



**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CRIMINAL JUSTICE ACT PLAN

PURSUANT TO THE
CRIMINAL JUSTICE ACT OF 1964, AS AMENDED

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**United States District Court
for the District of Columbia**

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 (Guide), Volume 7A, the judges of the United States District Court for the District of Columbia adopt this Plan, as approved by the Judicial Council of the District of Columbia Circuit, for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. Statement of Policy

A. Objectives

The objectives of this Plan are:

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

This Plan must therefore be administered so that those accused of a crime, or otherwise eligible for services under the CJA, will not be deprived of the right to counsel, or any element of representation necessary to an effective defense, due to lack of financial resources.

B. Compliance

1. The court, its clerk, the federal public defender, 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.

III. Definitions

A. Representation

“Representation” includes counsel and investigative, expert, and other services.

B. Appointed Attorney

“Appointed attorney” is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys, the federal public defender and staff attorneys of the federal public defender.

C. CJA Administrator

“CJA Administrator” is a person designated by the federal public defender to administer the CJA Panel.

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. is proceeding pro se and the judge determines that stand by counsel is warranted;
- f. has been advised by the United States attorney or a law enforcement officer that they are the target of a grand jury investigation;
- g. is proposed by the United States attorney for processing under a pretrial diversion program; or
- h. 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 or waived counsel, federal law enforcement officials must promptly notify, telephonically or electronically, the appropriate court personnel and 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 of an unsealed indictment, the unsealing of an indictment, or the filing of an unsealed criminal information, 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 and the federal public defender.
- (ii) Upon issuance of a subject or target letter, and where the individual has not retained or waived counsel, the United States attorney or their delegate must promptly notify, telephonically or electronically, the appropriate court personnel and the federal public defender. The federal public defender will promptly notify electronically the United States Attorney's Office when it is contacted by the recipient of a subject or target letter.
- (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 facilitate the timely appointment of other counsel.
- (ii) When practicable, the federal public defender, or CJA counsel who may be appointed, will discuss with the person who indicates that they are 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

In cases where counsel has already been appointed or

retained, 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 of the right to be represented by counsel throughout the case and that, if so desired, counsel will be appointed to represent the person if they are 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. Pursuant to the Guide, Vol. 7A, § 210.40.20, the person should complete a financial eligibility affidavit (Form CJA 23) reflecting information bearing on the person's eligibility for appointment of counsel. The federal public defender or CJA counsel shall assist the person in the completion of the financial affidavit.
- c. In determining whether a person is "financially unable to obtain counsel," consideration should be given to the cost of providing the person and any 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. 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\(f\)](#).
- g. 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.

3. Use of Information

The government may not use any information provided by a defendant in connection with a request for the appointment of counsel pursuant to this Plan, other than in a prosecution for perjury or false statements relating to information provided on the financial eligibility affidavit (Form CJA 23).

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. 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 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 set forth in this Plan, is hereby delegated and assigned to the federal public defender.

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 Public Defender

A. Establishment

The federal public defender is 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.

C. Workload

The federal public defender will continually monitor the workloads of its staff to ensure high quality representation for all clients.

D. Private Practice of Law

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

E. Training

The federal public defender will assess the training needs of federal public defender staff and, in coordination with the CJA Panel Attorney District Representative, the training needs of the local panel attorneys, and provide

training opportunities and other educational resources.

VIII. CJA Panel of Private Attorneys

A. Establishment of the CJA Committee

1. A CJA Committee (“CJA Committee”) will be established by the court and will consist of at least one district court judge, one magistrate judge, the federal public defender, the CJA Panel Attorney District Representative (PADR), and at least three criminal defense attorneys who practice regularly in the district, two of whom should be CJA panel members.
2. The federal public defender or its representative, and the district’s PADR are permanent members of the CJA Committee.
3. The CJA Committee will meet at least once a year and at any time the court asks the Committee to consider an issue.

B. Duties of the CJA Committee

1. Membership

Examine the qualifications of applicants for membership on the CJA Panel and recommend to the court the approval of those attorneys who are deemed qualified.

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 court 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.

4. Review of CJA Plan

Review the CJA Plan every five years and recommend any revisions to the court.

5. Removal

Recommend to the court the removal of any CJA panel member who:

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

See also Section IX.C.7

6. 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.

7. Voucher Review

The Committee will review vouchers as needed, at the request of counsel or the presiding judge, as described in Section XII(b).

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 CJA Committee will recommend attorneys for membership on the CJA Panel.

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.
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.

2. Equal Opportunity

All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases. Applicants will receive consideration for membership without regard to race, color, religion, gender, sexual orientation, national origin or disability.

3. Eligibility

a. Applicants for the CJA Panel must be members in good standing of the federal bar of this district.

b. Applicants must possess strong litigation skills and demonstrate proficiency with the federal sentencing guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence.

c. Applicants must have 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.

d. Attorneys who do not possess the experience set forth above but believe they have equivalent other experience are encouraged to apply and set forth in writing the details of that experience for the CJA Committee's consideration.

4. Appointment to CJA Panel

After considering the recommendations of the CJA Committee, the court will appoint or reappoint attorneys to the CJA Panel. Due to the highly complex and demanding nature of capital and habeas corpus cases, special procedures will be followed for the eligibility and appointment of counsel in such cases. See [Section XIV of this Plan](#).

5. 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

The CJA Committee will conduct an automatic disciplinary review of any CJA panel member against whom any licensing authority, grievance committee, or administrative body has taken action, or when a finding of probable cause, contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.

c. Complaints

(i) Initiation

A complaint against a panel member may be initiated by the CJA Committee, a judge, another panel member, a defendant, or a member of the federal public defender 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 court 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.

B. Appointment Procedures

1. The federal public defender is responsible for overseeing the appointment of cases to panel attorneys. The federal public defender 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. Appointment of cases to CJA panel members will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, the federal public defender 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. Such special circumstances may include cases in which the court determines that the

appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason. It is 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.

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 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.
2. Attorneys appointed under the CJA must conform to the highest standards 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 federal public defender or the Defender Services Office.
3. CJA panel members must attend 4 hours annually of legal education relevant to federal criminal practice, which may include programs sponsored by the federal public defender and the Defender Services Office.
4. Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel.

C. Facilities and Technology Requirements

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

D. Continuing Representation

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

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 federal public defender (or its designee) will review the claim for mathematical and technical accuracy, for conformity with Guide, Vol. 7A, and for a determination that the claim is for time reasonably expended representing the individual.
4. If the federal public defender determines that counsel's compensation request is excessive, the federal public defender shall notify counsel of

that determination before recommending a payment reduction to the presiding judge. The federal public defender thereafter must meet and confer with counsel and make a good faith effort to resolve any disagreements about the compensation request. If the federal public defender and counsel reach an agreement, the federal public defender shall forward the agreed-upon compensation request to the presiding judge for consideration and action. If applicable, the federal public defender shall inform the presiding judge that counsel has agreed to reduce their request for compensation.

5. If, following the meet and confer process described in paragraph 4, the federal public defender and counsel cannot reach an agreement as to the reasonableness of the compensation request, counsel may elect to take either of the following steps.
 - (a) Counsel may submit the payment dispute directly to the presiding judge for consideration and action, in which case the presiding judge shall provide counsel an opportunity to justify the reasonableness of the compensation request.
 - (b) Alternatively, before the disputed claim is submitted to the presiding judge, counsel may seek from the CJA Committee, or any subcommittee thereof, a written opinion as to the reasonableness of the compensation request. The CJA Committee shall afford counsel a reasonable opportunity to be heard. The CJA Committee shall submit its final, written opinion to the presiding judge, counsel, and the federal public defender within 21 days of receiving the request for an opinion.
6. Except in cases involving mathematical corrections, the presiding judge shall not reduce a claim for compensation sua sponte without first (a) notifying the federal public defender and counsel, and (b) affording counsel a reasonable opportunity to be heard. Upon receiving notice that the presiding judge is sua sponte considering a payment reduction, within ten days, counsel may ask the CJA Committee to prepare an opinion, as described in paragraph 5. The presiding judge shall consider the CJA Committee's opinion before making a final decision on the claim.
7. Notwithstanding the procedures set forth in this subsection, a presiding judge may consult with the federal public defender concerning a compensation request at any time, and a judge may seek a written opinion from the CJA Committee concerning any request, with notice to the affected counsel, at any time.
8. 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.

C. Waiver of Maximum Limits on Counsel Fees

Payment in excess of the maximum limits on counsel fees may be made in cases involving extended or complex representation whenever the district judge before whom representation was rendered, or the magistrate judge (if the representation was furnished exclusively before the magistrate judge), certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit or such active circuit judge to whom the chief judge has delegated such approval authority. Counsel claiming payment in excess of the statutory maximum shall submit a detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation.

XIII. Investigative, Expert, and Other Services

A. Financial Eligibility

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

B. Applications

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

C. Compliance

Counsel must comply with Judicial Conference policies set forth in [Guide, Vol. 7A, Ch. 3](#).

XIV. Appointment of Counsel and Case Management in CJA Capital Cases

A. Applicable Legal Authority

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

B. General Applicability and Appointment of Counsel Requirements

1. Unless otherwise specified, the provisions set forth in this section apply to all capital proceedings in the federal courts, whether those matters originated in a district court (federal capital trials) or in a state court (habeas proceedings under 28 U.S.C. § 2254). Such matters include those in which the death penalty may be or is being sought by the prosecution, motions for a new trial, direct appeal, applications for a writ of certiorari to the Supreme Court of the United States, all post-conviction proceedings under 28 U.S.C. §§ 2254 or 2255 seeking to vacate or set aside a death sentence, applications for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings.
2. Any person charged with a crime that may be punishable by death who is or becomes financially unable to obtain representation is entitled to the assistance of appointed counsel throughout every stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, competency proceedings, and proceedings for executive or other clemency as may be available to the defendant. See [18 U.S.C. § 3599\(e\)](#).
3. Qualified counsel must be appointed in capital cases at the earliest possible opportunity.
4. 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.
5. 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.

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 may consult with Federal Death Penalty Resource Counsel to recommend qualified counsel.
- e. To effectuate the intent of 18 U.S.C. § 3005 that the federal public defender’s recommendation be provided to the court, the judge should ensure the federal public defender has been notified of the need to appoint 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 federal public defender.
- 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 have been a member of this district’s bar for not less than five years and must have had not less than three years’ experience in the actual trial of felony prosecutions in this district. Appointment of counsel from outside the jurisdiction may be permitted if needed 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 prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high quality representation.
- d. 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.

- e. Learned counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.

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 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 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 may consult with the Federal Capital Habeas § 2255 Project.
- 5. Out-of-district counsel, including federal defender staff, who possess the requisite expertise may be considered for appointment in capital § 2255 cases to achieve high quality representation together with cost and other efficiencies.
- 6. Counsel in § 2255 cases should have prior experience in the area of federal post-conviction proceedings and in capital post-conviction

proceedings.

7. When possible, post-conviction counsel should have prior experience in capital § 2255 representations.
8. In evaluating the qualifications of proposed post-conviction § 2255 counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

E. 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 may consult with the National or Regional Habeas Assistance and Training Counsel projects.
4. 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.
5. 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.
6. 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\(e\)](#).
7. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
8. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.

9. 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.
10. 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 is effective as of April 17, 2019, the date upon which it was approved by the Judicial Council of the District of Columbia Circuit.

BERYL A. HOWELL
CHIEF JUDGE