

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
JUDICIAL COUNCIL

FILED

SEP 04 2018

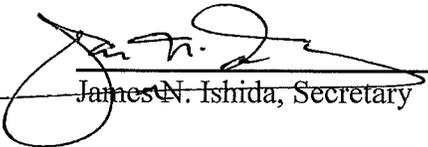
U.S. COURTS OF APPEALS  
FOURTH CIRCUIT

In the Matter of the Review of the \*  
Amendments to the Plan of the United \*  
States District Court for the \*  
Southern District of West Virginia \* No. 382  
in Implementation of the Criminal Justice Act \*  
\*

**ORDER**

The Plan of the United States District Court for the Southern District of West Virginia, as amended, which is attached to and made a part of this Order is hereby approved by the Judicial Council of the Fourth Circuit, and it is so ORDERED.

FOR THE COUNCIL:

  
James N. Ishida, Secretary

Date: September 4, 2018



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CRIMINAL JUSTICE ACT PLAN**

Approved by the Judicial Council of the Fourth Circuit on September 4, 2018.

# CRIMINAL JUSTICE ACT PLAN

## TABLE OF CONTENTS

I.	Authority & Supersession.....	1
II.	Statement of Policy .....	1
	A. Objectives.....	1
	B. Compliance.....	1
III.	Definitions .....	2
	A. Representation.....	2
	B. Appointed Attorney.....	2
	C. CJA Supervising Attorney .....	2
IV.	Determination of Eligibility for CJA Representation.....	2
	A. Subject Matter Eligibility .....	2
	B. Financial Eligibility .....	4
V.	Timely Appointment of Counsel.....	7
	A. Timing of Appointment.....	7
	B. Court’s Responsibility.....	7
	C. Pretrial Service Interview .....	8
	D. Retroactive Appointment of Counsel .....	8
VI.	Provision of Representational Services.....	8
	A. Federal Public Defender and Private Counsel.....	8
	B. Administration .....	8
	C. Apportionment of Cases.....	8
	D. Number of Counsel.....	8
	E. Capital Cases .....	8
	F. Waivers .....	8
VII.	Federal Public Defender Organization .....	9
	A. Establishment .....	9
	B. Standards .....	9
	C. Workload .....	9
	D. Professional Conduct.....	9
	E. Private Practice of Law .....	9

F.	Supervision of Defender Organization .....	9
G.	Training.....	10
VIII.	CJA Panel Advisory Committee.....	10
A.	Establishment of the CJA Panel Committee.....	10
B.	Duties of the CJA Committee.....	11
IX.	Establishment of a CJA Panel .....	12
A.	Approval of CJA Panel .....	12
B.	Size of CJA Panel.....	13
C.	Qualifications and Membership on the CJA Panel.....	13
X.	CJA Panel Attorney Appointment in Non-Capital Cases .....	18
A.	Appointment List .....	18
B.	Appointment Procedures .....	18
XI.	Duties of CJA Panel Members .....	19
A.	Standards and Professional Conduct .....	19
B.	Training and Continuing Legal Education .....	19
C.	Facilities and Technology Requirements .....	20
D.	Continuing Representation .....	20
E.	Miscellaneous .....	20
XII.	Compensation of CJA Panel Attorneys.....	21
A.	Policy of the Court Regarding Compensation.....	21
B.	Payment Procedures .....	21
XIII.	Investigative, Expert, and Other Services.....	22
A.	Financial Eligibility .....	22
B.	Applications.....	22
C.	Compliance .....	23
XIV.	Appointment of Counsel and Case Management in CJA Capital Cases .....	23
A.	Applicable Legal Authority.....	23
B.	General Applicability and Appointment of Counsel Requirements .....	23
C.	Appointment of Trial Counsel in Federal Death-Eligible Cases .....	25
D.	Appointment and Qualifications of Direct Appeal Counsel in Federal Death Penalty Cases .....	27

E.	Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. § 2255).....	28
F.	Appointment and Qualifications of Counsel in Federal Capital Habeas Corpus Proceedings (28 U.S.C. § 2254).....	29
G.	Case Budgeting.....	30
XV.	Effective Date .....	30

United States District Court  
for the Southern District of West Virginia  
Criminal Justice Act Plan

## I. Authority & Supersession

Under the [Criminal Justice Act \(CJA\) of 1964, as amended, 18 U.S.C. § 3006A](#), and [Guide to Judiciary Policy \(Guide\), Volume 7A](#), the judges of the United States District Court for the Southern District of West Virginia adopt this Plan, as approved by the circuit, for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA. This Plan supersedes all prior CJA Plans of this Court.

## 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 organization, 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. A link to the current CJA Guidelines is available on the court's website.
2. The CJA Supervising Attorney will ensure that a current copy of the CJA Plan is made available on the court's website, and provided to CJA counsel upon the attorney's designation as a member of the CJA panel of private attorneys (CJA Panel).

### III. Definitions

#### A. Representation

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

#### B. Appointed Attorney

“Appointed attorney” is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys appointed under the CJA, the Federal Public Defender and staff attorneys of the Federal Public Defender organization and attorneys on the CJA Panel.

#### C. CJA Supervising Attorney

“CJA Supervising Attorney” is a person designated by the Court to administer the CJA Panel and assist the court in the discharge of its responsibilities under the CJA. He/she will be employed by the Clerk’s Office and report to the court. He/she shall not be an employee of the Federal Public Defender. Specific duties and responsibilities of the CJA Supervising Attorney will be determined by the court.

### IV. Determination of Eligibility for CJA Representation

#### A. Subject Matter Eligibility

##### 1. Mandatory

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

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

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

2. Discretionary

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

- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
- b. is seeking relief under [28 U.S.C. §§ 2241](#), [2254](#), or [2255](#) other than to set aside or vacate a death sentence;
- c. is charged with civil or criminal contempt and faces loss of liberty;
- d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
- e. has been advised by the United States attorney or a law enforcement officer that they are the target of a grand jury investigation;
- f. is proposed by the United States attorney for processing under a pretrial diversion program; or
- g. is held for international extradition under [18 U.S.C. chapter 209](#).

3. Ancillary Matters

Representation may also be provided for financially eligible persons in ancillary matters appropriate to the criminal proceedings under

18 U.S.C. § 3006A(c). In determining whether representation in an ancillary matter is appropriate to the criminal proceedings, the court should consider whether such representation is reasonably necessary:

- a. to protect a constitutional right;
- b. to contribute in some significant way to the defense of the principal criminal charge;
- c. to aid in preparation for the trial or disposition of the principal criminal charge;
- d. to enforce the terms of a plea agreement in the principal criminal charge;
- e. to preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under [18 U.S.C. § 983](#), [19 U.S.C. § 1602](#), [21 U.S.C. § 881](#), or similar statutes, which property, if recovered by the client, may be considered for reimbursement under [18 U.S.C. § 3006A\(f\)](#); or
- f. 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, who in turn will notify the CJA Supervising Attorney of the arrest of an individual in connection with a federal criminal charge.
- (ii) Employees of law enforcement agencies should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

#### b. Duties of United States Attorney's Office

- (i) Upon the return or unsealing of an indictment or the filing of a criminal information, and where the

defendant has not retained or waived counsel, the United States attorney or their delegate will promptly notify, telephonically or electronically, appropriate court personnel, who in turn will notify the CJA Supervising Attorney.

- (ii) Upon issuance of a 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, who in turn will notify the CJA Supervising Attorney. If the United States Attorney's Office is aware of an actual or potential conflict with the target and the Federal Public Defender they must promptly notify the CJA Supervising Attorney.
- (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

In cases in which the Federal Public Defender may be appointed, the office will:

- immediately investigate and determine whether an actual or potential conflict exists; and
- in the event of an actual or potential conflict, promptly notify the CJA Supervising Attorney to facilitate the timely appointment of other counsel.

d. Duties of Pretrial Services Office – The Judicial Conference has recognized the importance of the advice of counsel for persons subject to proceedings under the Bail Reform Act, 18 U.S.C. § 3142 et seq. prior to being interviewed by a probation officer. This court recognizes the defendant's interest in speaking with an attorney at the earliest opportunity, as well as the probation officer's interest in having sufficient time to obtain information relevant to the defendant's release status.

- (i) When practicable, the pretrial services officer will not conduct the pretrial service interview of a financially eligible defendant until counsel has been appointed, unless the right to counsel is waived or the defendant

otherwise consents to a pretrial service interview without counsel. If the defendant requests counsel prior to the proceeding, the probation officer shall not continue with the interview without an attorney present.

- (ii) When counsel has been appointed and to the extent practicable, 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.
- (iii) During the course of the interview, the probation officer shall not discuss with the defendant any information about the defendant's alleged offense.

e. Duties of Court Employees

When practicable, a court employee designated by the responsible magistrate judge will discuss with the person who indicates that he or she is not financially able to secure representation the right to appointed counsel and, if appointment of counsel seems likely, assist in the completion of a financial affidavit (Form CJA23) and arrange to have the person promptly presented before a judge for determination of financial eligibility and appointment of counsel.

2. Factual Determination of Financial Eligibility

- a. In every case where appointment of counsel is authorized under [18 U.S.C. § 3006A\(a\)](#) and related statutes, the court must advise the person that he or she has a right to be represented by counsel throughout the case and that, if so desired, counsel will be appointed to represent the person if he or she is financially unable to obtain counsel.
- b. The determination of eligibility for representation under the CJA is a judicial function to be performed by the court after making appropriate inquiries concerning the person's financial eligibility. Other employees of the court may be designated to obtain or verify the facts relevant to the financial eligibility determination.
- c. In determining whether a person is "financially unable to obtain counsel," consideration should be given to the cost of providing the person and his or her dependents with the necessities of life, the cost of securing pretrial release, asset encumbrance, and the likely cost of retained counsel. If the person's net financial resources and income are insufficient to

obtain qualified counsel then a person is “financially unable to obtain counsel.”

- d. The initial determination of eligibility must be made without regard to the financial ability of the person’s family to retain counsel unless their family indicates willingness and ability to do so promptly.
- e. Any doubts about a person’s eligibility should be resolved in the person’s favor; erroneous determinations of eligibility may be corrected at a later time.
- f. Relevant information bearing on the person’s financial eligibility should be reflected on a [financial eligibility affidavit \(Form CJA 23\)](#).
- g. If at any time after the appointment of counsel a judge finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the judge may terminate the appointment of counsel or direct that any funds available to the defendant be paid as provided in [18 U.S.C. § 3006A\(f\)](#).
- h. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel may be appointed in accordance with the general provisions set forth in this Plan.

## V. Timely Appointment of Counsel

### A. Timing of Appointment

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

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

### B. Court’s Responsibility

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

C. Pretrial Service Interview

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

D. Retroactive Appointment of Counsel

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

## VI. Provision of Representational Services

A. Federal Public Defender and Private Counsel

This Plan provides for representational services by the Federal Public Defender organization and for the appointment and compensation of private counsel from a CJA Panel list maintained by the CJA Supervising Attorney 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 CJA Supervising Attorney.

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. Separate counsel shall be appointed for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

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](#).

F. Waivers

If the accused desires to waive his or her right to counsel, the judicial officer shall present the person with a waiver form, explain its meaning and effect,

and request that the person execute the waiver. If the person executes the waiver, it shall be included in and certified as part of the record of the proceedings. If the person refuses to execute the waiver, such fact shall be entered of record and certified as part of the proceedings. If it is determined that the person is financially able to obtain counsel but refuses to do so, such fact shall be entered of record and certified as part of the proceedings.

## VII. Federal Public Defender Organization

### A. Establishment

The established Federal Public Defender Organization (“FPDO”) in this district shall continue under the CJA and is responsible for rendering defense services on appointment throughout this district. The FPDO will maintain an office in Charleston. The Federal Public Defender shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed, reports of activities, financial position and proposed budget of the Office.

### B. Standards

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

### C. Workload

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

### D. Professional Conduct

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

### E. Private Practice of Law

Neither the Federal Public Defender nor any defender employee may engage in the private practice of law.

### F. Supervision of Defender Organization

The Federal Public Defender will be responsible for the supervision and management of the federal public defender organization. Accordingly, the

Federal Public Defender will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender.

#### G. Training

The Federal Public Defender will assess the training needs of federal public defender staff and in coordination with the CJA Supervising Attorney and the CJA Panel Attorney District Representative,<sup>1</sup> the training needs of the local panel attorneys, and provide training opportunities and other educational resources. The FPDO shall provide 1-2 comprehensive CLE training sessions during each calendar year. The Federal Public Defender may solicit assistance from the CJA Supervising Attorney and/or the Panel Advisory Committee. In addition, the CJA Supervising Attorney may coordinate various shorter and topic-based training sessions throughout the year, based on the needs and desires of Panel and Training Panel members.

### VIII. CJA Panel Advisory Committee

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

1. A CJA Panel Advisory Committee (“CJA Committee”) will be established by the court in consultation with the CJA Supervising Attorney. The CJA Committee will consist of one magistrate judge to be appointed by the court, the Federal Public Defender, the CJA Panel Attorney District Representative (PADR), the CJA Supervising Attorney, at least three private criminal defense attorneys who practice regularly in the district who may be CJA panel members, and an ex officio staff member employed by the Clerk. The CJA Supervising Attorney will act as administrative coordinator and liaison to the court. Quorum shall be achieved by attendance of two-thirds of the voting CJA Committee members. Composition of the CJA Committee should aim to reflect the diversity of the district.
2. The designated magistrate judge, CJA Supervising Attorney, Federal Public Defender, and the district’s PADR are permanent members of the CJA Committee.

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<sup>1</sup> The CJA Panel Attorney District Representative (PADR) is a member of the district’s CJA Panel who is selected by the local Federal Public Defender, with acquiescence from the chief judge, to serve as the representative of the district’s CJA Panel for the national Defender Services Office CJA PADR program and local CJA committees. The PADR shall communicate with panel members about information learned after attending the national conference and information provided by Defender Services, serve as a liaison for the Panel to the CJA Supervising Attorney and the judges and other functions as determined by the court. The PADR will serve for a two-year term and can be reappointed as many times as the court desires. If at time the court feels the PADR is not carrying out the duties appropriately, the court will appoint a replacement.

Membership on the CJA Committee will otherwise be for a term of three years. Members' terms will be staggered to ensure continuity on the CJA Committee.

3. The CJA Committee will meet at least twice a year and at any time the court asks the Committee to consider an issue.

B. Duties of the CJA Committee

1. Membership

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

2. Recruitment

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

3. Semi-Annual Report

Review the operation and administration of the CJA Panel over the preceding six months, 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. Removal

Recommend to the chief judge the removal of any CJA panel member who:

- a. fails to satisfactorily fulfill the requirements of CJA panel membership during their term of service, including the failure to provide high quality representation to CJA clients, or
- b. has engaged in other conduct such that his or her continued service on the CJA Panel is inappropriate. See also Section IX.C.7

5. Training

Assist the CJA Supervising Attorney and the Federal Public Defender Office in providing training for the CJA Panel on

substantive and procedural legal matters affecting representation of CJA clients.

6. Voucher Review

When requested by the court, review and make recommendations on the processing and payment of CJA vouchers in those cases where the court, for reasons other than mathematical errors, is considering authorizing payment for less than the amount of compensation claimed by CJA counsel. The judge will, at the time the voucher is submitted to the CJA Committee, provide a statement describing questions or concerns they have with the voucher. Counsel will be notified of the potential voucher reduction and given the opportunity to provide information or documentation relevant to the voucher and concerns raised by the judge. The CJA Committee will issue a written recommendation to the judge.

See also Section XII.B.6

7. Mentoring

Recommend experienced CJA panel members to serve as mentors for the CJA Training Panel which is designed to identify and help prepare viable candidates to qualify for consideration for appointment to the CJA Panel. Experienced members of the criminal defense bar who have practiced extensively in the federal courts will be selected to serve as mentors. The CJA Committee will make recommendations concerning their participation in the mentoring program, identify appropriate cases for the mentoring program, evaluate the success of the mentoring program, and provide guidance to the mentors.

8. Other Duties

Perform any other duties the court deems appropriate regarding the management and operation of the CJA Panel.

## 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. Separate CJA Panel lists are established for each point of holding court and unless otherwise directed by the court, an attorney may serve on more than one panel list.

2. The court will approve attorneys for membership on the CJA Panel after receiving recommendations from the CJA Committee.

B. Size of CJA Panel

1. The size of the CJA Panel will be determined by the CJA Committee based on the caseload and activity of the panel members, subject to review by the court. The CJA Committee may alter the composition of a panel list for a specific point of holding court should it determine that attorneys on that list are not obtaining a suitable number of appointments. If at any time during the course of a year, the number of vacancies due to resignation, removal or death detrimentally decreases the size of the panel, the CJA Supervising Attorney will solicit applications for the vacancies and/or collect outstanding applications, convene a meeting of the CJA Panel Advisory Committee to review the applications and recommend prospective members to the court for approval.
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

The application form for membership on the CJA Panel is available from the CJA Supervising Attorney and the court's website. All applications and reapplications for panel membership will be submitted to the CJA Supervising Attorney. Applications will be received at any time during the year, but in the normal course, membership recommendations will be made to the court twice yearly, after CJA Committee meetings. **Panel membership is a unique privilege that should not be taken lightly, and panel members have no vested right in membership on the Panel.** Applicants who may not have the experience necessary to become members of the CJA Panel may apply for the CJA Training Panel.

2. Equal Opportunity

All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin, or disabling condition.

3. Eligibility

- a. Applicants for the CJA Panel must be members in good standing of the federal bar of this district.
- b. Applicants must maintain a primary, satellite, or shared office in this district.
- c. 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.
- d. Applicants must have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.
- e. Attorneys who do not possess the experience set forth above but believe they have equivalent other experience are encouraged to apply and set forth in writing the details of that experience for the CJA Committee's consideration. Federal judicial clerkship(s) or civil litigation experience may also be considered.

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. Terms of CJA Panel Members

To establish staggered CJA membership terms, the current CJA Panel has been divided into three groups, equal in number. Each group will serve for a term of three years before having to reapply. Thereafter, attorneys admitted to membership on the CJA Panel will each serve for a term of three years, subject to the reappointment procedures set forth in this plan. There is no limit to the number of terms that a panel attorney may serve.

6. Reappointment of CJA Panel Members

- a. The CJA Supervising Attorney will notify CJA panel members, prior to the expiration of their current term, of the need to apply for reappointment to the CJA Panel.

- b. A member of the CJA Panel who wishes to be considered for reappointment must apply for appointment to an additional term at least three months prior to the expiration of his or her current term.
- c. The CJA Committee will solicit input concerning the quality of representation provided by lawyers seeking reappointment.
- d. The CJA Committee also will consider how many cases the CJA panel member has accepted and declined during the review period, whether the member has participated in training opportunities, whether the member has been the subject of any complaints, billing accuracy and timely submission of vouchers and whether the member continues to meet the prerequisites and obligations of CJA panel members as set forth in this Plan.
- e. The CJA Committee will compare the panel member's qualifications with the qualifications of other applicants and recommend to the court whether applicants for reappointment should remain a member of the Panel. The court will make the final decision.
- f. If an attorney decides not to reapply or is not selected for reappointment and is involved in the representation of a defendant in an ongoing matter, the attorney should continue representing the defendant until the close of the case or until relieved by the court, whichever occurs first.

7. Removal from the CJA Panel

a. Mandatory removal

Any member of the CJA Panel who is suspended or disbarred from the practice of law by the state court before whom such member is admitted, or who is suspended or disbarred from this court or any federal court, will be removed from the CJA Panel immediately. Any panel attorney who is convicted of a felony or of any misdemeanor involving moral turpitude shall be summarily removed from the Panel. The attorney shall not have the right to respond to notification of this action by the court. Substitute counsel will be appointed for any CJA clients of the suspended or disbarred attorney.

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 or a member of the Federal Public Defender Organization. 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 Supervising Attorney, who will in turn notify the CJA Committee. The CJA Committee will determine whether further investigation is necessary.

(ii) Notice

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

(iii) Response

A panel member subject to investigation may respond in writing within 10 days 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. Suspension, removal or non-reappointment may result if the court determines that a panel attorney has failed to fulfill the obligations of panel membership, or has engaged in other conduct warranting such action. The grounds for suspension, removal or non-reappointment may include, but are not limited to, inclusion of false or misleading information in CJA vouchers, unjustified or frequent failure to comply with the obligation to accept appointments, unjustified or frequent cancellation of or absence from meetings with court personnel, failure to comply with the eligibility requirements for membership, failure to comply with the applicable CLE requirements, violation of applicable Rules of Professional Conduct, violation of the rulings or orders of a judicial officer, failure to provide assistance of counsel within the standards of the Sixth Amendment of the United States Constitution, and general lack of professional competence.

(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 CJA Supervising Attorney will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience.

### B. Appointment Procedures

1. The CJA Supervising Attorney is responsible for overseeing the appointment of cases to panel attorneys. The CJA Supervising Attorney 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 CJA Supervising Attorney may appoint counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel. Subject to the court's discretion, exceptions may also be made due to the nature of the case and/or geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among members of the CJA Panel, and quality representation of each CJA defendant.
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. The attorney will be admitted to the CJA Panel *pro hac vice* and appointed to represent the defendant. 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. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify the attorney for admission to the district's CJA Panel in the ordinary course of panel selection.
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 FPDO.

## XI. Duties of CJA Panel Members

### A. Standards and Professional Conduct

1. CJA panel members must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. See *Polk County v. Dodson*, 454 U.S. 312, 318 (1981) (“Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.” (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980))).
2. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the American Bar Association’s Model Rules of Professional Conduct and the West Virginia Rules of Professional Conduct.
3. CJA panel members must notify within 30 days the CJA Supervising Attorney 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 FPDO and the court. The court may require attendance at these training sessions.
3. Attorneys on the CJA Panel will be guided in their practice by the Federal Adaptation of the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representations. A copy is posted on the court’s website.
4. CJA panel members must attend five (5) continuing legal education hours relevant to federal criminal practice by July 1<sup>st</sup> annually. CLE credit must be recorded in eVoucher. CJA Panel members must also be registered members of fd.org.
5. Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel.

C. Facilities and Technology Requirements

1. CJA panel attorneys must have facilities, resources, and technological capability to effectively and efficiently manage assigned cases, including prompt receipt of information concerning appointment in a CJA case.
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 Fourth 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, whichever is earliest. In the event that a defendant is convicted, counsel appointed under the CJA shall discuss with the defendant his or her wishes regarding the filing of a notice of appeal as soon as is practicable. If requested to do so by the defendant, counsel shall file a timely notice of appeal. Should a panel member's term expire during the course of a case and he/she does not seek reapplication or is not reappointed to the panel, the panel member should continue representing the defendant unless or until directed otherwise by the court.

E. Miscellaneous

1. Case budgeting

In non-capital representations of unusual complexity that are likely to become extraordinary in terms of cost, the court may require development of a case budget consistent with [Guide, Vol. 7A, Ch. 2, §§ 230.26.10-20](#). Counsel should notify the CJA Supervising Attorney as early as possible if the case budgeting threshold is reasonably expected to be met. Counsel may then be directed to consult with the Fourth Circuit Case Budgeting Attorney to timely prepare a proposed budget.

2. No receipt of other payment

Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the CJA (or for other contemporaneous representation of their client in any other matter), unless such payment is approved by order of the court. Appointed counsel must

make any such request to accept a fee in writing to the court, and the court will grant approval only in extraordinary circumstances. Allowing court-appointed counsel to accept payment from a client or his/her family creates an appearance of impropriety that may undermine the integrity of the judicial process.

3. Redetermination of need

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

4. No outside delegation without permission

An appointed attorney shall not delegate any substantive tasks in connection with the representation of a defendant to any person other than a partner, associate, or regular employee of the law firm of which the appointed attorney is a partner or associate, without the written consent of the defendant and the Court.

5. Transferred cases

Absent special circumstances, whenever a case is transferred to another district, such as under Rules 5, 20, and 21 of the Federal Rules of Criminal Procedure, representation by counsel appointed in this district shall cease, and new counsel shall be appointed in the transferee district.

## 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 45 days after the end of the attorney's representation or final disposition of the case, whichever comes first, unless good cause is shown. No claim for payment will be honored unless it is submitted within the 45 day time period or good cause is shown.
3. The CJA Supervising Attorney or their designee will review the claim for mathematical and technical accuracy and for conformity

with Guide, Vol. 7A and, if correct, will forward the claim for consideration and action by the presiding judge.

4. Absent extraordinary circumstances, the court should act on CJA compensation claims within 30 days of submission, and vouchers should not be delayed or reduced for the purpose of diminishing Defender Services program costs in response to adverse financial circumstances.
5. Except in cases involving mathematical corrections, no claim for compensation submitted for services provided under the CJA will be reduced without affording counsel notice and the opportunity to be heard.
6. The court, when contemplating reduction of a CJA voucher for other than mathematical reasons, may refer the voucher to the CJA Committee for review and recommendation before final action on the claim is taken. See [Section VIII of this Plan](#).
7. Notwithstanding the procedure described above, the court may, in the first instance, contact appointed counsel to inquire regarding questions or concerns with a claim for compensation. In the event that the matter is resolved to the satisfaction of the court and CJA panel member, the claim for compensation need not be referred to the CJA Committee for review and recommendation.

### 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](#), concerning authorization and payment for investigative, expert or other services.

## 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. 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 United States Courts (AO), Defender Services Death Penalty Resource Counsel projects (“Resource Counsel projects”) which include: (1) Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials), (2) Federal Capital Appellate Resource Counsel Project, (3) Federal Capital Habeas § 2255 Project, and (4) National and Regional Habeas Assistance and Training Counsel Projects (§ 2254). These counsel are death penalty experts who may be relied upon by the court for assistance with selection and appointment of counsel, case budgeting, and legal, practical, and other matters arising in federal capital cases.

5. The CJA Supervising Attorney should promptly notify and consult with the appropriate Resource Counsel projects about potential and actual federal capital trial, appellate, and habeas corpus cases, and consider their recommendations for appointment of counsel.
6. The presiding judge may appoint an attorney furnished by a state or local public defender organization or legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief provided that the attorney is fully qualified. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed pro hac vice. See [18 U.S.C. § 3006A\(a\)\(3\)](#).
7. All attorneys appointed in federal capital cases must be well qualified, by virtue of their training, commitment, and distinguished prior capital defense experience at the relevant stage of the proceeding, to serve as counsel in this highly specialized and demanding litigation.
8. All attorneys appointed in federal capital cases must have sufficient time and resources to devote to the representation, taking into account their current caseloads and the extraordinary demands of federal capital cases.
9. All attorneys appointed in federal capital cases should comply with the [American Bar Association’s 2003 Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases](#) (Guidelines 1.1 and 10.2 et seq.), and the [2008 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases](#).
10. All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.

11. 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 Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030 or via email at [ods\\_lpb@ao.uscourts.gov](mailto:ods_lpb@ao.uscourts.gov).

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

1. General Requirements

- a. Appointment of qualified capital trial counsel must occur no later than when a defendant is charged with a federal criminal offense where the penalty of death is possible. See [18 U.S.C. § 3005](#). In order to conserve scarce resources, facilitate good administration under the CJA, and ensure the early appointment of qualified counsel, the United States Attorney's Office shall, consistent with other lawful obligations, promptly notify the Clerk and the CJA Supervising Attorney that a death-eligible offense is charged or is to be charged.
- 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. 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.
- 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 in conjunction with the Federal Death

Penalty Resource Counsel and Capital Resource Counsel projects.

- g. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital trials to achieve high quality representation together with cost and other efficiencies.
- h. In evaluating the qualifications of proposed trial counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

## 2. Qualifications of Learned Counsel

- a. Learned counsel must either be a member of this district's bar or be eligible for admission pro hac vice based on his or her qualifications. Appointment of counsel from outside the jurisdiction is common in federal capital cases to achieve cost and other efficiencies together with high quality representation.
- b. Learned counsel must meet the minimum experience standards set forth in [18 U.S.C. §§ 3005](#) and [3599](#).
- c. Learned counsel should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high quality representation.
- d. "Distinguished prior experience" contemplates excellence, not simply prior experience. Counsel with distinguished prior experience should be appointed even if meeting this standard requires appointing counsel from outside the district where the matter arises.
- e. The suitability of learned counsel should be assessed with respect to the particular demands of the case, the stage of the litigation, and the defendant.
- f. Learned counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.



endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.

8. In evaluating the qualifications of proposed appellate counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

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

1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2255 is entitled to appointment of fully qualified counsel. See [18 U.S.C. § 3599\(a\)\(2\)](#).
2. 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. 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.
6. Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
7. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.
8. 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.
9. In evaluating the qualifications of proposed post-conviction § 2255 counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

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

1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 is entitled to the appointment of qualified counsel. See [18 U.S.C. § 3599\(a\)\(2\)](#).
2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.
3. When appointing counsel in a capital § 2254 matter, the appointing authority should consider the recommendation of the Federal Public Defender who will consult with the National or Regional Habeas Assistance and Training Counsel projects.
4. 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.

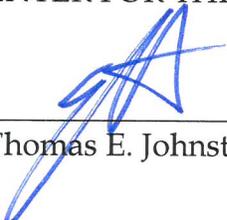
G. Case Budgeting

Appointed counsel in capital cases must submit a proposed budget to the presiding district judge at least ten (10) days prior to the precertification budget conference. The proposed budget must detail the costs reasonably expected to be incurred in the representation of the defendant, including attorney fees, expert fees, and other costs, such as projected travel expenses. In preparing this proposed budget, counsel should consult the Fourth Circuit Case Budgeting Attorney, the Resource Guide for Managing Capital Cases and Chapter 6 of the CJA Guidelines. Some elements of the budget may require the approval of the Chief Judge of the United States Court of Appeals for the Fourth Circuit, if first recommended for approval by the presiding district judge.

XV. Effective Date

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

ENTER FOR THE COURT ON: August 9, 2018.

  
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Thomas E. Johnston, Chief Judge