

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED
SEPTEMBER 21, 2017
LAWRENCE K. BAERMAN, CLERK

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**



GENERAL ORDER #1

**PLAN FOR THE COMPOSITION, ADMINISTRATION AND
MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS AND THE
OFFICE OF THE FEDERAL PUBLIC DEFENDER UNDER THE
CRIMINAL JUSTICE ACT**

Second Circuit Approved: September 21, 2017

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
	C. CJA Administrator	2
IV.	Determination of Eligibility for CJA Representation	2
	A. Subject Matter Eligibility.....	2
	1. Mandatory	2
	2. Discretionary	3
	3. Ancillary Matters.....	4
	B. Financial Eligibility	5
	1. Presentation of Accused for Financial Eligibility Determination.....	5
	2. Factual Determination of Financial Eligibility	7
V.	Timely Appointment of Counsel.....	9
	A. Timing of Appointment.....	9
	B. Court's Responsibility	9
	C. Pretrial Service Interview	9
	D. Retroactive Appointment of Counsel	9
VI.	Provision of Representational Services	9
	A. Federal Public Defender and Private Counsel	9
	B. Administration	10
	C. Apportionment of Cases	10
	D. Number of Counsel.....	10
	E. Capital Cases	10
VII.	Federal Public Defender Organization.....	10
	A. Establishment	10

B.	Standards	10
C.	Workload.....	11
D.	Professional Conduct.....	11
E.	Private Practice of Law	11
F.	Supervision of Defender Organization..	11
G.	Training.....	11
VIII.	CJA Panel of Private Attorneys	12
A.	Establishment of the CJA Panel Committee	12
B.	Duties of the CJA Committee.....	12
IX.	Establishment of a CJA Panel	14
A.	Approval of CJA Panel.....	14
B.	Size of CJA Panel.....	14
C.	Qualifications and Membership on the CJA Panel.....	14
1.	Application	14
2.	Equal Opportunity	15
3.	Eligibility	15
4.	Appointment to CJA Panel	16
5.	Terms of CJA Panel Members	16
6.	Reappointment of CJA Panel Members	16
7.	Removal from the CJA Panel.....	17
X.	CJA Panel Attorney Appointment in Non-Capital Cases	19
A.	Appointment List.....	19
B.	Appointment Procedures	19
XI.	Duties of CJA Panel Members.....	20
A.	Standards and Professional Conduct	20
B.	Training and Continuing Legal Education	20
C.	CJA Training Panel – Second Chair Program.....	21
D.	Facilities and Technology Requirements	24
E.	Continuing Representation	24
F.	Miscellaneous	25
XII.	Compensation of CJA Panel Attorneys	25
A.	Policy of the Court Regarding Compensation	25
XIII.	Investigative, Expert, and Other Services.....	27

A.	Financial Eligibility	27
B.	Applications	27
C.	Compliance.....	28
XIV.	Appointment of Counsel and Case Management in CJA Capital Cases	28
A.	Applicable Legal Authority	28
B.	General Applicability and Appointment of Counsel Requirements.....	28
C.	Appointment of Trial Counsel in Federal Death-Eligible Cases	30
1.	General Requirements	30
2.	Qualifications of Learned Counsel	31
3.	Qualifications of Second and Additional Counsel.....	32
D.	Appointment and Qualifications of Direct Appeal Counsel in Federal Death Penalty Cases.....	33
E.	Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. § 2255)	33
XV.	Effective Date	35

United States District Court
For the Northern District of New York
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 Northern District of New York 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 Criminal Justice Act (CJA).

II. Statement of Policy

A. Objectives

The objectives of this Plan are:

1. to attain the goal of equal justice under the law for all persons;
2. to provide all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, are cost-effective, and protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and
3. to particularize the requirements of the Criminal Justice Act (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 (FPD), 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).

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 who are members of the Northern District Criminal Justice Act Panel, the federal public defender and staff attorneys of the federal public defender organization, and private attorneys when needed to supplement the CJA Panel.

C. CJA Administrator

"CJA Administrator" is a person designated by the Chief Judge and Clerk of Court to administer the CJA Panel.

IV. Determination of Eligibility for CJA Representation

A. Subject Matter Eligibility

1. Mandatory

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

- a. is charged with a felony or with a Class A misdemeanor;
- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
- c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
- d. is under arrest, when such representation is required by law;

- e. is entitled to appointment of counsel in parole proceedings; (See: Guide, Vol 7A, Section 210.20.10)
- 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. § 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; (See: Guide, Vol 7A, Section 210.20.10) or
- l. faces loss of liberty in a case and federal law requires the appointment of counsel. (See: Guide, Vol 7A, Section 210.20.10)

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 or 2255 other than to set aside or vacate a death sentence (See Guide, Vol 7A, Section 210.20.20);
- 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 of an individual in connection with a federal criminal charge, federal law enforcement officials must promptly notify, telephonically or electronically, the appropriate court personnel (typically the Courtroom Deputy for the Magistrate Judge on criminal duty), and advise whether the defendant has or expects to retain counsel. Court personnel will notify the federal public defender of the arrest, unless the defendant has retained counsel or court personnel is aware that the federal public defender would have a conflict of interest, in which case an attorney on the CJA panel will be contacted. Court personnel will also arrange to have the defendant promptly presented before a magistrate judge (or other judge of this court) for determination of financial eligibility and appointment of counsel. Law enforcement and related agencies must also comply with the provisions of Local Rule 5.1 of the Rules of Criminal Procedure for the Northern District of New York.
- (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 federal public defender.

- (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 federal public defender, unless the United States Attorney's Office is aware of an actual or potential conflict with the target and the federal public defender, in which case they must promptly notify the court.
- (iii) Employees of the United States Attorney's Office should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

The Government may not use as part of its direct case, other than a prosecution for perjury or false statements, any information provided by a defendant in connection with his or her request for the appointment of counsel pursuant to this Plan.

c. Duties of Federal Public Defender Office

- (i) In cases in which the federal public defender may be appointed, the office will:
 - immediately investigate and determine whether an actual or potential conflict exists; and
 - in the event of an actual or potential conflict, promptly notify the courtroom deputy clerk for the assigned judicial officer 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, assist¹ in the completion of a

¹ The financial affidavit (Form CJA 23) is normally completed by either the courtroom deputy clerk assigned to the Magistrate Judge or District Judge on the case or by the pretrial services officer who then transmits the financial affidavit to the courtroom deputy clerk and assigned judge.

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) This Court recognizes the importance of the advice of counsel for persons subject to proceeding under 18 U.S.C. §3142 et seq., prior to their being interviewed by a pretrial services or probation officer. Accordingly, the United States Attorney shall include notification to the accused with the issuance of any criminal summons or appearance letter of their obligation to contact the Pretrial Services Office for the Northern District of New York at least forty-eight (48) hours prior to their scheduled appearance with the Court to arrange for a pretrial services report to be completed. If the accused does not have retained counsel, the notification shall also include contact information for the office of the Federal Public Defender. Upon execution of an arrest warrant, law enforcement and related agencies shall comply with the requirements set forth in B 1.(a) i. Early notification to the Federal Public Defender and Pretrial Services office will assist in the furnishing of appointed counsel at this stage of the proceedings to financially eligible defendants, having due regard for the importance of affording the pretrial services officer adequate time to interview the defendant and verify information prior to the initial appearance and bail hearing.
- (ii) When counsel has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release or detention hearing.

2. Factual Determination of Financial Eligibility

- a. In every case where appointment of counsel is authorized under 18 U.S.C. § 3006A(a) and related statutes, the court must advise the person that he or she has a right to be represented by counsel throughout the case and that, if so

desired, counsel will be appointed to represent the person if he or she is financially unable to obtain counsel.

- b. The determination of eligibility for representation under the CJA is a judicial function to be performed by the court after making appropriate inquiries concerning the person's financial eligibility. Other employees of the court may be designated to obtain or verify the facts relevant to the financial eligibility determination.
- c. In determining whether a person is "financially unable to obtain counsel," consideration should be given to the cost of providing the person and his or her dependents with the necessities of life, the cost of securing pretrial release, asset encumbrance, and the likely cost of retained counsel.
- d. The initial determination of eligibility must be made without regard to the financial ability of the person's family to retain counsel unless their family indicates willingness and ability to do so promptly.
- e. Any doubts about a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected at a later time.
- f. Relevant information bearing on the person's financial eligibility should be reflected on a financial eligibility affidavit (Form CJA 23).
- g. If at any time after the appointment of counsel a judge finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the judge may terminate the appointment of counsel or direct that any funds available to the defendant be paid as provided in 18 U.S.C. § 3006A(f).
- h. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel may be appointed 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 court 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 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 determined by the court to be extremely difficult.

E. Capital Cases

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

VII. Federal Public Defender Organization

A. Establishment

The Federal Public Defender Office for the Northern District of New York previously established on September 29, 1997, pursuant to the provisions of the *CJA*, is hereby recognized as the Federal Public Defender Organization for this district. The federal public defender organization is responsible for rendering defense services on appointment throughout this district.

B. Standards

The federal public defender organization must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. See *Polk County v. Dodson*, 454 U.S. 312, 318 (1981) ("Once a lawyer has undertaken the representation of an accused, the duties and

obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.” (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980)).

C. Workload

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

D. Professional Conduct

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

E. Private Practice of Law

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

F. Supervision of Defender Organization. The federal public defender will be responsible for the supervision and management of the federal public defender organization. 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 Panel Attorney District Representative,² and the Northern District of New York CJA Committee, determine the training needs of the local panel attorneys, and provide training opportunities and other educational resources.

² 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 CJA PADR program and local CJA committee.

VIII. CJA Panel of Private Attorneys

A. Establishment of the CJA Panel Committee

1. A CJA Panel Committee (“CJA Committee”) will be established by the court in consultation with the court federal public defender. The CJA Committee will consist of one magistrate judge from Albany, and one magistrate judge from Syracuse, the federal public defender, the CJA Panel Attorney District Representative (PADR), up to five representatives from various divisions of the court who practice regularly in the district and are current members of the Northern District CJA Panel, and an ex officio staff member employed by the clerk who will act as administrative coordinator. The CJA Committee will meet at least annually and will report their work to the Board of Judges.
2. The federal public defender or their representative, and the district’s PADR are permanent members of the CJA Committee.

Membership on the CJA Committee will otherwise be for a term of three years and may be extended for an additional three years. Members’ terms may be staggered to ensure continuity on the CJA Committee.
3. The CJA Committee will meet at least annually and at any time the court asks the Committee to consider an issue. The Committee will be asked to evaluate potential membership to the CJA Panel on a quarterly basis, and will provide their input to the Board of Judges for their consideration.

B. Duties of the CJA Committee

1. Membership

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

2. Recruitment

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

3. Annual Report

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

- a. the size of the CJA Panel;
- b. the recruitment of qualified and diverse attorneys as required and set forth in this plan;
- c. recurring issues or difficulties encountered by panel members or their CJA clients; and
- d. ascertain the continued availability and willingness of each panel member to accept appointments.

4. Removal

Recommend to the chief judge and Board of Judges 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 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

Review and make recommendations, upon the referral from the responsible judge, 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

IX. Establishment of a CJA Panel

A. Approval of CJA Panel

1. The existing, previously established panel of attorneys who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.
2. The Board of Judges 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 Board of Judges upon recommendation from the CJA Committee based on the caseload and activity of the panel members.
2. The CJA Panel must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that CJA panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work enabling them to provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.

C. Qualifications and Membership on the CJA Panel

1. Application

Application forms for membership on the CJA Panel are available on the court's website www.nynd.uscourts.gov. The Northern District of New York requires prospective CJA Panel Members to complete the online Application Form. Completed applications shall be routed by the automated system to the Clerk of the Court who will transmit the applications to the CJA Committee for recommendation to the Board of Judges on a quarterly basis.

2. Equal Opportunity

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

3. Eligibility

- a. Applicants for the CJA Panel must be members in good standing of the federal bar of this district and the Second Circuit Court of Appeals.
- b. Applicants must possess strong litigation skills and demonstrate proficiency with the federal sentencing guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, Federal Rules of Evidence, and the Local Rules of the Northern District of New York. In addition to the above, attorneys who serve on the CJA Panel must attend at least one CJA Training Program at least every two years.
- c. Applicants must have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.
- d. Attorneys who do not possess the experience set forth above but believe they have equivalent other experience are encouraged to apply and set forth in writing the details of that experience for the CJA Committee's consideration.
- e. When the district judge or magistrate judge presiding over the case, or the chief judge if a district judge or magistrate judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA panel, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA panel *pro hac vice* and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify him

or her for admission to the district's *CJA* panel in the ordinary course of panel selection.

4. Appointment to CJA Panel

After considering the recommendations of the CJA Committee, the Board of Judges 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

CJA Panel members shall serve at the pleasure of the court. Attorneys appointed to the CJA Panel shall serve a term of three years.³ After the three-year term expires, a panel member may be invited to serve additional terms or may apply to serve additional terms. Completion of a term does not create a right or a presumption for service of another term.

6. Reappointment of CJA Panel Members

- a. The court 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.

³ The Court will review approximately one-third of the membership of the CJA Panel each year. The Court in its sole discretion may invite a panel member to continue service for an additional three-year term, or shall inform the panel member that their term of service on the CJA Panel has ended.

- d. The CJA Committee also will consider how many cases the CJA panel member has accepted and declined⁴ during the review period, whether the member has participated in training opportunities, whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of CJA panel members as set forth in this Plan.

7. Removal from the CJA Panel

a. Mandatory removal

Any member of the CJA Panel who is suspended or disbarred from the practice of law by the state court before whom such member is admitted, or who is suspended or disbarred from this court or any federal court, will be removed from the CJA Panel immediately.

b. Automatic disciplinary review

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

c. Complaints

(i) Initiation

A complaint against a panel member may be initiated by the CJA Committee, a judge, another panel member, a defendant, or a member of the federal public defender office. A complaint need not follow any particular form, but it must be in writing and state the alleged deficiency with specificity. Any complaint should be directed to the CJA Committee, which will

⁴ The Clerk of Court shall maintain a record of each refusal (“pass”) by a panel attorney, and the reason for each pass. If the Clerk’s office determines that a panel member has repeatedly passed assignments, the Clerk may refer the name of the attorney to the Court. The Court shall then consider the information provided by the Clerk and make such further inquiry as it deems appropriate.

determine whether further investigation is necessary in consultation with the Chief Judge.

(ii) Notice

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

(iii) Response

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

(iv) Protective action

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

(v) Review and recommendation

After investigation, the CJA Committee may recommend dismissing the complaint, or recommend appropriate remedial action, including removing the attorney from the panel, limiting the attorney's participation to particular types or categories of cases, directing the attorney to complete specific CLE requirements before receiving further panel appointments, limiting the attorney's participation to handling cases that are directly supervised or overseen by another panel member or other experienced practitioner, or any other appropriate remedial action.

(vi) Final disposition by the court

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

(vii) Confidentiality

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

(viii) None of these procedures create a property interest in being on or remaining on the CJA Panel. Membership on the *CJA* Panel is a privilege, not a right, which may be terminated at any time by the Board of Judges, as they, in their sole discretion, may determine.

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

B. Appointment Procedures

1. The court is responsible for overseeing the appointment of cases to panel attorneys. The court will maintain a record of panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the federal public defender office and panel attorneys.
2. Appointment of cases to CJA panel members will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, the court may appoint counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel.
3. Under special circumstances the court may appoint a member of the bar of the court who is not a member of the CJA Panel. Such special circumstances may include cases in which the court determines that the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason. It is not anticipated that special

circumstances will arise often, and the procedures set forth in the Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed. Appointments made under this section will be reported to the CJA Committee.

4. Unless otherwise impracticable, CJA panel attorney(s) must be available to represent defendant(s) at the same stage of the proceedings as is the federal public defender.

XI. Duties of CJA Panel Members

A. Standards and Professional Conduct

1. CJA panel members must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. 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, the American Bar Association’s Model Code of Professional, and the New York Rules of Professional Conduct.
3. CJA panel members must notify the Chief Judge within 30 days 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 required to attend criminal practice trainings sponsored by the federal public defender and or the Federal Court Bar Association. The Office of the Federal Public Defender shall sponsor two CJA workshops each year. CJA Panel

members may also satisfy the training requirement by attending a nationally sponsored *CJA Panel* training program. In lieu of attending one of the above-mentioned programs, a Panel member may request to have this requirement waived by demonstrating that they have participated in a criminal law seminar of equal quality and length. Requests are to be submitted to the *CJA Panel* Committee in care of the Clerk of Court at the James M. Hanley Federal Building and Courthouse, 100 S. Clinton Street, Syracuse, New York 13261, and shall include the following materials:

- a. the date, location and length of the program attended;
- b. the agenda or syllabus of the program attended; and
- c. the number and type of CLE credit hours earned for attending the program.

Failure to fulfill this training requirement may result in grounds for removal from the *CJA Panel*.

3. Attorneys on the *CJA Panel* will be guided in their practice by the Federal Adaptation of the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representations.
4. *CJA panel* members must attend one continuing legal education program relevant to federal criminal practice at least once every two years.
5. Failure to comply with these training and legal education requirements may be grounds for removal from the *CJA Panel*.

C. *CJA Training Panel – Second Chair Program*

The Court has established a “*CJA Training Panel - 2nd Chair Program*”. The program has been designed to help educate attorneys who do not yet have the experience required for membership on the *CJA Panel*. Training Panel members should contact the Office of the Federal Public Defender to obtain information on additional training or on the *2nd Chair Program*. Training Panel members are not eligible to receive appointments. Attorneys participating in the *2nd Chair Program* must comply with section C. 6 below. Prior service on the *CJA Training Panel - 2nd Chair Program* is not a requirement for membership on the *CJA Panel*, nor will service on the Training Panel guarantee admission of an attorney to the *CJA Panel*.

1. Objective.

To provide necessary training and prepare experienced state practitioner for appointment to the CJA Panel in order to ensure quality representation for indigent defendants in federal court.

2. Immediate Approval.

There may be a select group of applicants who qualify for automatic placement on the CJA panel. For example, an applicant who seeks to transfer from another district and already has extensive federal criminal experience, may be eligible for immediate approval, as long as the applicant provides at least two letters of reference from the transferring district. In addition, applicants who have extensive experience practicing criminal law in federal court within the Northern District of New York may also qualify for automatic placement on the CJA panel.

3. Additional Training.

“Additional training” would be required for those practitioners who have substantial state court experience, including felony jury trials, but essentially have minimal to no federal court experience. Applicants who fall within this category would be required to complete the following:

Participate in CLE programs on the Bail Reform Act, the Sentencing Guidelines and the Federal Rules of Evidence. The Coordinator would identify specific programs for the applicant, who subsequently would certify his/her participation.

The Coordinator would link the applicant to an approved mentor and the applicant would join the mentor for an initial appearance (including custodial interview), detention hearing and sentencing. The mentor would certify the applicant’s participation. The “2nd Chair Program” would be instituted for otherwise qualified attorneys whose federal court experience is not “substantial” but who have some state criminal court experience. The Coordinator would link the applicant to a mentor and the applicant would join the mentor for the full spectrum of representation (e.g., initial appearance, detention hearing, discovery, guideline calculation and sentencing factors, plea negotiations, client interviews and conferences, evidentiary hearings, trial and sentencing, etc.). The mentor would certify the applicant’s participation.

Additionally, the coordinator will notify mentees whenever possible when a mentor has a jury trial scheduled (not necessarily the applicant's mentor) in order to provide the applicant with an opportunity to observe an entire trial.

Finally, the applicant in the 2nd Chair Program also must participate in CLE programs on the Bail Reform Act, the Sentencing Guidelines and the Federal Rules of Evidence, as under Section XI B 1 above.

A participating Mentee will be required to perform at least 15 hours of *pro bono* work prior to being considered for compensation at a reduced paralegal rate in an amount of \$65 per hour, not to exceed \$800, unless otherwise approved by the District Court Judge, provided the Mentee is not duplicating work completed by the Mentor. The Mentor is required to certify the completion of 15 hours of *pro bono* work.

Authorization of the Mentee as co-counsel and compensation, if any, for the Mentee will be determined by the District Court on a case-by-case basis. Such authorization is appropriate only if the District Court finds that the case in question would have warranted the authorization of a paralegal or associate counsel. No such authorization or determination of compensation will be made by the Magistrate Judge; however, the Mentor should identify the Mentee at any presentment or other appearance before the Magistrate Judge. The only expenses permitted to be reimbursed for a Mentee are travel-related expenses, such as mileage and parking. Travel expenses will be reimbursed at the current mileage rate prescribed for federal judiciary employees.

4. Coordinator.

The Federal Public Defender will administer the program. Administration will include nomination of Mentors, subject to the approval of the CJA Panel Committee; identifying prospective Mentees; pairing Mentees with Mentors; providing Mentors with guidance and identifying appropriate cases for the Program.

5. Mentors.

The Coordinator will link the applicant to a mentor and the applicant will join the mentor for the full spectrum of representation (e.g., initial appearance, detention hearing, discovery, guideline computation and sentencing factors, plea negotiations, client

interviews and conferences, evidentiary hearings, trial and sentencing) preferably in the context of a single “Program case.”

The CJA Committee Members will propose an initial pool of approximately (10) Mentors, subject to approval of the Chief Judge for the Northern District of New York. Mentors will be appointed for a 24-month period, which is renewable at the discretion of the Committee.

No Mentor will be assigned more than one Mentee, as long as there are willing Mentors who have not yet been assigned a Mentee. Mentees may have more than one Mentor.

The Mentor is the primary attorney and, accordingly is responsible for the representation of the Criminal Justice Act-client.

A Program case will be a Mentor’s CJA case that the Mentor has received as a regular CJA appointment, and which appears to have a wide range of issues to address, including: bail and release; discovery review; guideline calculation and sentencing factors; plea negotiation; client interview and conferences regarding various issues and themes; legal research and writing; and possible evidentiary hearing or trial.

6. Program Completion.

Mentees who successfully complete the program will be encouraged to renew their application for appointment to the Panel. If a Mentee renews their application, The Panel Review Committee will solicit the views of the Mentor and Coordinator as to whether the Mentee qualifies for appointment.

D. Facilities and Technology Requirements

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

E. Continuing Representation

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

F. 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.

2. No receipt of other payment

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

3. Redetermination of need

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

XII. Compensation of CJA Panel Attorneys⁵

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

⁵ Additional guidance on payment procedures are contained in the NDNJ CJA Handbook which can be found on the Court's website at www.nynd.uscourts.gov.

compensated for time expended in court and time reasonably expended out of court, and reimbursed for expenses reasonably incurred.

1. Maximum Amounts for Counsel. For representation of a defendant before a magistrate judge or judge of this court, or both, the compensation paid any attorney shall not exceed the maximum prescribed by 18 U.S.C. §3006A(d)(2).
2. Waiver of Limits on Counsel Fees. Payment in excess of any maximum amount prescribed by 18 U.S.C. §3006A(d)(2) for counsel fees or for other services may be made for extended or complex representation whenever the judge or magistrate judge (if the representation was entirely before the magistrate judge) certifies that the amount sought is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Second Circuit or such active Circuit Judge to whom the Chief Judge has delegated approval authority. Counsel claiming such excess payment shall submit a detailed memorandum justifying counsel's claim that the representation was in an extended or complex case and that the excess payment is necessary to provide fair compensation.
3. Reimbursement Restriction. CJA Panel Members who do not maintain an office within the Northern District of New York will only be reimbursed for their mileage and travel time accrued while traveling within the borders of the Northern District. Mileage and travel time incurred outside of the District either traveling from your office or returning to your office will not be allowed without the prior permission of the Court.

B. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the court's eVoucher system.
2. Claims for compensation should be submitted no later than 45 days after final disposition of the case, unless good cause is shown.
3. The court 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.

Without Prior Request.

Counsel appointed pursuant to this Plan may obtain, subject to later review, investigative, expert, or other services without prior judicial authorization if they are necessary for an adequate defense. The total

cost of services so obtained may not exceed the maximum prescribed by 18 U.S.C. § 3006(A)(e)(2) per individual or corporation providing the services (exclusive of reasonable expenses). However, in the interests of justice and upon finding that timely procurement of necessary services could not await prior authorization, a judge or magistrate judge (in a case entirely disposed of by the magistrate judge) may approve payment for such services after they have been obtained, even if the service exceeds the maximum prescribed by 18 U.S.C. § 3006(A)(e)(2).

Necessity of Affidavit.

Statements made by or on behalf of the party in support of requests for investigative, expert, and other services shall be made or supported by affidavit and filed with the Court in-camera for review and consideration.

C. Compliance

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

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

A. Applicable Legal Authority

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

B. General Applicability and Appointment of Counsel Requirements

1. Unless otherwise specified, the provisions set forth in this section apply to all capital proceedings in the federal courts, whether those matters originated in a district court (federal capital trials) or in a state court (habeas proceedings under 28 U.S.C. § 2254). Such matters include those in which the death penalty may be or is being sought by the prosecution, motions for a new trial, direct appeal, applications for a writ of certiorari to the Supreme Court of the United States, all post-conviction proceedings under 28 U.S.C. §§ 2254 or 2255 seeking to vacate or set aside a death sentence, applications for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings.
2. Any person charged with a crime that may be punishable by death who is or becomes financially unable to obtain representation is

entitled to the assistance of appointed counsel throughout every stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, competency proceedings, and proceedings for executive or other clemency as may be available to the defendant. See 18 U.S.C. § 3599(e).

3. Qualified counsel must be appointed in capital cases at the earliest possible opportunity.
4. 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 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. 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.

C. Appointment of Trial Counsel in Federal Death-Eligible Cases⁶

1. General Requirements
 - a. Appointment of qualified capital trial counsel must occur no later than when a defendant is charged with a federal criminal offense where the penalty of death is possible. See 18 U.S.C. § 3005.
 - b. To protect the rights of an individual who, although uncharged, is the subject of an investigation in a federal death-eligible case, the court may appoint 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

⁶ 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.

for “learned counsel” as described below. If necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in a capital case. See 18 U.S.C. § 3005.

- d. When appointing counsel, the judge must consider the recommendation of the federal public defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. See 18 U.S.C. § 3005.
- e. 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.
 - g. Learned counsel should satisfy the qualification standards endorsed by bar associations and other legal organizations regarding the quality of representation in capital cases.
3. Qualifications of Second and Additional Counsel
- a. Second and additional counsel may, but are not required to, satisfy the qualifications for learned counsel, as set forth above.
 - b. Second and additional counsel must be well qualified, by virtue of their distinguished prior criminal defense experience, training and commitment, to serve as counsel in this highly specialized and demanding litigation.
 - c. Second and additional counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
 - d. The suitability of second and additional counsel should be assessed with respect to the demands of the individual case, the stage of the litigation, and the defendant.

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

1. When appointing appellate counsel, the judge must consider the recommendation of the federal public defender, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.
2. 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 defender organization staff, who possess the requisite expertise may be considered for appointment in capital appeals to achieve high quality representation together with cost and other efficiencies.
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/ community] 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.

XV. Effective Date

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

ENTER FOR THE COURT ON SEPTEMBER 15, 2017.



Hon. Glenn T. Suddaby
Chief U.S. District Judge

APPROVED BY THE JUDICIAL COUNCIL OF THE SECOND CIRCUIT

September 21, 2017

s/ Robert A. Katzmann, Chief Judge

Hon. Robert A. Katzmann, Chief Judge
Second Circuit Court of Appeals