMENT OF COUNSEL**

### **A. Timing of Appointment**

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

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

### **B. Court's Responsibility**

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

### **C. Pretrial Service Interview**

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

### **D. Retroactive Appointment of Counsel**

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

## **VI. PROVISION OF REPRESENTATIONAL SERVICES**

### **A. Federal Public Defender and Private Counsel**

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

### **B. Administration**

Administration of the CJA Panel, as provided in this Plan, is shared by the court and the Federal Public Defender.

### **C. Apportionment of Cases**

Unless a special circumstance is found to exist, the Federal Public Defender shall be appointed. If the Federal Public Defender has a conflict or is otherwise unable to accept the appointment, then a private attorney who is a member of the CJA Panel shall be selected to serve as appointed counsel pursuant to this Plan.

### **D. Number of Counsel**

More than one attorney may be appointed in any case determined by the court to be complex.

### **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 in XIV of this Plan.

## **VII. FEDERAL PUBLIC DEFENDER ORGANIZATION**

### **A. Establishment**

The Federal Public Defender organization has been established in this district under the CJA and is responsible for rendering defense services on appointment throughout this district.

**B. Standards**

The Federal Public Defender must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. *See Polk County v. Dodson*, 454 U.S. 312, 318 (1981) (“Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.” (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980))).

**C. Workload**

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

**D. Professional Conduct**

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

**E. Private Practice of Law**

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

## **F. Supervision of Defender Organization**

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

## **G. Training**

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

# **VIII. CJA PANEL OF PRIVATE ATTORNEYS**

## **A. Establishment of the CJA Panel Committee**

1. A CJA Panel Committee (“CJA Committee”) has been established by the court in consultation with the Federal Public Defender. The CJA Committee will consist of at least one district court judge, at least one magistrate judge, the Federal Public Defender, the CJA Panel Attorney District Representative (PADR), at least one criminal defense attorney who practices regularly in the district who may be a CJA panel member, and an *ex officio* staff member employed by the Federal Public Defender who will act as administrative coordinator.

The Federal Public Defender, and the district’s PADR are permanent members 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.

2. The CJA Committee will meet at least twice a year and at

any time the court asks the CJA Committee to consider an issue.

## **B. Duties of the CJA Committee**

### **1. Membership**

Examine the qualifications of applicants for membership on the CJA Panel and recommend to the chief judge the approval of those attorneys who are deemed qualified and the rejection of the applications of those attorneys deemed unqualified.

### **2. Recruitment**

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

### **3. Annual Report**

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

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

### **4. Removal**

Recommend to the chief judge 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.

5. Training

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

**C. Mentoring Program**

A CJA Mentoring Program shall be implemented to identify and help prepare viable candidates to qualify for consideration for selection to the CJA Panel. The Mentoring Program also shall seek to increase the diversity of CJA Panel.

1. CJA Mentoring Subcommittee

A subcommittee of the CJA Committee, with the Federal Public Defender, will administer the Mentoring Program. The CJA Mentoring Subcommittee will be responsible for overseeing and administering the Mentoring program. Those responsibilities will include: (1) make recommendations to the CJA Panel Committee for the selection and approval of the Mentors; (2) make recommendations to the CJA Committee for the selection and approval of the Mentees; (3) administer orientation and training programs for the Mentees to be held at the Federal Public Defender's Office; (4) pairing of the Mentors and Mentees; (5) provide Mentors guidance on the objectives and parameters of the program; (6) evaluate the success of the Mentor – Mentee relationships; and (7) assist Mentors in screening or identifying appropriate cases for the program.



## 2. Mentors

- a. The subcommittee shall propose a pool of Mentors from the CJA panel.
- b. Mentors shall be experienced and respected members of the criminal defense bar and should have extensive experience practicing in federal court. They must be willing to work closely with a Mentee and assist in his or her training and development without additional compensation.
- c. Mentors should not be assigned more than one Mentee at a time.
- d. The Mentors should be instructed on the objectives of the Mentoring program, the need to expose Mentees to all aspects of federal criminal practice, and the assessment and development of the Mentees oral and written advocacy skills.
- e. The Mentors will provide the Mentoring subcommittee a frank assessment of the Mentee's progress and ability to practice in federal criminal cases.
- f. While Mentors will not be compensated for time spent training Mentees, the subcommittee will explore the possibility of conferring CLE credit or *pro bono* credit with the Bar for participation in the program.

## 3. Mentees

- a. Mentees shall have at least 5 years or more of criminal practice experience, and they shall demonstrate strong research and writing skills.
- b. Mentees must be admitted to practice in the Southern District of Florida

- c. Mentees will be selected from among those attorneys who apply to the CJA panel and communicate in the application that they wish to participate in the Mentoring program. The CJA application shall be amended to ask whether the applicant wishes to participate in the Mentoring Program should he or she not be selected to serve on the CJA panel. The CJA application shall serve as the application for the Mentoring Program, and the CJA application period shall also serve as the period for the selection of Mentees.
- d. The CJA committee shall select the Mentees with the goal of keeping the number of Mentees to a manageable and limited number of Mentees.
- e. The Mentoring Subcommittee shall meet with the Mentor and Mentees periodically to review the Mentee's progress.
- f. The Mentee will provide the Subcommittee an evaluation of the Mentor at the end of the training period.
- g. The training period shall be based on the matters to which the Mentee is assigned. The Mentee may have more than one Mentor.
- h. Participation in the Mentorship Program shall not guarantee a Mentee selection to the CJA Panel. No attorney has a right to be selected to the Panel or as a Mentee. Mentees who successfully complete the program, however, shall be encouraged to apply to the CJA panel, and the CJA committee shall solicit the opinions of the Mentor, the Subcommittee and the Judges before whom the Mentee appeared.

#### 4. Program Parameters

- a. Cases that shall serve as teaching vehicles for the program should be newly presented cases that will expose the Mentee to the many issues across the representation of a federal criminal defendant (bail, pre-trial motions, review of discovery and evidence, investigations, plea negotiations, counseling the client, evidentiary hearings, trial or plea and sentencing).
- b. The Mentor shall confer with the Subcommittee about the cases to be used to train a Mentee.
- c. The Mentor shall involve the Mentee as early as practically possible in those cases used to train the Mentee.
- d. The Mentor must receive permission of the District Judge assigned to the case and written consent of the defendant prior to utilizing a Mentee in a CJA case.
- e. The Mentee may appear and argue on the record on behalf of the client, and the Mentor shall be present in court with the Mentee at all times. A Mentee shall not appear in court in a case where he or she is assigned as a Mentee without the presence and guidance of the Mentor.
- f. Under the direction and in the presence of the Mentor, the Mentee shall act on behalf of the client with: law enforcement, counsel for the government and any co-defendants, United States Pre-Trial and Probation Officers, the Bureau Of Prisons, the client's family, potential witnesses, and other members of the defense team.
- g. The Mentee shall participate in the review and organization of discovery, perform legal research, draft and file submissions, pleadings and motions as co-

counsel or co-author under the direction of the Mentor.

- h. Under the direction and in the presence of the Mentor, the Mentee shall be able to participate in hearings, trials and evidentiary proceedings. The Mentee's examination of a witness, address to the jury, and argument made to the court shall always be done under the direction of the Mentor with his or her presence during any such examination, address or argument.
- i. Mentees shall be required to attend an orientation program and attend training programs conducted by the Subcommittee and the Federal Public Defender's Office.

## 5. Mentee Compensation

- a. Because the Mentee will be providing legal services and will work as associate counsel, the Mentor will be permitted to apply to the district court to have the Mentee authorized as associate counsel at the rate of one-half the ordinary CJA hourly rate for work performed solely by the Mentee.
- b. For additional compensation, authorization of the Mentee as associate counsel shall be determined by the district court on a case-by-case basis where the court finds that the additional compensation is warranted.
- c. Should the court, institutionally, approve the Mentoring program to include compensation to the Mentees, additional rules, requirements and guidance may be written into the program to facilitate the payment of compensation to the Mentees. For example, the compensation to the Mentee may be handled through a CJA 21.

## 6. Promotion of Mentoring Program

- a. The Court should encourage the support of the Mentoring Program.
- b. The Court, members of the CJA Ad Hoc Committee, and those attorneys selected as Mentors shall be encouraged to provide the names of prospective Mentees to the CJA Mentoring Subcommittee who may be encouraged to apply to become Mentees.
- c. The CJA Committee and the Mentoring Subcommittee may discuss and propose additional measures to promote and support the program.

## **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 recognized.
2. The Chair of the CJA Committee will approve attorneys for membership on the CJA Panel after receiving recommendations from the CJA Panel Committee.

### **B. Size of CJA Panel**

1. The size of the CJA Panel will be determined by the CJA Committee based on the caseload and activity of the panel members, subject to review by the court. As of the date of this Plan, the CJA Panel shall not exceed 165 attorneys.
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 Federal Public Defender and the court.

### **2. Equal Opportunity**

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

### **3. Eligibility**

- a.** Applicants for the CJA Panel must be members in good standing of the federal bar of this district and the Eleventh Circuit Court of Appeals.
- b.** Applicants must maintain a primary office in this district.
- c.** Applicants must possess strong litigation and appellate 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 Rules for the Southern District of Florida.
- 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 above but believe they have equivalent other experience are encouraged to apply and provide in writing the details of that experience for the CJA Committee.

#### 4. Appointment to CJA Panel

After considering the recommendations of the CJA Committee, the chief judge will appoint or reappoint attorneys to the CJA Panel. Due to the highly complex and demanding nature of capital and habeas corpus cases, special procedures will be followed for the eligibility and appointment of counsel in such cases.

#### 5. Terms of CJA Panel Members

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

#### 6. Reappointment of CJA Panel Members

- a. The Federal Public 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 as directed by the Federal Public Defender.
- c. The CJA Committee will solicit input concerning the quality of representation provided by attorneys 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 provided in this Plan.

## 7. Removal from the CJA Panel

### a. Mandatory Removal

Any member of the CJA Panel who is suspended or disbarred from the practice of law by any 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. Mandatory Notice Requirement

A panel member must immediately notify the Federal Public Defender when any licensing authority, grievance committee, or administrative body has made a finding of probable cause, or a contempt, sanction, or reprimand has been issued against the panel member by any state or federal court. The Federal Public Defender will determine whether disciplinary review is necessary.

### c. Complaints<sup>1</sup>

#### (i) Initiation

A complaint against a panel member may be

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<sup>1</sup> This section is pending Committee vote after Committee reviews § F of the Current Plan regarding “Conduct Review of Panel Members.” – SB, 1/13/20.



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

(ii) Notice

When conducting an investigation, the CJA Committee will notify the panel member of the specific allegations.

(iii) Response

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

(iv) Protective action

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

(v) Review and recommendation

After investigation, the CJA Committee may recommend dismissing the complaint, or recommend appropriate remedial action, including removing the attorney from the panel, limiting the attorney's participation to particular

types or categories of cases, directing the attorney to complete specific CLE requirements before receiving further panel appointments, limiting the attorney's participation to handling cases that are directly supervised or overseen by another panel member or other experienced practitioner, or any other appropriate remedial action.

(vi) Final disposition by the court

The CJA Committee will forward its recommendation to the chief judge for consideration and final disposition.

(vii) Confidentiality

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

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

d. Notification

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

**X. CJA PANEL ATTORNEY APPOINTMENT IN NON-CAPITAL CASES**

**A. Appointment List**

The Federal Public Defender will maintain a current list of all

attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience.

## **B. Appointment Procedures**

1. The 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 Public Defender office and panel attorneys.
2. Each week, seven (7) attorneys in Miami-Dade County, five (5) in Broward County, and five (5) in Palm Beach County, will be on a duty list for all district court CJA appointments for that week in those divisions. Appointment to Monroe County and Ft. Pierce County cases also will be made by the magistrate judges in those locations from a duty list of five (5) attorneys. The appointment of district court cases to CJA panel members will be made using these lists. In cases where there are more defendants than CJA attorneys who are able to represent them on that week's list, the court should first appoint a CJA panel member from the previous week who did not receive an appointment, or, second, appoint a CJA panel attorney from the next week's list, or, third, any CJA panel member.
3. Appointment of cases to CJA panel members will be made on the rotational basis described above. In the interests of justice, the court may appoint counsel outside of the normal rotation.
4. Under special circumstances the court may appoint a member of the bar of the Southern District of Florida who is not a member of the CJA Panel. Such special circumstances may include cases in which the court determines

that the appointment of a particular attorney is in the interests of justice, judicial economy, continuity of representation, or for any other compelling reason. It is not anticipated that special circumstances will arise often, and the procedures provided 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.

5. Each week, one (1) attorney from the appeals-only list shall be on a duty list for appointment for any appeals to the Eleventh Circuit Court of Appeals. That one (1) attorney shall be on the duty list for all 5 divisions of the court. If more than one appellate attorney is needed in any week, the court should first appoint an appeals-only attorney from the previous week who did not receive an appointment. In the interests of justice, the court may appoint counsel outside of the normal rotation.
6. Unless otherwise impracticable, CJA panel attorneys must be available to represent defendants at the same stage of the proceedings as is the Federal Public Defender.

## **XI. DUTIES OF CJA PANEL MEMBERS**

### **A. Standards and Professional Conduct**

1. CJA panel members must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. *See Polk County v. Dodson*, 454 U.S. 312, 318 (1981) (“Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.” (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980))).
2. Attorneys appointed under the CJA must conform to the

highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct, American Bar Association's Model Code of Professional Conduct, and other standards for professional conduct adopted by the court.

3. CJA panel members must notify within 30 days the chair of the CJA Committee when any licensing authority, grievance committee, or administrative body has taken action against them, or when a finding of contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.

## **B. Training and Continuing Legal Education**

1. Attorneys on the CJA Panel are expected to remain current with developments in federal criminal defense law, practice, and procedure, including the Recommendation for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases.
2. Attorneys on the CJA Panel are expected to attend trainings sponsored by the Federal Public Defender and must attend at least one Federal Public Defender annual conference during their three-year term.
3. Attorneys on the CJA Panel will be guided in their practice by the Federal Adaptation of the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representations.
4. CJA panel members must attend 5 continuing legal education hours relevant to federal criminal practice annually.
5. Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel.

## **C. Facilities and Technology Requirements**

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

## **D. Continuing Representation<sup>2</sup>**

Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals (unless provided otherwise by the Eleventh 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**

In non-capital representations of unusual complexity that are likely to become extraordinary in terms of cost (ordinarily, a representation in which attorney hours are expected to exceed 300 hours or total expenditures are expected to exceed 300 times the prevailing CJA panel attorney non-capital hourly rate), the court may require development of a case budget consistent with Guide, Vol. 7A, §§ 230.26.10–20.

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<sup>2</sup> This section is pending language, after Michael's review of other plans, regarding co-operation and post-judgment representation.

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. A CJA Panel member must notify the court and move to withdraw as CJA counsel if the defendant wants to privately retain the attorney's services in the appointed case.

3. Redetermination of Need

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

## **XII. COMPENSATION OF CJA PANEL ATTORNEYS**

### **A. Policy of the Court Regarding Compensation**

1. Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA panel attorneys must be compensated for time expended in court and time reasonably expended out of court, and reimbursed for expenses reasonably incurred.
2. Voucher cuts should be limited to:
  - a. Mathematical errors;
  - b. Instances in which work billed was not compensable;
  - c. Instances in which work was not undertaken or completed; and
  - d. Instances in which the hours billed are clearly in excess of what was reasonably required to complete the

task.

## **B. Payment Procedures**

1. Claims for compensation must be submitted on the appropriate CJA form through the court's eVoucher system.
2. Claims for compensation should be submitted no later than 45 days after final disposition of the case, unless good cause is shown.
3. The court will review the claim for mathematical and technical accuracy and for conformity with Guide, Vol. 7A and, if correct, will forward the claim for consideration and action by the presiding judge.
4. Absent extraordinary circumstances, the 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.

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.

## **C. Voucher Review Process**

1. The court adopts the following standard for voucher review: vouchers should be considered presumptively reasonable, and voucher cuts should be limited to mathematical errors, instances in which work billed was not compensable, was not undertaken or completed, and instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.
2. Any attorney who disagrees with a district judge's decision to reduce a voucher may inform the district judge of his/her



disagreement. Each district judge shall develop a procedure to allow the attorney to present his/her position to the district judge prior to a final decision being made by the district judge.

3. All processes implemented by a district judge must be consistent with the statutory requirements for fixing compensation and reimbursement to be paid under 18 U.S.C. § 3006A(d).

### **XIII. INVESTIGATIVE, EXPERT, AND OTHER SERVICES**

#### **A. Financial Eligibility**

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

#### **B. Applications**

Requests for authorization of funds for investigative, expert, and other services must be submitted in an *ex parte* application to the court (using the court's eVoucher system) and must not be disclosed except with the consent of the person represented or as required by law or Judicial Conference policy.

#### **C. Compliance**

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

## **XIV. APPOINTMENT OF COUNSEL AND CASE MANAGEMENT IN CJA CAPITAL CASES**

### **A. Applicable Legal Authority**

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

### **B. General Applicability and Appointment of Counsel Requirements**

1. Unless otherwise specified, the provisions of 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 8 U.S.C. § 2254). Such matters include those in which the death penalty may be or is being sought by the prosecution, motions for a new trial, direct appeal, applications for a writ of certiorari to the Supreme Court of the United States, all post-conviction proceedings under 28 U.S.C. §§ 2254 or 2255 seeking to vacate or set aside a death sentence, applications for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings.
2. Any person charged with a crime that may be punishable by death who is or becomes financially unable to obtain representation is entitled to the assistance of appointed counsel throughout every stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, competency proceedings, and proceedings for executive or other clemency as may be available to the defendant. *See* 18 U.S.C. § 3599(e).

3. Qualified counsel must be appointed in capital cases at the earliest possible opportunity.
4. Given the complex and demanding nature of capital cases, where appropriate, the court will utilize the expert services available through the Administrative Office of the U.S. Courts (AO), Defender Services Death Penalty Resource Counsel projects (“Resource Counsel projects”), which include: (1) Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials), (2) Federal Capital Appellate Resource Counsel Project, (3) Federal Capital Habeas § 2255 Project, and (4) National and Regional Habeas Assistance and Training Counsel Projects (§ 2254). These counsel are death penalty experts who may be relied upon by the court for assistance with selection and appointment of counsel, case budgeting, and legal, practical, and other matters arising in federal capital cases.
5. The Federal Public Defender should promptly notify and consult with the appropriate Resource Counsel projects about potential and actual federal capital trial, appellate, and habeas corpus cases, and consider their recommendations for appointment of counsel.
6. In appointing counsel in capital cases, judges should consider and give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.
7. The presiding judge may appoint an attorney furnished by a state or local public defender organization or legal aid agency or other private, nonprofit 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).

8. 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.
9. 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.
10. 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.
11. All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.
12. There should be no formal or informal non-statutory budgetary caps on capital cases, whether in a capital trial, direct appeal, or habeas matter.
13. All capital cases should be budgeted with the assistance of case budgeting attorneys and resource counsel where appropriate.
14. Questions about the appointment and compensation of counsel and the authorization and payment of investigative, expert, and other service providers in federal capital cases should be directed to the AO's Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030 or by email at [ods\\_lpb@ao.uscourts.gov](mailto:ods_lpb@ao.uscourts.gov).

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

### 1. General Requirements

- a. Appointment of qualified capital trial counsel must occur no later than when a defendant is charged with a federal criminal offense where the penalty of death is possible. *See* 18 U.S.C. § 3005.
- b. To protect the rights of an individual who, although uncharged, is the subject of an investigation in a federal death-eligible case, the court may appoint capital-qualified counsel upon request, consistent with Sections C.1, 2, and 3 of these provisions.
- c. At the outset of every capital case, the court must appoint two attorneys, at least one of whom meets the qualifications for “learned counsel” as described below. If necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in a capital case. *See* 18 U.S.C. § 3005.
- d. When appointing counsel, the judge must consider the recommendation of the Federal Public Defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. *See* 18 U.S.C. § 3005.
- e. In appointing counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.
- f. To effectuate the intent of 18 U.S.C. § 3005 that the Federal Public Defender’s recommendation be pro-

vided to the court, the judge should ensure the Federal Public Defender has been notified of the need to appoint capital qualified counsel.

- g. 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 should be based on individualized recommendations from the Federal Public Defender in conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel projects.
- h. 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.
- i. 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 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 provided above.
- b. Second and additional counsel must be well qualified, by virtue of their distinguished prior criminal defense experience, training and commitment, to serve as counsel in this highly specialized and demanding litigation.

- c. Second and additional counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
- d. The suitability of second and additional counsel should be assessed with respect to the demands of the individual case, the stage of the litigation, and the defendant.

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

- 1. When appointing appellate counsel, the judge must consider the recommendation of the Federal Public Defender, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.
- 2. In appointing appellate counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.
- 3. Counsel appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial.
- 4. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.
- 5. 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.



6. Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals and capital appeals.
7. 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).
8. 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.
9. In evaluating the qualifications of proposed appellate counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

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

1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2255 is entitled to appointment of fully qualified counsel. *See* 18 U.S.C. § 3599(a)(2).
2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.
3. In light of the accelerated timeline applicable to capital § 2255 proceedings, prompt appointment of counsel is essential. Wherever possible, appointment should take place prior to the denial of certiorari on direct appeal by the United States Supreme Court.

4. When appointing counsel in a capital § 2255 matter, the court should consider the recommendation of the Federal Public Defender, who will consult with the Federal Capital Habeas § 2255 Project.
5. In appointing post-conviction counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.
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. Local or circuit restrictions prohibiting capital habeas units (CHUs) from engaging in cross-district or cross-circuit representation should not be imposed without good cause. Every district should have access to a CHU.
8. Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital postconviction proceedings.
9. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.
10. 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.
11. In evaluating the qualifications of proposed post-conviction § 2255 counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

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

1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 is entitled to the appointment of qualified counsel. *See* 18 U.S.C. § 3599(a)(2).
2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.
3. When appointing counsel in a capital § 2254 matter, the appointing authority should consider the recommendation of the Federal Public Defender who will consult with the National or Regional Habeas Assistance and Training Counsel projects.
4. In appointing counsel in a capital § 2254 matter, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.
5. Local or circuit restrictions prohibiting Capital Habeas Units (CHUs) from engaging in cross-district or cross-circuit representation should not be imposed without good cause. Every district should have access to a CHU.
6. 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.
7. 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.

8. 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 postconviction 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).
9. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
10. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.
11. 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.
12. 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 Eleventh Circuit Court of Appeals.