



**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
CRIMINAL JUSTICE ACT PLAN**

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 as amended (CJA), 18 U.S.C. § 3006A, and the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), Volume VII, Guide to Judiciary Policies and Procedures, the Judges of the United States District Court for the Southern District of Ohio, adopt this Plan 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.

1. The primary objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of a crime, or otherwise eligible for services under the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. A secondary objective of this Plan is to particularize the requirements of both the CJA and the CJA Guidelines in a way that meet the needs of this District.

B. Compliance.

1. The Court, its Clerk, the Federal Public Defender, the Ohio Public Defender, and private attorneys appointed under the CJA (CJA Panel) shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. A copy of this Plan is posted on the District Court's website located at www.ohsd.uscourts.gov. The Clerk of the Court shall maintain a current copy of the CJA Guidelines that can be consulted by the CJA Panel.

III. DEFINITIONS

- A. "Representation" includes counsel and investigative, expert, and other services.
- B. "Appointed attorney" includes private attorneys appointed under the CJA, the Office of the Federal Public Defender and its staff attorneys, and the Ohio Public Defender and staff attorneys of that organization.

IV. PROVISION OF REPRESENTATION

A. Circumstance.

1. **Mandatory.** Representation **shall** be provided for any financially eligible person who:
 - a. is charged with either a felony or 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 alleged to have violated a condition of probation, or faces the prospect of a modification to a 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 alleged to have violated a condition of supervised release or faces the prospect of a modification to a condition of supervised release, unless the modification sought is favorable to the supervisee and the government has not objected to the proposed change;
 - g. is subject to a mental condition hearing under Chapter 313 of Title 18, United States Code;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under either 28 U.S.C. §§ 2254 or 2255;
 - j. is entitled to appointment of counsel in verification of consent proceedings pursuant to 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;
 - l. faces loss of liberty in a case and federal law requires the appointment of counsel;

- m. is entitled to appointment of counsel for an evidentiary hearing in non- capital habeas proceedings filed under either 28 U.S.C. §§ 2254 or 2255;
 - n. is charged with civil or criminal contempt and who faces the loss of liberty; or
 - o. is charged with a “petty offense” (Class B or C misdemeanor or an infraction) for which a sentence of confinement is authorized, unless the presiding judicial officer agrees at the initial appearance that no confinement will be imposed.
- 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” for which a sentence of confinement is authorized even if the presiding judicial officer agrees at the initial appearance that no confinement will be imposed;
 - b. is seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255, other than to set aside or vacate a death sentence;
 - c. has been called as a witness before a federal grand jury, a federal 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 the testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face the loss of liberty;
 - d. is proposed by the United States Attorney for admission into a pretrial diversion program;
 - e. is held for international extradition under Chapter 209 of Title 18, United States Code; or
 - f. has been advised by the United States attorney or a law enforcement officer that they are the target of a grand jury investigation.

3. Ancillary Matters.

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

- a. to protect a constitutional right;
- b. to contribute in some significant way to the defense of the principal criminal charge;
- c. to aid in preparation for the trial or disposition of the principal criminal charge;

- d. to enforce the terms of a plea agreement in the principal criminal charge;
- e. to preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under 18 U.S.C. § 983, 19 U.S.C. § 1602, 21 U.S.C. § 881, or similar statutes, which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f); or
- f. effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f).

B. When Counsel Shall be Provided.

Counsel shall be provided to eligible defendants as soon as possible after they are taken into custody, when they appear before a District Judge or Magistrate Judge, when they are formally charged or notified of charges if formal charges are sealed, or when a District Judge or Magistrate Judge otherwise considers appointment of counsel under the CJA, whichever event occurs earliest. Appointment of counsel may be made retroactive to include representation provided prior to appointment.

C. Number and Qualifications of Counsel.

1. **Number.** More than one attorney may be appointed in any case determined by the Court to be complex.
2. **Federal Capital Prosecutions.** Pursuant to 18 U.S.C. § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. In rare instances, but when necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.
3. **Habeas Corpus Proceedings.** A financially eligible person seeking to vacate or set aside a death sentence in proceedings brought under either 28 U.S.C. §§ 2254 or 2255 is entitled to the appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of capital habeas proceedings, judicial officers should consider appointing at least two counsel in these cases.

D. Eligibility for Representation.

1. **Factfinding.** The determination of eligibility for representation under the CJA is a judicial function to be performed by either a District Judge or Magistrate Judge after making appropriate inquiries concerning the individual's financial condition.
2. **Use of Financial Information.** The United States Attorney's Office may not use, as part of its case-in-chief, other than in a prosecution for perjury or making a false statement, any information provided by an individual in connection with his/her request for the appointment of counsel pursuant to this Plan.

3. **Disclosure of Change in Eligibility.** If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal services, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court of the change of circumstances.
4. **Reimbursement.** If a defendant's financial condition changes and the Court finds that the defendant is financially able to hire counsel or to make partial payment for representation, the Court may either terminate the appointment of counsel or direct the defendant to reimburse the Clerk of the Court for the cost of appointed counsel, as the interests of justice may dictate.

V. FEDERAL PUBLIC DEFENDER

A. Recognition of Existing Organization.

1. The Office of the Federal Public Defender for the Southern District of Ohio, previously established in this District pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender for this District.
2. The Federal Public Defender is capable of providing legal services throughout the Eastern and Western Divisions of the District, and shall maintain offices in each Seat of Court.

B. Supervision of Defender Organization. The Federal Public Defender shall be responsible for the supervision and management of the Office of the Federal Public Defender. Accordingly, the Federal Public Defender shall be appointed in all cases assigned to that organization for Subsequent assignment to staff attorneys at the discretion of the Federal Public Defender.

VI. PRIVATE ATTORNEYS

A. CJA Panel.

1. **Establishment of CJA Panel.** By adopting this CJA Plan, the District Court establishes a CJA Panel whose members are eligible and willing to be appointed to provide representation under the CJA; this Panel shall replace any Panel that existed prior to the adoption of this Plan.

The CJA Panel is divided into separate lists for each of the three Seats of Court. A Seat of Court CJA Panel Committee, described in further detail in subsection VI (B) of this Plan, may submit additional potential Panel members to the Chief Judge if satisfied that the applicant(s) meet the eligibility requirements set forth in subsection VI (A)(2) of this Plan. Members of the CJA Panel shall serve at the pleasure of the Chief Judge.

2. **Eligibility.** Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this District; possess federal and/or state criminal trial experience; and have demonstrated proficiency with the Sentencing Guidelines, federal sentencing procedure, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence. To maintain eligibility, each CJA Panel attorney must accept the role of mentor, if requested to perform this function by either the Chief Judge or the Seat of

Court CJA Panel Committee and shall complete biennially at least six hours of continuing legal education in federal criminal practice and a session on Court procedures (including payment forms) with the Clerk's Office. At least two hours of this continuing legal education must be on the application of the advisory Sentencing Guidelines and/or federal sentencing procedure. Compliance with this continuing legal education requirement will be monitored by the members of the Seat of Court CJA Panel Committee. With the exception of CJA counsel in capital cases, CJA Panel attorneys must maintain a primary, satellite, or shared office in this district.

3. **Application.** Applications for membership to the CJA Panel will be available on the District Court's website located at www.ohsd.uscourts.gov. Completed applications shall be submitted to the Clerk of the Court who will transmit the applications to the Chairperson of the Seat of Court CJA Panel Committee.
4. **Size.** The Seat of Court CJA Panel Committee, in consultation with the Chief Judge, shall fix, periodically, the size of the CJA Panel. In determining the size of the CJA Panel, due regard should be given to the fact that 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, and thereby provide a high quality of representation that is expected of the Panel.
5. **Ratio of Appointments.** Where practical and cost effective, the CJA Panel shall 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" means approximately 25% of the annual appointments made under the CJA.
6. **Equal Opportunity.** All qualified attorneys shall be encouraged to become members of the CJA Panel, without regard to race, color, religion, sex, age, national origin, or disabling condition.
7. **Term of Service.** Members of the CJA Panel shall serve continuously until they either resign or are removed from the Panel. However, the Chief Judge retains the authority to direct a Seat of Court CJA Panel Committee to constitute an entirely new appointment list to replace the existing list from which appointments are made. When the Seat of Court CJA Panel Committee is directed to compile a new appointment list, the existing list shall be used for appointment purposes until further order of the Chief Judge. Nothing will prevent an attorney on the existing Panel from applying for membership on the new Panel.
8. **Acceptance of Appointments.** Members of the CJA Panel are expected to make themselves available to accept appointments when called upon to do so and to serve as mentors when requested.
9. **Removal from the Panel.** The Court is very appreciative of the time and commitment required to accept CJA appointments. Membership on the CJA Panel is not a right, however, and the refusal to promptly accept appointments on a consistent basis will be considered as resignation from the CJA Panel. The attorney will be notified in writing of any change in status resulting from the failure to promptly accept appointments.

Removal, at all times, is at the discretion of the Chief Judge. Further, a CJA Panel member may be removed from the CJA Panel by the Chief Judge whenever the Seat of Court Panel Committee determines the member has failed to fulfill the obligations of CJA Panel membership or has engaged in other conduct which renders it inappropriate that he/she continue as a CJA Panel member. Complaints concerning the conduct of Panel members may be forwarded to the Chair of the Panel Committee or the Chief Judge. If the Chair, or the Chief Judge, determines the complaint alleges facts which if true would warrant consideration of removal of the Panel member, the Chair or the Chief Judge shall direct the Committee to review the complaint, make such inquiry as it deems appropriate, and issue a report of its findings and recommendation. The report and recommendation of the Committee should be presented to the Chief Judge who has the authority to remove the attorney from the CJA Panel or take such action as deemed appropriate.

Any attorney whose resignation is assumed because he/she has not promptly accepted cases may file a request to return to active status. This request must include an explanation regarding counsel's refusal to accept appointments. The Seat of Court CJA Panel Committee will make a recommendation to the Chief Judge on whether to accept or reject these requests for reinstatement.

Attorneys removed for any other reason may file an application to be placed back on the CJA Panel no earlier than one year from the date of removal. In this application, counsel must note the earlier removal and explain why he/she believes that he/she should be permitted to return to the CJA Panel. The Seat of Court CJA Panel Committee will also make a recommendation to the Chief Judge on any such requests for reinstatement to the CJA Panel.

10. Appointment of non-Panel members. All appointments of counsel in CJA cases are to be made from the list of attorneys who comprise the CJA Panel in each Seat of Court.

B. Seat of Court CJA Panel Committee.

1. The Court hereby creates a standing committee in each Seat of Court, to be known as the "Seat of Court CJA Panel Committee." Each Seat of Court CJA Panel Committee shall consist of the following members:
 - a. the Federal Public Defender or his/her designee;
 - b. the Clerk of the Court for the United States District Court for the Southern District of Ohio or his/her designee, who shall provide administrative and clerical support to the Committee but shall be a non-voting member;
 - c. a CJA Panel Attorney who regularly practices in the Seat of Court in which the Committee is constituted and who possesses sufficient experience and interest in the federal criminal justice system to assist in administering the CJA Panel for the Seat of Court in which the Committee is constituted; and
 - d. a Magistrate Judge from the Seat of Court in which the Committee is constituted, who shall serve as Chair of the Committee.

2. The CJA Panel Attorney and Magistrate Judge Committee members shall be appointed by the Chief Judge of the United States District Court for the Southern District of Ohio for two-year terms and may be reappointed for additional terms, at the discretion of the Chief Judge.
3. The responsibilities of the Seat of Court CJA Panel Committee include:
 - a. reviewing and maintaining the CJA Panel list within the Seat of Court and to include designation by experience, if appropriate;
 - b. reviewing CJA Panel member applications and considering rotating off up to ten percent of the existing panel members in order to ensure that the court has a pool of qualified and experienced attorneys and to allow a greater number of qualified applicants the opportunity to serve. After the applicant's credentials are evaluated on the face of an application that was submitted, the Seat of Court CJA Panel Committee will report its recommendations to the Chief Judge who will make the final determination as to whether the applicant should be admitted as a CJA Panel member.
 - c. making recommendations or raising issues concerning the administration of the CJA Panel list or appointment of counsel to the Southern District of Ohio CJA Panel Standing Committee, described in further detail in subsection VI (C) of this Plan;
 - d. updating the CJA Panel list and reporting its recommendations to the Southern District of Ohio CJA Panel Committee not later than February 15 of every other year;
 - e. reviewing the performance of Panel members; and
 - f. creating a "Pending Applications List," which is fully discussed in Section VI (D) of this Plan.
4. **The Seat of Court.** CJA Panel Committee will be appointed and meet within ninety days of the adoption and final approval of this CJA Plan. Thereafter, the Seat of Court CJA Panel Committee will meet from time to time as needed to complete its tasks, but no less often than annually.
5. **Advisory Group.** The Chief Judge may, after consultation with a Seat of Court CJA Panel Committee, appoint members of the private bar who are non-Panel members, to serve the Committee in any capacity in order to assist in the completion of the Committee's business. Members of this advisory group will be considered non-voting members of the Committee.

C. Southern District of Ohio CJA Panel Committee.

1. The Court hereby creates a standing committee known as the "Southern District of Ohio CJA Panel Committee." The Southern District of Ohio CJA Panel Committee shall consist of the following members:

- a. the Chief Judge for the United States District Court for the Southern District of Ohio or his/her designee, who shall serve as Chair;
 - b. the Federal Public Defender or his/her designee;
 - c. the Clerk of the Court for the United States District Court for the Southern District of Ohio or his/her designee, who shall provide administrative and clerical support to the Committee;
 - d. the CJA Panel Attorney member of each of the Seat of Court CJA Panel Committees; and
 - e. the Magistrate Judge member of each of the Seat of Court CJA Panel Committees.
2. The responsibilities of the Southern District of Ohio CJA Panel Committee include:
- a. reviewing this Plan and any Appendices thereto;
 - b. making recommendations regarding the need for any amendments to this Plan, and any Appendices thereto appropriate to ensure that the right to counsel is protected for all eligible persons within the Southern District of Ohio;
 - c. making recommendations to the Court or raising issues concerning the administration of the CJA Panel list or appointment of counsel; and
 - d. reporting its recommendations to the District Court not later than October 31 of every other year.
3. The Southern District of Ohio CJA Panel Committee shall meet within ninety days of the receipt of the reports from the Seat of Court CJA Panel Committees. Thereafter the Southern District of Ohio CJA Panel Committee will meet from time to time, as needed, to complete its tasks, but no less often than annually.

D. Creation of A Pending Applications List–Mentor Program.

- 1. **Pending Applications List.** A “Pending Applications List” shall be established, consisting of lawyers who have applied for membership on the CJA Panel and who do not yet possess sufficient skill, knowledge, or experience to be eligible for unsupervised membership on the CJA Panel. Pending final approval of their applications, such attorneys shall receive training which may include service in a second chair capacity to a mentor on a given case, or aspects of a given case, including detention hearings and sentencing proceedings.
- 2. **The Seat of Court.** CJA Panel Committee shall maintain the Pending Applications List. CJA Panel attorneys will be advised of the existence of this list and will be expected to contact the Clerk’s Office or a Seat of Court CJA Panel Committee member to obtain the names of attorneys seeking to serve in a second chair capacity. The Seat of Court CJA

Panel Committee shall periodically review the Pending Applications List and determine which attorneys meet the criteria for unrestricted CJA Panel membership set forth in subsection VI (A)(2) of this Plan and should be moved to the regular CJA Panel.

A Panel member serving as a mentor to an attorney on the Pending Applications List will notify the Seat of Court CJA Panel Committee of the applicant's progress and the Committee may accept this as a recommendation for admission or take whatever action it deems necessary. Compensation may be made available to the applicant for time spent working on cases with a mentor. Any determination regarding compensation rests solely with the Chief Judge or his/her designee.

E. Selection for Appointment.

Maintenance of List and Distribution of Appointments. The Clerk of the Court shall maintain a current list of all attorneys included on the CJA Panel for each Seat of Court and shall make that list available to all District Judges and Magistrate Judges. The Clerk, with the assistance of the Magistrate Judge and the Federal Public Defender, shall maintain statistical data reflecting the number of appointments of CJA attorneys and the number of appointments of the Federal Public Defender.

F. Method of Selection.

- 1. Rotational Appointments.** Appointments from the CJA Panel list should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments among the members of the CJA Panel as well as quality representation for each CJA defendant.
- 2. New Matters.** The primary way of ensuring that appointments will be equally distributed among the CJA Panel will be through tracking the assignment of a "new matter." Once a CJA Panel member is appointed to a "new matter," counsel's name will be moved to the bottom of the appointment list. Every CJA appointment that counsel receives counts as a "new matter," with the following exceptions: (1) when counsel is appointed to represent a supervisee in either a probation or supervised release revocation proceeding and counsel was the same attorney who originally handled the case; or (2) when the CJA Panel member is appointed as counsel but is replaced by other counsel before the cost for services rendered has reached \$750.00. Under this second exception, the CJA Panel member must notify the judicial officer who made the appointment that the appointment did not constitute a "new matter." Once the submission of the voucher is confirmed, the CJA Panel member will be moved to the top of the appointment list.
- 3. Exceptional Circumstances.** In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk's Office, the District Judge or Magistrate Judge may appoint any attorney from the list.

VII. 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 28 U.S.C. § 2254). Such matters include those in which the death penalty may be or is being sought by the prosecution, motions for a new trial, direct appeal, applications for a writ of certiorari to the Supreme Court of the United States, all post-conviction proceedings under 28 U.S.C. §§ 2254 or 2255 seeking to vacate or set aside a death sentence, applications for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings.
2. Any person charged with a crime that may be punishable by death who is or becomes financially unable to obtain representation is entitled to the assistance of appointed counsel throughout every stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, competency proceedings, and proceedings for executive or other clemency as may be available to the defendant. See: 18 U.S.C. § 3599(e).
3. Qualified counsel must be appointed in capital cases at the earliest possible opportunity.
4. Given the complex and demanding nature of capital cases, where appropriate, the court will utilize the expert services available through the Administrative Office of the 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.

7. The presiding judge may appoint an attorney furnished by a state or local public defender organization or legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief provided that the attorney is fully qualified. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed pro hac vice. See: 18 U.S.C. § 3006A(a)(3).
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/or 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.

C. Appointment of Trial Counsel in Federal Death-Eligible Cases.¹

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.

¹ The Judicial Conference adopted detailed recommendations on the appointment and compensation of counsel in federal death penalty cases in 1998 (*JCUS-SEP 98*, p. 22). In September 2010, the Defender Services Committee endorsed revised commentary to the Judicial Conference’s 1998 recommendations. *CJA Guidelines, Vol. 7A, Appx. 6A (Recommendations and Commentary Concerning the Cost and Quality of Defense Representation (Updated Spencer Report, September 2010))* (“Appx. 6A”) is available on the judiciary’s website.

- b. To protect the rights of an individual who, although uncharged, is the subject of an investigation in a federal death-eligible case, the court may appoint capitally qualified counsel upon request, 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 Council 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.
- f. 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 capitally 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 be based on individualized recommendations from the Federal Public Defender in conjunction with the Federal Death Penalty Resource Council and Capital Resource Council 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.

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.

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 post-conviction 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. The defender's recommendation may be to appoint this district's Capital Habeas Unit (CHU), a CHU from another district, or other counsel who qualify for appointment under 18 U.S.C. § 3599 and this Plan, or any combination of the foregoing appropriate under the circumstances.
4. In appointing counsel in a capital § 2254 matter, judges should give due weight to the recommendations made by federal defenders and resource counsel.
5. Local or circuit restrictions prohibiting 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 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).
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.

VIII. DUTIES OF APPOINTED COUNSEL

- A. **Standards.** The legal services provided to a defendant represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the defendant.
- B. **Professional Conduct.** Counsel appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the American Bar Association's Model Rules of Professional Conduct. Counsel shall also be subject to the Model Federal Rules of Disciplinary Enforcement, as adopted by this Court in General Order 81-1.
- C. **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 appointment, unless such payment is approved by order of the Court.

- D. Continuing Representation.** Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

In the event that a defendant is convicted following trial, counsel shall advise the defendant of the right of appeal and of the right to the assistance of counsel on appeal. If requested to do so by the defendant, counsel shall file a timely notice of appeal and shall continue to represent the defendant unless, or until, relieved by the United States Court of Appeals for the Sixth Circuit.

- E.** CJA panel members must notify within 30 days the chair of the CJA Seat of Court 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.

IX. SERVICES OTHER THAN COUNSEL

- A. Authorization.** Counsel for any defendant who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding that the services are necessary and that the defendant is financially unable to obtain them, the Court shall authorize counsel to obtain the services.

The CJA authorizes counsel for an indigent defendant to obtain investigative, expert, or other services without prior authorization but subject to subsequent court review, providing the cost of the services does not exceed \$500.00 plus expenses reasonably incurred. This limit may be waived if the Court finds that timely procurement of necessary services could not await prior authorization.

- B. Change in Eligibility.** If at any time after counsel has been authorized to obtain investigative, expert, or other necessary services for a defendant, the Court finds that the defendant is financially able to obtain such services or to make partial payment therefor, the Court may terminate the authorization of such services or direct the defendant to reimburse the Clerk of the Court for the costs of these services rendered, as the interests of justice may dictate. A provider of these services may not require, request, or accept any payment or promise of payment or any other valuable consideration for these services unless such payment is approved by order of the Court.

- C. Applicability.** The provisions of this subsection do not apply to the Federal Public Defender organization operating under this Plan.

X. COMPENSATION

- A. Rates.** The maximum rates and amounts of compensation for members of the CJA Panel as well as for services other than counsel shall be in accordance with prevailing rates and amounts as set by the CJA.

The hourly rates and amounts of compensation are intended to be maximum rates and will be treated as such. In fixing the compensation, the Court will consider the qualifications of attorneys and the relative difficulties encountered in presenting the case. The Court shall also bear in mind the underlying philosophy of the CJA that the bar of the nation owes a responsibility to represent persons financially unable to retain counsel and that the compensation provided is not intended to equate to private attorney fees. In keeping with that philosophy, payment in excess of the statutory maximum shall only be sought in complex or extended cases.

- B. Excess.** Payment in excess of the statutory maximum may be made for extended or complex representation when supported by a motion from counsel requesting approval of the excess amount and stating the reasons why the amount is justified. In order for a CJA Panel member to receive excess compensation, the District Judge or Magistrate Judge must certify that the excess payment is necessary to provide fair compensation to counsel due to either the complexity of the case or counsel's extended representation. The amount of the excess payment must also be approved by the Chief Judge of the United States Court of Appeals for the Sixth Circuit or his/her designee.
- C. Claims.** Claims for compensation shall be submitted, on the appropriate CJA form, to the Clerk of the Court. The Clerk of the Court shall review the claim form for mathematical and technical accuracy, and for conformity with the CJA Guidelines and, if correct, shall forward the claim form for the consideration and action of the District Judge or Magistrate Judge.
- D. Payment.** Although the CJA provides for limited compensation, the Court recognizes that the compensation afforded often does not reflect the true value of the services rendered. Consequently, it is the Court's policy not to cut or reduce claims which are reasonable and necessary. If the Court determines that a claim must be reduced, it will provide the attorney notice of its intent to reduce the claim and an opportunity to address this issue before final payment is made. Once the CJA Panel member is provided with notice of the Court's intention to reduce the submitted claim, the attorney must submit his/her written response to support the claim within ten days.

The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing. Upon approval by the Court, all vouchers and claims for compensation and reimbursement of expenses shall be entered into the CJA Panel Attorney Payment System for payment by the Administrative Office of the United States Courts. The originals of the voucher forms will be retained in this District for audit purposes.

E. 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.

F. Voucher Reductions and Independent Review Procedures.

1. **Reductions.** Claims for compensation under the CJA will not be reduced without affording counsel notice and an opportunity to be heard.
 - a. When contemplating a voucher reduction, the Court will notify CJA counsel of any proposed reduction and offer counsel the opportunity to justify the submission.
 - b. If counsel indicates that the reduction is not contested, the Court will process the reduced voucher once corrected and resubmitted by counsel.
 - c. If counsel responds and provides information justifying the claimed time or expense, the voucher will be approved as corrected and resubmitted by counsel.
2. **Independent Review.**
 - a. If after reviewing counsel's response the presiding judge reduces the voucher, counsel may seek review of the reduction to the Chief District Judge or his or her designee within ten days. If the Chief District Judge is the presiding judge who reduced the voucher, counsel may seek review by the Chief Circuit Judge or his or her designee within thirty days. Deadline extensions may be granted for good cause.
 - b. If the reviewing judge or his or her designee finds the request for review to be meritorious, the CJA specialist will be notified and direct counsel to create a new voucher for the appropriate amount.

XI. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

- A. **Presentation of Accused for Appointment of Counsel.** Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this District, and those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he/she is financially able to secure representation, and shall, in such cases in which the person indicates that he/she is not financially able to secure representation, 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. 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. Pretrial Services Interview. In recognition of the importance of the advice of counsel for persons being interviewed by pretrial service officers, the pretrial services officers of this District, prior to conducting such interviews, shall notify the defendant of his/her right to speak with an attorney before answering any questions and of the defendant's right to have an attorney appointed to represent him/her during questioning if the defendant cannot afford an attorney. Such notice shall be given in writing and in substantially the same format as provided in Appendix I.

C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation or supervised release, the United States Attorney or the probation officer, as appropriate, immediately shall mail or otherwise deliver a copy of the pertinent document to appointed counsel, or to the defendant if he/she is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

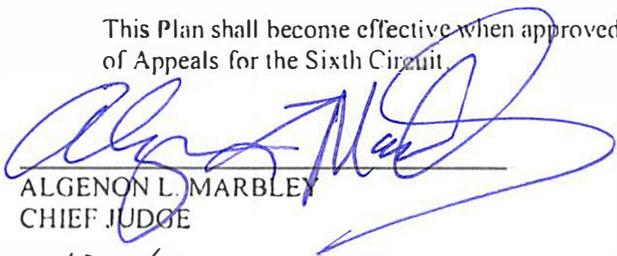
XII. MISCELLANEOUS

A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.

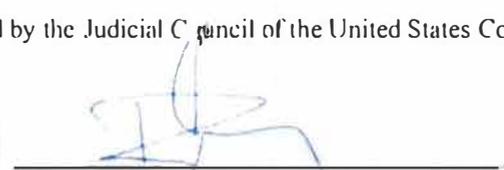
B. Supersession. This Plan supersedes all prior CJA Plans of this Court.

XIII. EFFECTIVE DATE

This Plan shall become effective when approved by the Judicial Council of the United States Court of Appeals for the Sixth Circuit.



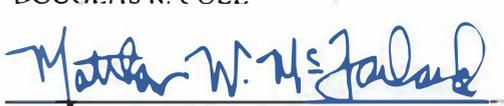
ALGENON L. MARBLEY
CHIEF JUDGE



DOUGLAS R. COLE



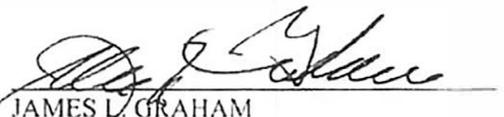
EDMUND A. SARGUS, JR.



MATTHEW W. MCFARLAND



MICHAEL H. WATSON



JAMES L. GRAHAM



TIMOTHY S. BLACK



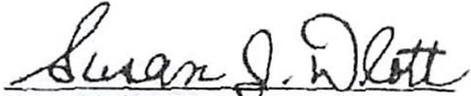
WALTER H. RICE

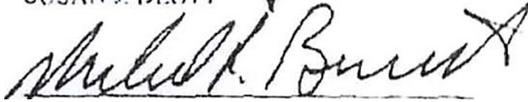


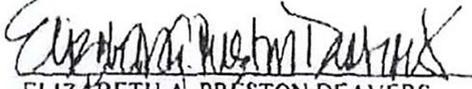
SARAH D. MORRISON

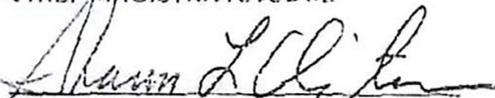


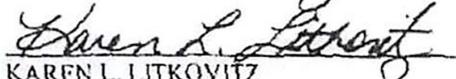
THOMAS M. ROSE

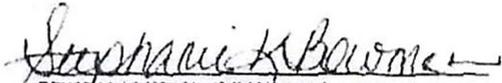

SUSAN J. DLOTT


MICHAEL R. BARRETT


ELIZABETH A. PRESTON DEAVERS
CHIEF MAGISTRATE JUDGE

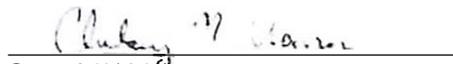

SHARON L. OVINGTON


KAREN L. LITKOVITZ


STEPHANIE K. BOWMAN


MICHAEL J. NEWMA


KIMBERLY A. JOLSON


CHELSEA M. KING


NORAH MCCANN KING


MICHAEL R. MERZ

CERTIFICATE OF APPROVAL

This is to certify that, in accordance with the Criminal Justice Act of 1964 as amended, 18 U.S.C. § 3006A, *et seq*, the foregoing revised Criminal Justice Act Plan and Criminal Justice Act Training Panel Program for the Southern District of Ohio, has been duly received and approved via mail ballot dated September 24, 2020 as complying with the law by the Judicial Council of the Sixth Circuit of the United States. The said revised plan shall become effective upon the date of this approval.

This 14th day of October, 2020.

A handwritten signature in black ink, appearing to read "R. Guy Cole, Jr.", written over a horizontal line.

R. Guy Cole, Jr., Chief Judge