CRIMINAL JUSTICE ACT PLAN FOR THE EASTERN DISTRICT OF TENNESSEE

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United States District Court
For the Eastern District of Tennessee
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 Eastern District of Tennessee adopt this Plan, as approved by the Sixth Circuit, for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. Statement of Policy

A. Objectives

The objectives of this Plan are:

1. to attain the goal of equal justice under the law for all persons;

2. to provide all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, are cost-effective, and protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and

3. to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), and *Guide*, Vol. 7A, in a way that meets the needs of this district.

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

B. Compliance

1. The Court, its Clerk, the Community Defender Organization, attorneys provided by a bar association or legal aid agency, 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. CJA Panel Attorney

"CJA panel attorney" is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys, the

Community Defender, staff attorneys of the Community Defender Organization, and attorneys provided by a bar association or legal aid agency.

C. Community Defender Organization

"Community Defender Organization" is a nonprofit defense counsel service established by this district's CJA Plan as set out in 18 U.S.C. § 3006A.

IV. Determination of Eligibility for CJA Representation

A. Subject Matter Eligibility

1. Mandatory

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

a. is charged with a felony or with a Class A misdemeanor;

b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;

c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);

d. is under arrest, when such representation is required by law;

e. is entitled to appointment of counsel in parole proceedings;

f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;

g. is subject to a mental condition hearing under 18 U.S.C. chapter 313;

h. is in custody as a material witness;

i. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255;

j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;

k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or

l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary

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

a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;

b. is seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 other than to set aside or vacate a death sentence;

c. is charged with civil or criminal contempt and faces loss of liberty;

d. has been called as a witness before a grand jury, a Court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;

e. has been advised by the United States attorney or a law enforcement officer that they are the target of a grand jury investigation;

f. is proposed by the United States attorney for processing under a pretrial diversion program; or

g. is held for international extradition under 18 U.S.C. chapter 209.

3. Ancillary Matters

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

a. to protect a constitutional right;

b. to contribute in some significant way to the defense of the principal criminal charge;

c. to aid in preparation for the trial or disposition of the principal criminal charge;

d. to enforce the terms of a plea agreement in the principal criminal charge;

e. to preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under 18 U.S.C. § 983,19 U.S.C. § 1602, 21 U.S.C. § 881, or similar statutes, which property, if recovered by the client, may be considered for reimbursement under 18. U.S.C. § 3006A(f); or

f. effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f).

B. Financial Eligibility

1. Presentation of Accused for Financial Eligibility Determination

a. Duties of Law Enforcement

(i) Upon arrest, and where the defendant has not retained or waived counsel, federal law enforcement officials must promptly notify, telephonically or electronically, the appropriate Court personnel, who in turn will notify the Community Defender or CJA panel attorney of the arrest of an individual in connection with a federal criminal charge.

(ii) Employees of law enforcement agencies should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

b. Duties of United States Attorney's Office

(i) Upon the return or unsealing of an indictment or the filing of a criminal information, and where the defendant has not retained or waived counsel, the United States attorney or their delegate will promptly notify, telephonically or electronically, appropriate Court personnel, who in turn will notify the Community Defender.

(ii) Upon issuance of a target letter or other notification, 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 Community Defender, unless the United States Attorney's Office is aware of an actual or potential conflict with the target and the Community 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.

c. Duties of Community Defender Organization

(i) In cases in which the Community 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 Court to facilitate the timely appointment of other counsel.

(ii) When practicable, the Community 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) When practicable, the pretrial services officer will not conduct the pretrial service interview of a financially eligible defendant until counsel has been appointed, unless the right to counsel is waived or the defendant otherwise consents to a pretrial service interview without counsel.

(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. Initial Interviews

The Court, the Community Defender Organization, the United States Attorney's Office, and the United States Probation Office will make all efforts to facilitate providing appointed counsel to financially eligible defendants prior to an interview by a pretrial services officer.

If not practicable, the pretrial service interview may be conducted without counsel present if the defendant has signed a waiver of counsel. Arrangements will be made with federal, state, and local investigative and police agencies as will ensure timely appointment of counsel.

C. Retroactive Appointment of Counsel

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

VI. Provision of Representational Services

A. Community Defender and Private Counsel

This Plan provides for representational services by the Community 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 of the CJA Panel

Administration of the CJA Panel is hereby delegated and assigned to the Court.

C. Administration of the CJA eVoucher Payment Program

Administration of the CJA eVoucher payment program is hereby delegated to the Community Defender Organization, as set forth in section XII(C) of this Plan.

D. Apportionment of Cases

Where practical and cost effective, private attorneys from the CJA Panel will be appointed in a substantial portion 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.

E. Number of Counsel

More than one attorney may be appointed in any case determined by the Court to be extremely difficult.

F. 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. Community Defender Organization

A. Establishment

The Community Defender Organization, Federal Defender Services of Eastern Tennessee, Inc., is established in this district under the CJA and is responsible for rendering defense services on appointment throughout this district.

B. Standards

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

D. Professional Conduct

The Community Defender Organization must conform to the highest standards of professional conduct, including but not limited to the Local Rules of the United States District Court for the Eastern District of Tennessee and the Tennessee Rules of Professional Conduct, as adopted by the Court in E.D. Tenn. L.R. 83.6.

E. Private Practice of Law

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

F. Supervision of Defender Organization

The Community Defender will be responsible for the supervision and management of the Community Defender Organization. Accordingly, the Community Defender will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Community Defender.

G. Training

The Community Defender will assess the training needs of Community Defender staff and, in coordination with the CJA Panel Attorney District Representative,[1] the training needs of the local panel attorneys, and provide training opportunities and other educational resources.

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[1] The CJA Panel Attorney District Representative (PADR) is a member of the district's CJA Panel who is selected by the local Community 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 committees for a term of three years.

VIII. CJA Panel of Private Attorneys

A. Establishment of Divisional CJA Panel Committees

1. A separate CJA Panel Committee ("CJA Committee") will be established in Chattanooga, Greeneville, and Knoxville by the Court in consultation with the Community Defender.

   Each divisional CJA Committee will consist of one district court judge from the division, one magistrate judge from the division, the Community Defender, the CJA Panel Attorney District Representative (PADR), a criminal defense attorney who practices regularly in the division who may be a CJA panel member, and one or more ex officio staff members employed by the Clerk who will act in an administrative capacity.

2. The Community Defender or their representative and the district's PADR are permanent members of each CJA Committee.

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

B. Duties of the Divisional CJA Committees

1. Membership

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

   a. the size of the CJA Panel;

   b. the recruitment of qualified and diverse attorneys as required and set forth in this Plan; and

c. recurring issues or difficulties encountered by panel members or their CJA clients.

4. Removal

Recommend to the Chief Judge the removal of any CJA panel member who:

a. fails to satisfactorily fulfill the requirements of CJA panel membership during their term of service, including the failure to provide high quality representation to CJA clients, or

b. has engaged in other conduct such that his or her continued service on the CJA Panel is inappropriate.

See also Section IX.C.7.

5. Training

Assist the Community 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 on the processing and payment of CJA vouchers in those cases where the Court or CJA Coordinating Attorney, for reasons other than mathematical errors, is considering authorizing payment for less than the amount of compensation claimed by CJA counsel, pursuant to the process outlined in Section XII.B.6. The judge or CJA Coordinating Attorney 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 to the Committee and to the judge or CJA Coordiating Attorney which is relevant to the voucher and concerns raised. The CJA Committee will issue a written recommendation to the judge or CJA Coordinating Attorney.

7. Mentoring

Administer a mentoring program designed to identify and help prepare viable candidates to qualify for consideration for appointment to the CJA Panel. The CJA Committee will review the mentee applications, make recommendations concerning their participation in the mentoring program, identify appropriate cases for the mentoring program, evaluate the success of the mentoring program, and provide guidance to the mentors. Details of the Court's mentoring program shall be made available on the Court's website. See https://www.tned.uscourts.gov/cja.

IX. Establishment of a CJA Panel

A. Approval of CJA Panel

There shall be a CJA Panel established for the Chattanooga, Greeneville and Knoxville divisions. Appointments to Winchester cases will be from the Chattanooga panel. The existing panels of attorneys in place at the time this plan is adopted are hereby recognized and shall continue in their service for the remaining length of the terms established under the prior plan.

B. Size of CJA Panel

1. The size of the CJA Panel for each division will be determined by the division's CJA Committee based on the caseload and activity of the panel members, subject to review by the Court.

2. The CJA Panel must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that CJA panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work enabling them to provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.

C. Qualifications and Membership on the CJA Panel

1. Application

   Application forms for membership on the CJA Panel are available at www.tned.uscourts.gov or at www.fdset.com.

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 Sixth Circuit Court of Appeals.

   b. Applicants may be appointed to only one CJA Panel, which shall be the one closest to the attorney's home or place of doing business.

   c. Applicants must possess strong litigation skills and demonstrate proficiency with the federal sentencing guidelines, federal

sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence.

d. Applicants must have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.

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

4. Appointment to CJA Panel

After considering the recommendations of the CJA Committee, the Chief Judge 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

Attorneys admitted to membership on the CJA Panel will each serve for a term of three years, subject to the reappointment procedures set forth in this Plan.

6. Reappointment of CJA Panel Members

a. The Community Defender 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 by December 31 of the year before the expiration of the member's term.

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

d. The CJA Committee also will consider how many cases the CJA panel member has accepted and declined during the review period, including whether a minimum of two cases were accepted, 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 will conduct an automatic disciplinary review of any CJA panel member against whom any licensing authority or administrative body has taken action, or when a citation or arrest warrant (except for traffic violations) has been served on, or when a finding of contempt, sanction or reprimand has been issued against the panel member by any state or federal court.

Panel members are required to notify the Community Defender in writing within 7 days of the occurrence of any of these events. The Community Defender will notify the Chair of the CJA Committee of receipt of the notice.

c. Complaints

(i) Initiation

A complaint against a panel member may be initiated by the CJA Committee, a judge, another panel member, or a member of the Community Defender office. A complaint need not follow any particular form, but it must be in writing and state the alleged deficiency with specificity. Any complaint should be directed to the CJA Committee, which will determine whether further investigation is necessary.

(ii) Notice

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

(iii) Response

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

(iv) Protective action

Prior to disposition of any complaint, the CJA Committee may recommend to the Committee Chair 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 with notice to the affected attorney.

(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. Records of complaints will be maintained by the Clerk's Office in the same manner as are attorney discipline matters.

(viii) None of these procedures create a property interest in being on or remaining on the CJA Panel.

X. CJA Panel Attorney Appointment in Non-Capital Cases

A. Appointment List

The Clerk of 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 Clerk of Court is responsible for overseeing the appointment of cases to panel attorneys. The Clerk of Court will maintain a record of panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the Community 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 Community 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 the Local Rules of the United States District Court for the Eastern District of Tennessee and the Tennessee Rules of Professional Conduct, as adopted by the Court in E.D. Tenn. L.R. 83.6.

3. CJA panel members must notify the Community Defender in writing within 7 days of any licensing authority, grievance committee, or administrative body taking 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. *See also* Section IX.C.7.b.

B. Training and Continuing Legal Education

1. Attorneys on the CJA Panel are expected to remain current with developments in federal criminal defense law, practice, and procedure, including the Recommendation for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases.

2. Attorneys on the CJA Panel are expected to attend trainings sponsored by the Community Defender.

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 shall annually attend at their own expense a minimum of three hours of continuing legal education related to federal criminal practice. This requirement applies to all panel attorneys, including those whose term begins on May 1. All seminars presented by Federal Defender Services of Eastern Tennessee, or by the Office of Defender Services, or any video posted on www.fd.org, will automatically satisfy this requirement. CJA panel members must certify their attendance at other federal criminal practice seminars on forms provided by the Community Defender by December 1 of each year so that the appropriate panel selection committee might decide if the seminar is sufficiently relevant. A copy of the agenda must also be attached to the form.

5. Attorneys on the CJA Panel will register with www.fd.org so that they have access to the most current CJA resources.

6. Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel.

C. Facilities and Technology Requirements

1. CJA panel attorneys must have facilities, resources, and technological capability to effectively and efficiently manage assigned cases.

2. CJA panel attorneys must comply with the requirements of electronic filing and eVoucher.

3. CJA panel attorneys must know and abide by procedures related to requests for investigative, expert, and other services.

D. Continuing Representation

Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals (unless provided otherwise by the Sixth Circuit's CJA plan) or review by certiorari, is closed; or until substitute counsel has filed a notice of appearance; or until an order is entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by Court order.

E. 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 Attorneys

A. Policy of the Court Regarding Compensation

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

2. Voucher cuts should be limited to:

   a. Mathematical errors;

   b. Instances in which work billed was not compensable;

   c. Instances in which work was not undertaken or completed; and

   d. Instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.

   See: JCUS SEP 2018, p. 42.

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 representation concludes, unless good cause is shown. If the Court has not received an attorney's claim for compensation within 45 days, the Clerk will send a notice to the attorney through ECF providing the attorney an additional 7 days to submit the attorney's claim. Claims not submitted within that time will be deemed waived, unless good cause shown.

   a. Appointed attorneys who are replaced by another CJA Panel attorney may submit their claim for compensation after their representation ceases. If the total of the attorney's claim plus any panel attorney who was appointed before exceeds the case cap, the attorney must include a completed CJA 26 form, even if the attorney's individual claim amount does not exceed the case cap.

3. The Court or its 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 appropriate judicial officer.

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.

C. Delegated Authority for Payment Claim Approval

The Commnity Defender shall manage eVoucher, the Court's payment program. Details shall be set forth in the CJA eVoucher Administration Manual. The CJA eVoucher Administration Manual shall be publicly available on the Community Defender website and may be updated only with approval of the Court.

The Court delegates to the Community Defender (or designee) the authority to review, approve, adjust, or deny:

1. CJA compensation claims requesting payment ("vouchers") for the services of an attorney or service provider that are within statutory funding limits;

2. CJA funding requests for the services of an expert or service provider that are within the statutory funding limits but which require pre-authorization.

3. Authorization and payment requests for transcripts and non-routine travel.

The Community Defender (or designee) shall provide both a technical and reasonableness review on all other vouchers or funding requests before submitting them to a judge for final approval, as further outlined in the CJA eVoucher Administrative Manual.

Such authority is subject to the supervision of the Court and shall be consistent with this Plan and the CJA eVoucher Administration Manual.

D. Independent Review Process

1. Purpose

The Court has established CJA Fee Review Committees in each division (referred to, generally, as an FRC) to investigate and review voucher reduction challenges submitted by CJA panel attorneys and to investigate specific issues related to a submitted voucher at the request of a judge or CJA eVoucher Administrator. The FRC will assist the Court and panel attorneys by conducting an independent review of reduced or denied vouchers, assessing the reasonableness of vouchers or individual time entries, ensuring compliance with mandated billing guidelines, ensuring accurate record keeping, and promoting fairness and independence in compensation and voucher review.

2. Initiation of Review

a. Initiation of Review by Panel Attorney

Within fourteen (14) days[2] of the denial or reduction of a CJA voucher, the appointed counsel whose voucher, or whose retained service provider's voucher, was denied or reduced may initiate FRC review of the denial or reduction by submitting a written appeal of ten (10) pages or less in length (excluding any affidavits and exhibits) in PDF format, via email to CJAreview@tned.uscourts.gov.

The appeal shall address the grounds for initiating review and shall cite the relevant sections of the Criminal Justice Act (18 U.S.C. § 3006A), the Court's Criminal Justice Act Plan, or CJA Billing Guidelines, as may be applicable.

Any supporting documents should be submitted with the appeal and should be attached to an affidavit or unsworn declaration under penalty of perjury for purposes of authentication.

The Clerk's Office shall transmit via email the written appeal to the members of the FRC for the appropriate division for investigation. The written appeal will be docketed as a new

[2] All time periods set forth in the Independent Review Process shall be calculated consistent with the rules of computation set forth in Fed. R. Civ. P. 6. Service is complete upon the date of (1) email transmission or (2) the docketing of any document or event. The Federal Rules of Civil Procedure do not apply to this Independent Review Process.

matter, separate from the underlying case, viewable only to the Court, the CJA eVoucher Administrator, the members of the FRC, and the attorney whose claim for payment is at issue or the attorney who engaged the service provider whose claim for payment is at issue.

Review may be initiated for any reductions made by the judge or CJA eVoucher Administrator except for reductions based on mathematical errors. Review may be initiated only in instances when the cumulative amount of the challenged reductions exceeds $500.

In all reviews, the attorney bears the burden to prove that the claim for payment is proper under the Criminal Justice Act (18 U.S.C. § 3006A), the Court's Criminal Justice Act Plan, and the CJA Billing Guidelines. Failure to meet the deadlines or substantive requirements set forth in this section is grounds for summary denial of the appeal.

b. Initiation of Review by the Court or CJA Coordinating Attorney

At any time, the presiding judge, the referral judge, the chief district judge, or CJA Coordinating Attorney may initiate FRC review of an attorney's voucher to determine whether billed work was compensable, whether billed work was actually undertaken or completed, or whether hours billed were clearly in excess of what was reasonably required to complete the task.

The judge or CJA Coordinating Attorney shall direct the request for investigation in writing to the clerk of court, the chief deputy clerk, or the Court's administrative attorney. The judge's request shall specify the scope of the review. The judge or CJA Coordinating Attorney's request will be docketed as a new matter separate from the underlying case, viewable only to the Court, the CJA Coordinating Attorney, the attorney whose claim for payment is at issue, and the FRC members.

The request shall be served electronically on the attorney whose claim for payment is being reviewed. Within fourteen (14) days of service of the request on the subject attorney, the attorney may electronically file a brief of ten (10) pages or less in length (excluding any affidavits and exhibits) in PDF format. The brief should demonstrate that the subject claims for payment are proper and should cite the relevant sections of the Criminal Justice Act (18 U.S.C. § 3006A), the Court's Criminal Justice Act Plan, or CJA Billing Guidelines, as may be applicable.

Any supporting documents should be submitted with the brief and shall be attached to an affidavit or unsworn declaration under penalty of perjury for purposes of authentication.

In all reviews, the attorney bears the burden to prove that the claim for payment is proper under the Criminal Justice Act (18 U.S.C. § 3006A), the Court's Criminal Justice Act Plan, and the CJA Billing Guidelines. This review process is optional and does not otherwise affect the ability of a judge or CJA Coordinating Atorney to reduce or deny a voucher without FRC review.

3. Investigation

After a review has been initiated by an attorney, the FRC shall conduct an investigation to determine whether the challenging attorney has met his or her burden to demonstrate that the claim for payment was proper under the Criminal Justice Act (18 U.S.C. § 3006A), the Court's Criminal Justice Act Plan, and the CJA Billing Guidelines. In the event that the review was initiated by a judge or CJA Coordinating Attorney, the FRC's investigation shall be limited to the scope of the judge or CJA Coordinating Attorney's request.

The investigation undertaken by the FRC may include review of vouchers submitted by other panel members in the same case; review of court files; review of records of detention facilities; interviews of panel members or service providers, including the individual whose voucher is being reviewed; and/or interviews of other witnesses with relevant personal knowledge. The attorney whose claims for payment are at issue, or whose retained service provider's claims for payment are at issue, may not conduct discovery. The FRC is encouraged to conduct its investigation informally, however, the FRC may, in its discretion, conduct formal discovery if necessary to complete its investigation.

The attorney whose claims for payment are at issue, or whose retained service provider's claims for payment are at issue, may not conduct discovery without leave of court. Any such motion must state the scope of discovery sought, the specific means by which that discovery will be completed, and must show that such discovery is necessary to allow the attorney or service provider to meet his or her burden to demonstrate that the claim for payment was proper under the Criminal Justice Act (18 U.S.C. § 3006A), the Court's Criminal Justice Act Plan, and the CJA Billing Guidelines.

Any motion to conduct discovery and to extend the filing deadlines must be five (5) pages or less in length; and may be filed at any point in the review process prior to five (5) days after the FRC's issuance of a report

and recommendation. The decision to allow discovery and to extend any deadlines necessary to allow for discovery is within the sole discretion of the presiding judge.

4. Determination

For reviews initiated by the attorney, within thirty (30) days of the receipt of the written appeal, the FRC shall file a written report and recommendation for consideration by the presiding judge. For reviews initiated by the Court, within thirty (30) days of (a) the receipt of the attorney's brief or (b) if no brief is filed, the expiration of the deadline for the attorney to file a brief, the FRC shall file a written report and recommendation for consideration by the presiding judge. The report and recommendation shall contain any findings and conclusions of the FRC and shall cite to the relevant sections of the Criminal Justice Act (18 U.S.C. § 3006A), the Court's Criminal Justice Act Plan, or the CJA Billing Guidelines, as may be applicable.

Within fourteen (14) days of the filing of the report and recommendation, the panel attorney may file a written objection to the report and recommendation of ten (10) pages or less in length. No exhibits or affidavits are permitted to be attached to the objection.

The presiding judge shall make a final determination in the form of a written order. The presiding judge shall give due deference to the FRC's recommendation in making a final determination. Regardless of whether the Court adopts the FRC's recommendation, the Court's decision is final, and there shall be no additional right of review or right of further appeal. If the CJA Coordinating Attorney initated the review, the CJA Coordinating Attorney shall apply the presiding judge's determination. Any determination that a voucher should be reduced does not necessarily constitute a finding of wrongdoing by the attorney or service provider.

5. Confidentiality

All information gathered during the fee review process shall be the property of the Court and shall be confidential. Any records, votes, or other work product of the FRC shall also be confidential. FRC members shall not disclose to others, in any manner, the discussions, deliberations, or actions of the FRC; information obtained during investigation or deliberations of the FRC; or any documents related to the foregoing, unless authorized to do so by the Court or required by law. The foregoing obligations of confidentiality shall not prohibit the disclosure of information by an FRC member to the extent necessary to fulfill an independent ethical obligation.

The FRC shall take appropriate measures to protect any proprietary, confidential, privileged, or otherwise protected information of persons whose testimony, records, or opinions have been sought in the investigation. The challenging attorney or service provider shall have no right to discover information deemed by the FRC to be proprietary, confidential, privileged, or otherwise protected.

6. FRC Membership

A separate FRC shall be assigned to each division to review challenges to voucher reductions in cases pending in that division. The FRC shall be comprised of the following members:

a. The Greeneville FRC shall be comprised of the non-judge voting members of the Knoxville Criminal Justice Act Panel-Selection Committee,

b. The Knoxville FRC shall be comprised of the non-judge voting members of the Chattanooga Criminal Justice Act Panel-Selection Committee, and

c. The Chattanooga FRC shall be comprised of the non-judge voting members of the Greeneville Criminal Justice Act Panel-Selection Committee.

7. Conflicts of Interest

A member of the FRC shall recuse himself or herself from participation in the consideration of a panel attorney or service provider voucher or from attempting to influence others with respect to such consideration, in the following circumstances:

a. The FRC member is the current or former law partner or associate of the panel attorney;

b. The FRC member, or the law firm or office with which the FRC member is affiliated, represents the panel attorney or service provider;

c. The FRC member, or the law firm or office with which the FRC member is affiliated, is a party to pending litigation in which the panel attorney, the service provider, or the law firm or office with which the panel attorney is affiliated, is a party;

d. The FRC member or his or her spouse is related to the panel attorney or service provider by consanguinity or affinity within the third degree according to the rules of civil law;

e. The FRC member stands in the relation of guardian and ward, conservator and conservatee, employer and employee, or principal and agent to the panel attorney or service provider;

f. The FRC member has appeared as an expert witness or acted as a consultant or has been consulted with reference to an actual or threatened lawsuit against the panel attorney for malpractice;

g. The FRC member has any personal bias or prejudice concerning the panel attorney or service provider which would prevent the committee member from fairly evaluating all the evidence;

h. The FRC member represents or represented one party in the matter for which the request for compensation is being reviewed where the panel attorney to be audited represents or represented another party.

If a member of the FRC does not voluntarily recuse himself or herself, the panel attorney, any other member of the FRC, or any judge in the district, shall, upon becoming aware of factors which may indicate a potential conflict of interest as described above, initiate an inquiry into the potential conflict. The inquiry shall be conducted by the chief district judge, who shall make a final determination. The determination shall be binding, and neither the subject FRC member nor the challenging attorney or service provider shall have any right of appeal or further review.

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 (using the Court's eVoucher system) as provided in 18 U.S.C. § 3006A(e)(1), regardless of whether counsel is appointed under the CJA. Upon finding that the services are necessary, and that the person is financially unable to obtain them, the Court must authorize counsel to obtain the services.

B. Applications

Requests for authorization of funds for investigative, expert, and other services must be submitted in an *ex parte* application to the Court (using the Court's

eVoucher system) and must not be disclosed except with the consent of the person represented or as required by law or Judicial Conference policy.

C. Compliance

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

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

A. Applicable Legal Authority

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

B. General Applicability and Appointment of Counsel Requirements

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

2. Any person charged with a crime that may be punishable by death who is or becomes financially unable to obtain representation is entitled to the assistance of appointed counsel throughout every stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, competency proceedings, and proceedings for executive or other clemency as may be available to the defendant. See 18 U.S.C. § 3599(e).

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

4. 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 Community Defender should promptly notify and consult with the appropriate Resource Counsel projects about potential and actual federal capital trial, appellate, and habeas corpus cases, and consider their recommendations for appointment of counsel.

6. In appointing counsel in capital cases, judges shall consider the recommendation of the Community Defender and resource counsel and articulate reasons for not doing so.

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

8. All attorneys appointed in federal capital cases must be well qualified, by virtue of their training, commitment, and distinguished prior capital defense experience at the relevant stage of the proceeding, to serve as counsel in this highly specialized and demanding litigation.

9. All attorneys appointed in federal capital cases must have sufficient time and resources to devote to the representation, taking into account their current caseloads and the extraordinary demands of federal capital cases.

   All attorneys appointed in federal capital cases should comply with the American Bar Association's 2003 Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (Guidelines 1.1 and 10.2 et seq.), and the 2008 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases.

11. All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.

12. There should be no formal or informal non statutory budgetary caps on capital cases, whether in a capital trial, direct appeal, or habeas matter.

13. 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 dos_lpd@ao.uscourts.gov.

C. Appointment of Trial Counsel in Federal Death-Eligible Cases[3]

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 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 Community Defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. See 18 U.S.C. § 3005.

e. In appointing counsel, judges shall consider the recommendation of the Community Defender and resource counsel and articulate reasons for not doing so.

f. To effectuate the intent of 18 U.S.C. § 3005 that the Community Defender's recommendation be provided to the Court, the judge

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[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.

should ensure that the Community Defender has been notified of the need to appoint capitally-qualified counsel.

g. Reliance on a list for appointment of capital counsel is not recommended because selection of trial counsel should account for the particular needs of the case and the defendant, and be based on individualized recommendations from the Community Defender in conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel projects.

h. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital trials to achieve high quality representation together with cost and other efficiencies.

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

2. Qualifications of Learned Counsel

a. Learned counsel must either be a member of this district's bar or be eligible for admission pro hac vice based on his or her qualifications. Appointment of counsel from outside the jurisdiction is common in federal capital cases to achieve cost and other efficiencies together with high quality representation.

b. Learned counsel must meet the minimum experience standards 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 Community Defender, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.

2. In appointing appellate counsel, judges shall consider the recommendations made by the Community Defender and resource counsel and articulate reasons for not doing so.

3. Counsel appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial.

4. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.

5. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital appeals to achieve high quality representation together with cost and other efficiencies.

6. Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals and capital appeals.

7. At least one of the attorneys appointed as appellate counsel must have the requisite background, knowledge, and experience required by 18 U.S.C.§ 3599(c) or (d).

8. In evaluating the qualifications of proposed appellate counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.

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

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

1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2255 is entitled to appointment of fully qualified counsel. See 18 U.S.C. § 3599(a)(2).

2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the Court should consider appointing at least two attorneys.

3. In light of the accelerated timeline applicable to capital § 2255 proceedings, prompt appointment of counsel is essential. Wherever possible, appointment should take place prior to the denial of certiorari on direct appeal by the United States Supreme Court.

4. When appointing counsel in a capital § 2255 matter, the Court shall consider the recommendation of the Community Defender, who will consult with the Federal Capital Habeas § 2255 Project.

5. In appointing post-conviction counsel, judges shall consider the recommendations made by the Community Defender and resource counsel and articulate reasons for not doing so.

6. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2255 cases to achieve high quality representation together with cost and other efficiencies.

7. Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.

8. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.

9. 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.

10. 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 Community Defender who will consult with the National or Regional Habeas Assistance and Training Counsel projects.

The Community Defender's recommendation may be to appoint an attorney from this district's Capital Habeas Unit ("CHU") or a CHU from another district, other counsel who qualify for appointment under 18 U.S.C. § 3599 and this Plan, or any combination of the foregoing that is appropriate under the circumstances. The Federal Community Defender may be appointed as sole counsel.

4. In appointing counsel in a capital § 2254 matter, judges shall consider the recommendations made by the Community Defender and resource counsel and articulate reasons for not doing so.

5. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2254 cases to achieve cost and other efficiencies together with high quality representation.

6. 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.

7. Unless precluded by a conflict of interest, or replaced by similarly qualified counsel upon motion by the attorney or motion by the defendant, capital § 2254 counsel must represent the defendant throughout every subsequent stage of available judicial proceedings and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, and must also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant. See 18 U.S.C. § 3599(e).

8. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.

9. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.

10. 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.

11. 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 Sixth Circuit.

ENTER FOR THE COURT: June 13, 2025.

_____
CHIEF JUDGE, DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE SIXTH CIRCUIT ON THE
_____ OF _____ OF _____.
day month year

_____
CHIEF JUDGE, COURT OF APPEALS

CERTIFICATE OF APPROVAL

This is to certify that, in accordance with the Criminal Justice Act of 1964 as amended, 18 U.S.C. § 3006A, et seq., the Judicial Council of the Sixth Circuit did receive and approve via mail ballot dated November 5, 2025, the foregoing revised Criminal Justice Act Plan for the Eastern District of Tennessee. The revised plan shall become effective upon the date of this approval.

This 19th day of November 2025.

Jeffrey S. Sutton, Chief Judge