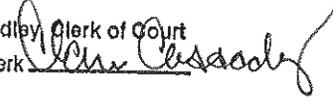


United States District Court
Southern District of Texas
ENTERED

DEC 12 2018

David J. Bradley, Clerk of Court
By Deputy Clerk 

GENERAL ORDER 2018-18

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

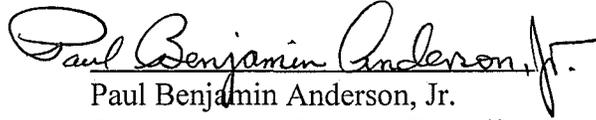
CRIMINAL JUSTICE ACT PLAN
AMENDED 2018

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

REVIEWING PANEL --- CRIMINAL JUSTICE ACT PLAN

The amended Criminal Justice Act Plan for the Southern District of Texas is approved.

Entered for the Reviewing Panel at New Orleans, Louisiana, this 12th day of December, 2018.


Paul Benjamin Anderson, Jr.
Secretary to the Judicial Council
of the Fifth Circuit

The following judges comprised and acted as the Reviewing Panel:

(a) The Judicial Council of the Fifth Circuit:

Carl E. Stewart
Priscilla R. Owen
Edith H. Jones
Jerry E. Smith
James L. Dennis
Jennifer Walker Elrod
Leslie H. Southwick
Catharina Haynes
James E. Graves, Jr.
Stephen A. Higginson
Carl J. Barbier
Shelly D. Dick
S. Maurice Hicks, Jr.
Debra M. Brown
Halil S. "Sul" Ozerden
David C. Godbey
Lee H. Rosenthal
Rodney Gilstrap
Philip R. Martinez

(b) Chief United States District Judge:



Lee H. Rosenthal
Chief United States District Judge
Southern District of Texas

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CRIMINAL JUSTICE ACT PLAN**
(Amended December 12, 2018)

TABLE OF CONTENTS

I. AUTHORITY	1
II. STATEMENT OF POLICY	1
A. OBJECTIVES	1
B. COMPLIANCE	1
III. DEFINITIONS	2
A. REPRESENTATION	2
B. APPOINTED 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	7
D. RETROACTIVE APPOINTMENT OF COUNSEL	7
VI. PROVISION OF REPRESENTATIONAL SERVICES	7
A. FEDERAL PUBLIC DEFENDER AND PRIVATE COUNSEL	7
B. ADMINISTRATION	8
C. APPORTIONMENT OF CASES	8
D. NUMBER OF COUNSEL	8
E. CAPITAL CASES	8
VII. FEDERAL PUBLIC DEFENDER OFFICE	8
A. ESTABLISHMENT	8
B. STANDARDS	8
C. WORKLOAD	8
D. PROFESSIONAL CONDUCT	9
E. PRIVATE PRACTICE OF LAW	9
F. SUPERVISION OF THE DEFENDER ORGANIZATION	9
G. TRAINING	9

VIII. CJA COMMITTEES FOR PANEL ATTORNEYS	9
A. ESTABLISHMENT OF CJA AD HOC PANEL COMMITTEE	9
B. DUTIES OF THE CJA COMMITTEE	10
IX. ESTABLISHMENT OF A DIVISION CJA PANEL	11
A. APPROVAL OF CJA PANELS	11
B. SIZE OF CJA PANELS	11
C. QUALIFICATIONS AND MEMBERSHIP ON THE CJA PANELS	12
X. CJA PANEL ATTORNEY APPOINTMENT IN NON-CAPITAL CASES	14
A. APPOINTMENT LIST	14
B. APPOINTMENT PROCEDURES	14
XI. DUTIES OF DIVISION CJA PANEL MEMBERS	15
A. STANDARDS AND PROFESSIONAL CONDUCT	15
B. TRAINING AND CONTINUING LEGAL EDUCATION	15
C. FACILITIES AND TECHNOLOGY REQUIREMENTS	16
D. CONTINUING REPRESENTATION	16
E. MISCELLANEOUS	16
XII. COMPENSATION OF CJA PANEL ATTORNEYS	17
A. POLICY OF THE COURT REGARDING COMPENSATION	17
B. PAYMENT PROCEDURES	17
XIII. INVESTIGATIVE, EXPERT, AND OTHER SERVICES	18
A. FINANCIAL ELIGIBILITY	18
B. APPLICATIONS	18
C. COMPLIANCE	18
XIV. APPOINTMENT OF COUNSEL AND CASE MANAGEMENT IN CJA CAPITAL CASES	18
A. APPLICABLE LEGAL AUTHORITY	18
B. GENERAL APPLICABILITY AND APPOINTMENT OF COUNSEL REQUIREMENTS	18
C. APPOINTMENT OF TRIAL COUNSEL IN FEDERAL DEATH-ELIGIBLE CASES	20
D. APPOINTMENT AND QUALIFICATIONS OF DIRECT APPEAL COUNSEL IN FEDERAL DEATH PENALTY CASES	22
E. APPOINTMENT AND QUALIFICATIONS OF POST-CONVICTION COUNSEL IN FEDERAL DEATH PENALTY CASES (28 U.S.C. §2255)	23
F. APPOINTMENT AND QUALIFICATIONS OF COUNSEL IN FEDERAL CAPITAL HABEAS CORPUS PROCEEDINGS (28 U.S.C. §2254)	24
XV. EFFECTIVE DATE	25

**United States District Court
For The Southern District of Texas**

CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

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

II. STATEMENT OF POLICY

A. Objectives

The objectives of this Plan are:

1. to attain the goal of equal justice under the law for all persons;
2. to provide all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, are cost-effective, and protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and
3. to implement 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 be administered so that individuals accused of a crime, or who are 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's office, and private attorneys appointed under the CJA must comply with Guide, Vol. 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, and with this Plan.
2. The Court will ensure that a current copy of the CJA Plan is made available on the Court's website, and provided to CJA counsel upon the attorney's designation as a member of the CJA panel of private attorneys (CJA Panel).

3. Nothing in this District CJA Plan should be interpreted as limiting or preventing each Division CJA Committee from establishing policies that reflect the unique needs of the Division that do not conflict with the District CJA Plan and the Criminal Justice Act. Any procedures established or implemented by a division must first be approved by the District and subsequently be approved by the Judicial Council of the Fifth Circuit.

III. DEFINITIONS

A. Representation

Representation includes counsel and investigative, expert, and related services.

B. Appointed Attorney

Appointed attorney means an attorney ordered by the Court to represent a financially eligible person under the CJA and this Plan. Such attorneys include the Federal Public Defender, staff attorneys of the Federal Public Defender, private attorneys on the CJA Panel, and other attorneys appointed 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. § § 4241, et seq;
- h. has been designated by the Court 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 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 that 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 a loss of liberty;
- e. has been advised by the United States attorney or a law enforcement officer that he or she is 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 a proceeding under 18 U.S.C. § 3006A(c). In determining whether representation in an ancillary matter is appropriate to a proceeding, the Court should consider whether such representation is reasonably necessary:

- a. to protect a constitutional right;
- b. to contribute in a significant way to the defense of a principal criminal charge;
- c. to aid in preparation for the trial or disposition of a principal criminal charge;
- d. to enforce the terms of a plea agreement in a 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 a 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 when the defendant has not retained counsel, federal law enforcement officials must as soon as feasible notify – telephonically or electronically – the appropriate Court personnel, who in turn will appoint counsel under this Plan.
 - (ii) Employees of law enforcement agencies must 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 when the defendant has not retained counsel, the United States Attorney (or his or her delegate) must as soon as feasible notify – telephonically or electronically – appropriate Court personnel, who in turn will appoint counsel under this Plan.
- (ii) Upon issuance of a target letter, and where the individual has not retained counsel, the United States Attorney (or his or her delegate) must as soon as feasible notify– telephonically or electronically – the appropriate Court personnel, who in turn will appoint counsel under this Plan.
- (iii) Employees of the United States Attorney's Office must 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 the Federal Public Defender's Office

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

d. Duties of Pretrial Services Office

- (i) 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. The pretrial services

officer must inform the defendant of his or her right and obtain a waiver. *See* Attachment “A”.

- (ii) When counsel has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer before the initial pretrial release or detention hearing.

2. Factual Determination of Financial Eligibility

- a. In every case where appointment of counsel is authorized under 18 U.S.C. § 3006A(a) or other statutes, the Court must advise the person that he or she has a right to be represented by counsel throughout the case and that, if so desired, counsel will be appointed to represent the person if he or she is financially unable to obtain counsel.
- b. The determination of eligibility for representation under the CJA is a judicial function to be performed by the Court after making appropriate inquiries concerning the person’s financial eligibility. Other employees of the Court may be designated to obtain or verify the facts relevant to the financial eligibility determination.
- c. In determining whether a person is financially unable to obtain counsel, consideration should be given to the cost of providing the person and his or her dependents with the necessities of life, the cost of securing pretrial release, asset encumbrance, and the likely cost of retained counsel.
- d. The initial determination of eligibility must be made without regard to the financial ability of the person’s family to retain counsel unless their family indicates willingness and ability to do so promptly.
- e. Any doubts about a person’s eligibility should be resolved in the person’s favor; erroneous determinations of eligibility may be corrected at a later time.
- f. Relevant information bearing on the person’s financial eligibility should be reflected on a financial eligibility affidavit (Form CJA 23).
- g. If at any time after the appointment of counsel, a judge finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the judge may terminate the appointment of counsel or direct that any funds available to the defendant be paid as provided in 18 U.S.C. § 3006A(f).

- h. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel may be appointed under the provisions of this Plan.

V. TIMELY APPOINTMENT OF COUNSEL

A. Timing of Appointment

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

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

B. Court's Responsibility

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

C. Pretrial Service Interview

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 before being interviewed by a pretrial services officer.

D. Retroactive Appointment of Counsel

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

VI. PROVISION OF REPRESENTATIONAL SERVICES

A. Federal Public Defender and Private Counsel

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

B. Administration

Administration of the CJA Panel, as set forth in this Plan, is delegated and assigned to the Court.

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 under the Court’s discretion.

E. Capital Cases

Procedures for appointment of counsel in cases where the defendant is charged with a crime that may be punishable by death, or is seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § § 2254 or 2255, are set forth in section XIV of this Plan.

VII. FEDERAL PUBLIC DEFENDER OFFICE

A. Establishment

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

B. Standards

The Federal Public Defender must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. 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 43.9 (2d ed. 1980))).

C. Workload

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

D. Professional Conduct

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

E. Private Practice of Law

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

F. Supervision of Defender Organization

The Federal Public Defender will be responsible for the supervision and management of the Federal Public Defender Office. Accordingly, the Federal Public Defender will be appointed in all cases assigned to that office 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 Panel Attorney District Representative¹, the training needs of the local panel attorneys, and provide training opportunities and other educational resources.

VIII. CJA COMMITTEES FOR PANEL ATTORNEYS

A. Establishment of the CJA Ad Hoc Panel Committee

1. A CJA Panel Committee (Ad Hoc CJA Committee) will be established by the Court in consultation with the Federal Public Defender. The CJA Committee will consist of one district court judge, at least one magistrate judge, the Federal Public Defender, the CJA Panel Attorney District Representative (PADR), and at least one criminal defense attorney who practices regularly in the district and who is a CJA panel member. The Committee is an Ad Hoc Committee appointed by and serves at the pleasure of the Chief Judge.

¹ The CJA Panel Attorney District Representative (PADR) is a member of the district's CJA Panel who is selected by the Chief Judge, after conferring with the FPD, to serve as the representative of the district's CJA Panel for the national Defender Services CJA PADR program and local CJA committees.

2. The PADR is selected by the Chief Judge after conferring with the FPD and serves all District and Division CJA Panels for the National Defender Services CJA PADR program and local CJA Committees.
3. The Federal Public Defender and the office of the district PADR are permanent members of the CJA Committee.

Each Division or combination of Divisions will establish a Division CJA Committee in consultation with the Federal Public Defender and the District Representative. The Division Committee consists of a district judge appointed by the Chief Judge, a magistrate judge, the Federal Public Defender or representative, a Division Representative and at least one criminal defense attorney who practices regularly in the Division and who is a CJA Panel member. The district judge or his or her designee will appoint a magistrate judge, a Division Representative and any criminal defense attorney(s) in consultation from the Division Judges.

Membership on the Division CJA Committee will otherwise be for a term of three years and may be extended for an additional three years. Members' terms will be staggered to ensure continuity.

4. The Division CJA Committees will meet at least once per year and at any time the Court asks the Committee to consider an issue.

B. Duties of the CJA Committee

1. Membership

The Committee examines the qualifications of applicants for membership on the CJA Panel and votes to recommend to the Court the approval of attorneys who are deemed qualified or the rejection or removal of attorneys deemed unqualified after receiving comments concerning eligibility from magistrate and district judges.

2. Recruitment

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

3. Annual Review and (Optional) Report

Each Division CJA Committee will review the operation and administration of the CJA Panel over the preceding year, and make necessary changes, and report to the full 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, their CJA clients, or the bar at large.
4. Removal

Any member of the Committee may recommend the removal of any CJA panel member who:

- a. fails to satisfactorily fulfill the requirements of CJA panel membership during his or her 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.
 - c. *See also* Section IX.C.(7).
5. Training

The Committee may assist the Federal Public Defender's Office in providing training for the CJA Panel on substantive and procedural legal matters affecting representation of CJA clients.

IX. ESTABLISHMENT OF A DIVISION CJA PANEL

A. Approval of the Division CJA Panel

- 1. The existing, previously established panel of attorneys who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.
- 2. Each Division will have a CJA Committee that will review attorney applications, reapplications, and continued membership on the Division's CJA Panel.
- 3. The Division CJA Committee will recommend to the Court qualified attorneys for membership on the CJA Panel after receiving recommendations from the members of the Committee or the Court.

B. Size of CJA Panel

- 1. The size of the CJA Panel will be determined by the Division CJA Committee based on the caseload and activity of the panel members, subject to review by the Court.

2. The CJA Panel must be large enough to provide enough experienced attorneys to handle the CJA caseload, yet small enough so that CJA panel members will receive enough 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 legal services provided when counsel is privately retained.

C. Qualifications and Membership on the CJA Panel

1. Application

Application forms for membership on the CJA Panel are available on the Court's website.

2. Equal Opportunity

All qualified attorneys are encouraged to apply for the CJA Panel.

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 Division CJA Committee's consideration.

4. Appointment to CJA Panel

After a review of the applications and comments from the Court and members of the Division CJA Committee, the Committee will recommend to the Court the appointment or reappointment of attorneys to the Division CJA Panel. An appointment to the Panel is no guarantee of reappointment

or appointment as counsel in any particular Court proceeding. 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 Division CJA Panel will be divided into three groups, approximately equal in number. Attorneys admitted to membership on the CJA Panel will each serve for a term of at least three years, subject to the reappointment procedures set forth in this plan.

6. Reappointment of Division CJA Panel Members

a. The Court will notify CJA panel members, before their current term expires, of the need to apply for reappointment to the Division CJA Panel.

b. A member of the CJA Panel who wishes to be considered for reappointment must apply for an additional term no later than the deadline set by the Court. Application forms for reappointment are available on the Court's website.

c. The Division CJA Committee will solicit input concerning the quality of representation provided by lawyers seeking reappointment.

d. The Division CJA Committee will consider, among other things, how many cases the Division CJA panel member has accepted and declined during the review period, whether the member has participated in training opportunities, whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of a Division CJA panel members as set forth in this Plan.

7. Removal from the CJA Panel

a. Mandatory removal

Any member of the Division 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 Division CJA Panel immediately.

b. Automatic review

The Division CJA Committee will conduct an automatic review of any Division CJA panel member against whom any licensing authority, grievance committee, or administrative body has taken action, or when there has been a finding of probable cause, contempt, sanction, or reprimand against the panel member by any state or federal court. Nevertheless, all panel attorneys serve on the CJA Panel at the pleasure of the Court

X. CJA PANEL ATTORNEY APPOINTMENT IN NON-CAPITAL CASES

A. Appointment List

The Court will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers. The list may include a statement of qualifications and experience.

B. Appointment Procedures

1. The Court is responsible for overseeing the appointment of cases to panel attorneys. The Court will maintain a record of panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the Federal Public Defender Office and Panel attorneys.
2. Appointment of cases to Division CJA panel members will be at the Court's discretion. The Court will consider the nature of the case, the characteristics of the defendant, and the background and experience of the potential appointed attorneys in order to ensure effective assistance of counsel is provided.
3. Under special circumstances, a judge may find it necessary to appoint a member of the bar of the Court who is not a member of the Division CJA Panel. These circumstances may include cases in which the judge determines that the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason. It is not anticipated that special circumstances will arise often, and the procedures set forth in the Plan are presumed to be sufficient in the majority of cases in which counsel are to be appointed. Appointments made under this section will be reported to the CJA Committee by the appointing judge.

XI. DUTIES OF DIVISION CJA PANEL MEMBERS

A. Standards and Professional Conduct

1. Division 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 the American Bar Association’s Model Rules of Professional Conduct, the American Bar Association’s Model Code of Professional Conduct, the Texas Disciplinary Rules of Professional Conduct, and other standards for professional conduct adopted by the Court.
3. Each Division CJA Panel member must notify within 10 days the chair of the Division CJA Committee after: 1) being notified that a complaint has been filed against the Panel member with any licensing authority, grievance committee, or administrative body; 2) being notified that any authority, committee or body has taken action against the Panel member, or 3) being notified when a finding of contempt, sanction, or reprimand has been issued against the Panel member by any court.

B. Training and Continuing Legal Education

1. Attorneys on the Division CJA Panel are expected to remain current with developments in federal criminal defense law, practice, and procedure.
2. Attorneys on the Division CJA Panel are expected to attend seminars sponsored by the Federal Public Defender.
3. Attorneys on the Division CJA Panel will be guided in their practice by the Federal Adaptation of the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representations.
4. CJA panel members must annually attend continuing legal education relevant to federal criminal practice and report any such attendance to the Committee.
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 the facilities, resources, and technological capability to effectively and efficiently manage assigned cases.
2. CJA Panel attorneys must comply with the requirements of electronic filing and eVoucher.
3. CJA Panel attorneys must know and abide by procedures related to requests for investigative, expert, and other services.

D. Continuing Representation

Once appointed under the CJA, counsel will continue the representation until: the matter, including appeals or review by certiorari, is closed; substitute counsel has filed a notice of appearance; an order is entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by Court order.

E. Miscellaneous

1. Case budgeting

In complex non-capital representations that are likely to become unusual in terms of cost, the Court may require development of a case budget consistent with Guide, Vol. 7A, Ch. 2, § § 230.26.10 and 20.

2. No receipt of other payment

Appointed counsel may not require, request, or accept any payment, promise of payment, or any other valuable consideration for representation under the CJA, unless the payment is approved by order of the Court.

3. Redetermination of need

If at any time after appointment, counsel has reason to believe that a party is financially able to obtain counsel, or to 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. The Court appoints all counsel with the expectation that counsel will perform all tasks required of an attorney. None of these tasks should be delegated to another person or attorney without notice to or permission of the Court.

XII. COMPENSATION OF CJA PANEL ATTORNEYS

A. Policy of the Court Regarding Compensation

Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA Panel attorneys must be compensated for time expended in Court and time reasonably expended out of Court, and reimbursed for expenses reasonably incurred.

B. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the Court's eVoucher system.
2. Claims for compensation should be submitted no later than 45 days after final disposition of the case, unless good cause is shown.
3. The clerk will review the claims for mathematical and technical accuracy and for conformity with Guide, Vol. 7A and, if correct, will forward them for consideration and action by Court.
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 generally or in response to adverse financial circumstances.
5. In cases when the voucher for compensation submitted for services should, in the Judge's opinion, be reduced (except for mathematical corrections), the Division CJA attorney will receive notice from an eVoucher clerk indicating that the claim has been rejected or reduced. The Judge who reduced the voucher should indicate or describe the reductions, in order that counsel may supplement his or her claim with additional supporting documentation.
6. The Court, when contemplating reducing a CJA voucher for other than mathematical reasons, may refer the voucher to the Division 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 raise questions or concerns with a claim for compensation.

XIII. INVESTIGATIVE, EXPERT, AND OTHER SERVICES

A. Financial Eligibility

Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request these services in a sealed, 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

In non-capital cases, requests for authorization of funds for investigative, expert, and other services must be submitted in a sealed, ex parte application to the Court in advance of any commitment. The requests must not be publicly disclosed except with the consent of the person represented or as required by law or Judicial Conference policy.

C. Compliance

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

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

A. Applicable Legal Authority

The appointment and compensation of counsel in capital cases and the authorization and payment of persons providing investigative, expert, and other services are governed by 18 U.S.C. §§ 3005, 3006A, and 3599², and Guide, Vol. 7A, Ch. 6, and the Special Procedures for Reviewing Attorney Compensation Requests in Death Penalty Cases promulgated by the Judicial Council of the Fifth Circuit..

B. General Applicability and Appointment of Counsel Requirements

² As to investigative, expert, and other services, Section 3599(f) provides:

Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or the sentence, the court may authorize the defendant's attorneys to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses therefor under subsection (g). No ex parte proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.

1. Unless otherwise specified, the provisions set forth in this section apply to all capital proceedings in the federal courts, whether they originated in a district court (federal capital trials) or in a state court (habeas proceedings under 28 U.S.C. § 2254). The proceedings 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 related 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. The Court should consult with the Federal Public Defender about potential counsel to be appointed in CJA capital matters.
4. Given the complex and demanding nature of capital cases, where appropriate, the Court will use 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) the Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials); (2) the Federal Capital Appellate Resource Counsel Project; (3) the Federal Capital Habeas § 2255 Project; and (4) the National and Regional Habeas Assistance and Training Counsel Projects (§ 2254). These counsel are death penalty experts who the Court may rely on for assistance with selecting and appointing counsel, case budgeting, and handling the 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. 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. The appointments may be in place of, or in addition to, the appointment of the Federal Public Defender 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 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 must 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. The Fifth Circuit Budgeting Attorney and Administrative Attorney can also be contacted at 504-310-7799 for guidance.

C. Appointment of Trial Counsel in Federal Death-Eligible Cases³

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 for which the penalty of death is possible. See 18 U.S.C. § 3005.

³ 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 capital-qualified counsel upon request, consistent with Sections C.1, 2, and 3 of these provisions.
- c. At the outset of every capital case, the Court must appoint two attorneys, at least one of whom meets the qualifications for “learned counsel.” as described below. If necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in a capital case. See 18 U.S.C. § 3005.
- d. When appointing counsel, the Court must consider the recommendation of the Federal Public Defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. See 18 U.S.C. § 3005.
- e. 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 that the Federal Public Defender has been notified of the need to appoint capital-qualified counsel.
- f. Total reliance on a list for appointment of capital counsel is not recommended because selection of trial counsel should account for the particular needs of the case and the defendant, and should be based on individualized recommendations from the Federal Public Defender in conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel projects.
- g. Out-of-district counsel who have 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.
- b. Learned counsel must meet the minimum experience standards set forth in 18 U.S.C. §§ 3005 and 3599.
- c. Learned counsel should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty

cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high quality representation.

- d. Distinguished prior experience contemplates excellence, not simply prior experience. Counsel with distinguished prior experience should be appointed even if meeting this standard requires appointing counsel from outside the district where the matter arises.
- e. The suitability of learned counsel should be assessed with respect to the particular demands of the case, the stage of the litigation, and the defendant.
- f. Learned counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
- g. Learned counsel must satisfy the qualification standards endorsed by bar associations and other legal organizations regarding the quality of representation in capital cases.

3. Qualifications of Second and Additional Counsel

- a. Second and additional counsel may, but are not required to, satisfy the qualifications for learned counsel, as set forth above.
- b. Second and additional counsel must be well qualified, by 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 Court must consider the recommendation of the Federal Public Defender, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.

2. Counsel appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial.
 3. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.
 4. Out-of-district counsel, including Federal Public Defender staff, who have the requisite expertise, may be considered for appointment in capital appeals to achieve high quality representation together with cost and other efficiencies.
 5. Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals and capital appeals.
 6. At least one of the attorneys appointed as appellate counsel must have the requisite background, knowledge, and experience required by 18 U.S.C. § 3599(c) or (d).
 7. In evaluating the qualifications of proposed appellate counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
 8. In evaluating the qualifications of proposed appellate counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.
- E. Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. § 2255)
1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2255 is entitled to appointment of fully qualified counsel. See 18 U.S.C. § 3599(a)(2).
 2. 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 Public Defender staff, who have 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 Public Defender 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, preferably no later than the conclusion of the state direct appeal.

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 competency proceedings and proceedings for executive or other clemency as may be available to the defendant. See 18 U.S.C. § 3599(e).
7. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
8. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.
9. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
10. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to proposed counsel's commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to represent effectively the interests of the client.

XV. EFFECTIVE DATE

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

Entered for the Court on December 12, 2018.



Lee Rosenthal
Chief Judge for the Southern District of Texas

Approved by the Judicial Council for the Fifth Circuit on December 12, 2018.