

FILED
Oct 31, 2023
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IN RE:)
)
ADOPTION OF CRIMINAL JUSTICE)
ACT PLAN)
_____)

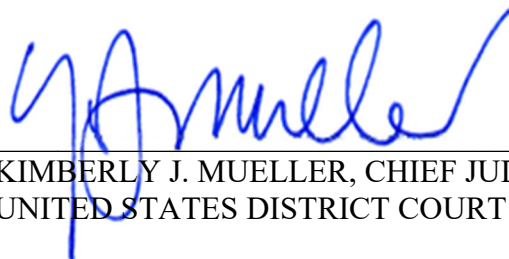
GENERAL ORDER NO. 671

Pursuant to the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A, the attached Criminal Justice Act Plan is adopted by the judges of the Eastern District of California and approved by the Judicial Council of the Ninth Circuit on October 11, 2023.

IT IS SO ORDERED.

DATED: October 31, 2023.

FOR THE COURT:



KIMBERLY J. MUELLER, CHIEF JUDGE
UNITED STATES DISTRICT COURT

A blue geometric graphic consisting of overlapping triangles and quadrilaterals, creating a sense of depth and movement. It is positioned on the left side of the page, partially overlapping the text.

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA**

**CRIMINAL JUSTICE ACT
(CJA)
PLAN
2023**

Table of Contents

- I. STATEMENT OF POLICY 6
- II. AUTHORITY 6
- III. COMPLIANCE 6
- IV. DEFINITIONS 7
 - A. “Representation” 7
 - B. “Appointed Attorney” 7
 - C. “CJA Administrator” 7
- V. ELIGIBILITY FOR CJA REPRESENTATION 7
 - A. Subject Matter Eligibility 7
 - 1. Mandatory..... 7
 - 2. Discretionary. 8
 - 3. Ancillary Matters. 8
 - B. Financial Eligibility..... 9
 - 1. Presentation of the Accused for Financial Eligibility Determination..... 9
 - a. Law Enforcement’s Duties..... 9
 - b. United States Attorney’s Office’s Duties 9
 - c. Pretrial Services (PTS) Office’s Duties..... 10
 - d. Office of the Federal Defender’s Duties 10
 - 2. Financial Eligibility Factual Determination..... 11
- VI. TIMELY COUNSEL APPOINTMENT 12
 - A. Events Triggering Appointment. 12
 - B. Retroactive (*Nunc Pro Tunc*) Appointment. 12
- VII. PROVIDING REPRESENTATION 12
 - A. Appointing the Office of the Federal Defender and Private CJA Counsel 12
 - B. Panel Administration 12
 - C. Case Apportionment..... 12
 - D. Number of Counsel 12
 - E. Capital Cases 13
- VIII. OFFICE OF THE FEDERAL DEFENDER 13

A.	FD-CAE Establishment.....	13
B.	Supervision	13
C.	Standards and Professional Conduct.....	13
D.	CJA Panel Management and Training.....	13
IX.	CJA PANEL COMMITTEE	14
A.	Establishing a CJA Panel Committee	14
1.	CJA Panel Committee Composition.	14
2.	Term.....	14
3.	Meetings.	14
4.	Quorum and Decision Making.	14
B.	CJA Committee Duties.....	15
1.	Reviewing Panel Membership	15
a.	Yearly Meetings.....	15
b.	Factors to Consider	15
c.	Panel Diversity – Equal Opportunity	15
d.	Unbiased Representation.....	15
2.	Annual Report.	15
3.	Removal from the Panel.....	16
4.	Mentoring.	16
X.	CJA PANEL MEMBERSHIP	16
A.	Approving CJA Panel Members	16
B.	Panel Size	16
C.	CJA Panel Qualifications for Membership	17
1.	Applications.....	17
2.	Eligibility.	17
3.	Panel Appointment Types.	17
4.	Panel Terms.....	17
5.	CJA Panel Membership Appointment.....	18
6.	Training.	18
7.	Removal from the CJA Panel.....	18

a.	Mandatory Removal.....	18
b.	Automatic Disciplinary Review.....	18
c.	Discretionary Disciplinary Review.	18
d.	Disciplinary Review Procedures.	19
XI.	CJA PANEL APPOINTMENTS	20
A.	Appointment List	20
B.	Appointment Procedure	20
C.	Appointing Attorneys Not on the CJA Panel.....	20
D.	Appointing CJA Panel Counsel Previously Retained	21
XII.	CJA PANEL MEMBER DUTIES	21
A.	Continuing Representation	21
B.	Case Budgeting & Discovery Consultation	21
C.	Financial Eligibility & Acceptance of Payment.....	22
D.	Duty to Report Disciplinary Action	22
E.	Training and Continuing Legal Education	22
F.	Facilities and Technology Requirements	22
XIII.	CJA PANEL ATTORNEY COMPENSATION.....	23
A.	Policy.....	23
B.	Payment Procedures.....	23
C.	Delegated Approval	23
D.	Voucher Review	24
E.	Independent Review of Voucher Reductions and Funding Denials.....	25
1.	Informal Peer Review Prior to Reduction/Denial.....	25
2.	Notice of Reduction or Denial.	25
3.	Opportunity to Submit Additional Information.	25
4.	Informal Peer Review.	25
5.	Independent Review.	26
XIV.	INVESTIGATIVE, EXPERT AND OTHER SERVICES	26
A.	Authorization	26
B.	Requests for Funds	26

C.	Service Provider Rates and Rules	26
D.	Associate Attorneys	27
E.	Engagement Letters	27
F.	Services Obtained by Person Represented by Retained Counsel	27
XV.	APPOINTMENT OF COUNSEL AND CASE MANAGEMENT IN CJA CAPITAL CASES.....	27
A.	Applicable Legal Authority	27
B.	General Applicability and Appointment of Counsel Requirements	28
C.	Appointing Trial Counsel in Federal Death-Eligible Cases	29
1.	General Requirements	29
2.	Learned Counsel Qualifications	30
3.	Second and Additional Counsel Qualifications	31
D.	Direct Appeal Counsel in Federal Death Penalty Cases - Appointment and Qualifications 32	
E.	Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. § 2255) - Appointment and Qualifications	32
F.	Counsel in Federal Capital Habeas Corpus Proceedings (28 U.S.C. § 2254 and Local Rule 191) - Appointment and Qualifications	33
XVI.	EFFECTIVE DATE	35

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CRIMINAL JUSTICE ACT (CJA) PLAN

I. STATEMENT OF POLICY

The objective of the *Criminal Justice Act Plan* for the Eastern District of California (*Plan*) is to attain the constitutional ideal of equality before the law for all persons. This *Plan* must be administered so those accused of a crime, or otherwise eligible for services, are not deprived of their right to counsel due to any lack of financial resources. The *Plan* must be administered so all eligible persons receive timely appointed counsel. The *Plan* must be administered so appointed counsel's services meet the legal profession's best practices, are cost-effective, and protect the defense function's independence in order that the rights of individual defendants are protected and enforced. This *Plan* satisfies requirements of the UNITED STATES CONSTITUTION, amend. VI, the Criminal Justice Act (CJA) (18 U.S.C. § 3006A), the USA Patriot Improvement and Reauthorization Act of 2005 (18 U.S.C. § 3599), Judicial Council of the Ninth Circuit Criminal Justice Act Policies and Procedures (Ninth Circuit Policies & Procedures), and the *Guide to Judiciary Policy*, Volume 7A (CJA Guidelines), in a way best meeting the Eastern District of California's needs.

II. AUTHORITY

Under the CJA (18 U.S.C. § 3006A) and the *Guide*, Volume 7A, the Judges of the United States District Court for the Eastern District of California (the Court) adopt this *Plan*, as approved by the Ninth Circuit, to furnish representation in the Eastern District of California's federal court for any person financially unable to obtain representation required or entitled to by law.

III. COMPLIANCE

The Court, its Clerk, the Office of the Federal Defender for the Eastern District of California (FD-CAE), and private attorneys appointed under the CJA must comply with this *Plan*, any General Orders issued by this District's District Judges pertaining to this *Plan*, 18 U.S.C. § 3006A, and the *Guide*, Volume 7A as approved by the Judicial Conference of the United States or its Defender Services Committee.

The Court will post on the Court's website a current copy of the *Plan* and any related General Orders. The FD-CAE's CJA Panel Administrator will provide new CJA counsel, upon that attorney's designation as a CJA counsel or upon their first appointment to the Panel, a current copy of this *Plan* and any related General Orders thereon. The Panel Administrator must also maintain a current copy of the *Plan*, General Orders relating to the Plan, and the *Guide* for CJA Panel member use.

IV. DEFINITIONS

A. “Representation”

Representation includes counsel and investigative, expert, and any other necessary 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 and FD attorneys.

C. “CJA Administrator”

CJA Administrator is a person(s) from the FD-CAE, designated by the Federal Defender, to administer the CJA Panel.

V. 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 violating probation, or faces a change of a probation term or condition (unless the modification sought is favorable to the probationer, the government has not objected to the proposed change, and the probationer has waived their right to counsel);
- d. is under arrest, when the law requires such representation;
- e. is entitled to appointed counsel in parole proceedings;
- f. is charged with violating supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
- g. is subject to a mental condition hearing under 18 U.S.C. § 4241 et seq;
- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence or when an evidentiary hearing is warranted in a non-capital proceeding under 28 U.S.C. § 2254 or § 2255;
- j. is entitled to appointed counsel in verification of consent proceedings connected with an offender’s transfer to or from the United States to execute a penal sentence under 18 U.S.C. § 4109;

- k. is entitled to appointed counsel under the Sixth Amendment to the United States Constitution; or
- l. faces loss of liberty in a case and federal law requires appointed counsel.

2. Discretionary.

Whenever a District Judge or Magistrate Judge determines the interests of justice so require, the Court may appoint counsel for any financially eligible person who:

- a. is charged with a petty offense (class B or C misdemeanor or infraction) authorizing a sentence of confinement;
- b. is seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 other than to set aside or vacate a death sentence, unless an evidentiary hearing is warranted;
- 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 such testimony, 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 of the likelihood that federal criminal charges may be filed against them or 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. § 3181 et al.

3. Ancillary Matters.

Whenever a District Judge or Magistrate Judge determines the interests of justice so require, the Court may appoint counsel for financially eligible persons in ancillary matters appropriate to the criminal proceedings, pursuant to 18 U.S.C. § 3006A(c). The following non-exhaustive list cites reasons the Court might consider appointed counsel 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 preparing for the trial or disposition of the principal criminal charge;
- d. to enforce a plea agreement's terms in the principal criminal charge;

- e. to preserve the CJA client's claim to an interest in real or personal property subject to a 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 the CJA client's real or personal property, which may be subject to a motion for the property's return 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 the Accused for Financial Eligibility Determination

a. *Law Enforcement's Duties*

- 1) Where a defendant has not retained or waived counsel, federal law enforcement officials must promptly notify, telephonically or electronically, the FD-CAE of an individual's arrest in connection with a federal criminal charge.
- 2) Law enforcement agency employees should not participate in completing the financial affidavit or seek information concerning financial eligibility from a person arrested or requesting counsel appointment.

b. *United States Attorney's Office's Duties*

- 1) Upon returning an indictment, unsealing a criminal complaint, or filing an information, and where the defendant has not retained or waived counsel, the United States Attorney or their designee will promptly notify, telephonically or electronically, the FD-CAE.
- 2) Upon issuing a target letter or pretrial diversion notice, and where the individual has not retained or waived counsel, the United States Attorney's Office (USAO) should promptly notify, telephonically or electronically, the FD-CAE. Target letters and pretrial diversion notices sent by the USAO should provide the FD-CAE's address and telephone number unless the Target has informed the USAO that the Target already retained private counsel. If the USAO knows of an actual or potential conflict between the Target and the FD-CAE, the USAO should promptly notify the CJA Panel Administrator or the Federal Defender. The USAO should also let the CJA Panel Administrator know if any CJA Panel lawyers have a conflict in representing the Target.
- 3) USAO employees should not participate in completing the financial affidavit for any person requesting appointed counsel.

c. *Pretrial Services (PTS) Office's Duties*

- 1) The Judicial Conference recognizes the importance of counsel's advice for persons subject to Bail Reform Act proceedings (18 U.S.C. § 3141 et seq.) before a pretrial services or probation officer interviews the person. Accordingly, the FD-CAE must be given a reasonable period of time within which to contact a person subject to 18 U.S.C. § 3142 proceedings. During this reasonable period of time, the PTS Office must not contact that person. Thereafter, the PTS officer will not conduct the pretrial service interview (PTSI) of a financially eligible defendant without counsel present unless that defendant waives their right to counsel or otherwise knowingly consents to a PTSI without counsel.
- 2) When the Court has appointed counsel or designated the FD-CAE for appointment before the initial appearance, the PTS officer will provide counsel notice either telephonically or electronically and will provide counsel with a reasonable opportunity to attend the defendant's PTSI before the initial appearance release or detention hearing.
- 3) PTS Office employees should not participate in completing the financial affidavit or seek information concerning financial eligibility from any person requesting counsel appointment. This should not be construed as prohibiting the usual information gathering regarding the release or detention hearing.

d. *Office of the Federal Defender's Duties*

- 1) In cases where the FD-CAE may be appointed, the FD-CAE will immediately investigate and determine whether an actual or potential conflict exists. If such conflict exists, FD-CAE will promptly notify the CJA Panel Administrator to facilitate CJA counsel appointment.
- 2) When a person indicates they are financially unable to retain counsel, whenever practicable, the FD-CAE will:
 - a) discuss with the person their right to appointed counsel,
 - b) assist them to complete a financial affidavit (Form CJA 23) if counsel appointment seems likely, and
 - c) arrange to have their matter promptly presented before a Magistrate Judge or District Judge to determine financial eligibility and counsel appointment.

2. Financial Eligibility Factual Determination

- a. In every case where 18 U.S.C. § 3006A(a) and related statutes authorize counsel appointment, the Court must advise the person they have a right to counsel representation throughout their case and, if so desired, the Court will appoint counsel to represent the person when they are financially unable to obtain counsel.
- b. The completed financial eligibility affidavit (Form CJA 23) should reflect relevant information bearing on the person's financial eligibility for appointed counsel and should not be included in the public case file.
- c. Determining eligibility for representation under the CJA is a judicial function performed by the Court after making appropriate inquiries concerning the person's financial eligibility. Other court employees, the CJA Panel Administrator, or the FD-CAE may be designated to obtain or verify facts relevant to the financial eligibility determination.
- d. In determining whether a person is "financially unable to obtain counsel," one should consider the person's and their dependents' costs for life's necessities, any cost to securing the person's pretrial release, any asset encumbrance, and the likely cost to retain counsel in their case.
- e. The initial eligibility determination must be made without considering a person's family's financial ability to retain counsel unless their family indicates a willingness and ability to do so promptly.
- f. Any doubts about a person's eligibility should be resolved in the person's favor. Erroneous eligibility determinations may be corrected at a later time.
- g. If, at any time after the counsel appointment, a judge finds a person with court-appointed representation is financially able to retain private counsel or contribute through partial payments towards the appointed representation, the judge may either terminate counsel's court appointment or direct the defendant to contribute to representation costs by paying the Court as provided in 18 U.S.C. § 3006A(f).
- h. If, at any stage of their proceedings, a judge finds a person can no longer financially pay retained counsel, the Court may appoint counsel in accord with this *Plan's* procedures.
- i. If, at any stage of the proceedings, a judge finds that a *pro se* or privately represented person is not financially able to pay other representation costs, including investigative, expert, transcript, or other services or costs, the court may authorize funding for those costs under this *Plan's* general provisions.

VI. TIMELY COUNSEL APPOINTMENT

A. Events Triggering Appointment.

Eligible persons must receive appointed counsel as soon as feasible. This means as soon as possible after they are taken into custody, when they appear before a judicial officer, when they are formally charged or notified of the charges if formal charges are sealed, when they receive a target letter, when they are named as a material witness, or when a judicial officer otherwise determines appointed counsel is appropriate under the CJA or this *Plan*, whichever occurs earliest.

B. Retroactive (*Nunc Pro Tunc*) Appointment.

Counsel appointment may be made retroactive (*nunc pro tunc*) to include representation provided prior to the judicial officer's formal appointment.

VII. PROVIDING REPRESENTATION

A. Appointing the Office of the Federal Defender and Private CJA Counsel

This *Plan* governs representation appointments:

- by the FD-CAE,
- by appointing and for compensation of
 - private counsel from the Court's approved CJA Panel list as maintained by the CJA Panel Administrator, and,
 - in limited circumstances, other private attorneys, in cases authorized under the CJA and related statutes.

B. Panel Administration

This *Plan* delegates and assigns the FD-CAE to administer the CJA Panel in the Eastern District of California.

C. Case Apportionment

Whenever possible, CJA Panel attorneys should be appointed in a substantial proportion of the clients where the Court determines a person is financially eligible for CJA representation under this *Plan*. "Substantial" in this context means at least twenty-five percent (25%) of the annual CJA appointments.

D. Number of Counsel

The Court may appoint more than one attorney to represent one person when the Court determines the client's representation is extremely complex or difficult.

E. Capital Cases

Capital case representation services guidelines and procedures are set forth in this *Plan's* section XIV for when a defendant is (i) charged with a crime punishable by death or (ii) seeking to vacate or set aside a death sentence in 28 U.S.C. §§ 2254 or 2255 proceedings.

VIII. OFFICE OF THE FEDERAL DEFENDER

A. FD-CAE Establishment

This District established the FD-CAE pursuant to the CJA. The FD-CAE is responsible for appointed defense services throughout this District. The FD-CAE must maintain full-time staffed offices in Sacramento and Fresno, a seasonally/part-time staffed office in Yosemite National Park, and, as needed, representation for clients in the Bakersfield Court.

B. Supervision

The Federal Defender is responsible for supervising and managing the FD-CAE. Accordingly, the Federal Defender will be appointed to all cases assigned to the organization for subsequent assignment to FD-CAE Assistant Federal Defenders at the Federal Defender's discretion. The Federal Defender will continually monitor office staff workloads to ensure high quality representation for all clients.

C. Standards and Professional Conduct

The FD-CAE must provide high quality representation consistent with the legal profession's best practices, commensurate with privately retained counsel's services. The FD-CAE must conform to the highest professional conduct standards, including, but not limited to:

- California laws and rules for lawyers practicing in California to include the *California Rules of Professional Conduct* and the California Business and Professions Code, §§6000 *et seq.*,
- The American Bar Association's *Model Rules of Professional Conduct*, and *Defense Function* Criminal Justice Section standards, and
- The *Guide to Judiciary Policy*, (the *Guide*) Volume 2, Part A, Chapter 4, *Code of Conduct for Federal Public Defender Employees*.

D. CJA Panel Management and Training

The Federal Defender must designate CJA Panel Administrators for Sacramento and for Fresno and is responsible for supervising them. A CJA Panel Administrator must systematically distribute cases to and manage the CJA Panel subject to the CJA's provisions, the *Guide*, and this *Plan's* provisions. The Federal Defender, along with the CJA Panel Administrators and the CJA Panel Attorney

District Representative(s) (PADR), must assess the Panel attorneys' training needs and will provide training opportunities and other educational resources.

IX. CJA PANEL COMMITTEE

A. Establishing a CJA Panel Committee

1. CJA Panel Committee Composition.

CJA Panel Committees in Fresno and Sacramento (CJA Committee) are established in consultation with the Federal Defender and District Judges for the Fresno and Sacramento divisions. A separate CJA Attorney Panel Committee is established and administered by the Magistrate Judge in Redding. Each CJA Committee must consist of:

- two experienced CJA Panel members,
- two experienced criminal law practitioners who are not CJA Panel members – the CJA Committee is encouraged to include in one of these positions a county public defender from an office within the respective divisions,
- an experienced attorney from the FD-CAE, and
- the CJA Panel Attorney District Representative and the CJA Panel Attorney District Representative-elect.

The Federal Defender or their designee must serve as the permanent CJA Committee Chair. The CJA Panel Administrator must serve as the permanent CJA Committee secretary. The Court should make a diligent effort to ensure that the CJA Panel Committees' composition reflects the racial, ethnic, gender, and geographic diversity of the District and division.

2. Term.

CJA Committee members must serve three year terms and may be extended for unlimited additional terms. Vacancies will be filled by remaining CJA Committee members' recommendation with the Chief District Judge's approval. The Federal Defender, CJA Panel Administrator, and CJA Panel Representative are members for as long as they hold those titles.

3. Meetings.

The CJA Committee must meet at least twice a year and at any other time the Chief District Judge requests the CJA Committee meet and consider an issue.

4. Quorum and Decision Making.

CJA Committee decisions must be by majority vote. The secretary is not a voting member of the CJA Committee. A quorum of four voting Committee

members is required to conduct business.

B. CJA Committee Duties

1. Reviewing Panel Membership

a. Yearly Meetings.

At least once a year, the CJA Committee must review applicant qualifications for CJA Panel membership and recommend the Chief Judge approve those attorneys deemed qualified and reject those attorney applications not recommended for the CJA Panel. The CJA Committee must recommend whether applicants should be on the A, B, or C general panel list, on the post-conviction panel list (for direct appeals and noncapital habeas appeals), or both. Please see *Definitions of Panels A, B, and C* on page 11, § IX.C.3.

b. Factors to Consider

The CJA Committee must consider whether applicants attended the FD-CAE free training sessions regularly provided for the CJA Panel. For CJA Panel reappointments, the CJA Committee will consider how many appointments the member accepted or declined in the past year. The CJA Committee may also solicit input from the legal community concerning an applicant's quality of representation.

c. Panel Diversity – Equal Opportunity

The CJA Committee must strive to create and maintain a diverse CJA Panel from the highest caliber federal criminal defense practitioners in our community. The CJA Panel Committee must not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, national origin, gender identity, sexual orientation, age, religion, or disability.

d. Unbiased Representation

The Court encourages all qualified attorneys to participate in furnishing CJA case representation without regard to race, ethnicity, color, religion, veteran status, sex, sexual orientation, gender identification or expression, age, national origin, disability, or mental or medical condition.

2. Annual Report.

Annually, in the first quarter of each year, the CJA Committee must review the CJA Panel operation and administration for the preceding year. The CJA Committee Chair must report its findings and recommendations to the Chief Judge. This report should include the current CJA Panel size and whether it

should grow or not, efforts made to recruit qualified and diverse CJA Panel attorneys, and any recurring issues or difficulties CJA Panel members or their CJA clients encountered. The CJA Committee must consult with the CJA Panel Administrator and the CJA Panel Representative in preparing this report.

3. Removal from the Panel.

The CJA Committee must follow the procedures set forth in Section IX of this *Plan* and recommend to the Chief District Judge removing any CJA Panel member who:

- a. fails to satisfactorily fulfill their CJA Panel membership requirements during their service term, including failing to provide high quality representation to their CJA clients, or
- b. has engaged in other conduct such that their continued CJA Panel service is inappropriate.

4. Mentoring.

The CJA Committee must appoint CJA Panel members to serve as mentors to new, less experienced CJA Panel members. CJA Panel member mentor arrangements are voluntary.

X. CJA PANEL MEMBERSHIP

The CJA Panel attorneys must provide high-quality representation consistent with the legal profession's best practices and commensurate with private retained counsel services. CJA Panel attorneys are also expected to conform to the highest professional conduct standards, including but not limited to:

- California laws and rules for lawyers practicing in California to include the *California Rules of Professional Conduct* and the California Business and Professions Code, §§6000 *et seq.*, and
- The American Bar Association's *Model Rules of Professional Conduct*, and *Defense Function Criminal Justice Section* standards.

A. Approving CJA Panel Members

The existing, previously established CJA Panel of attorneys eligible and willing to accept CJA appointments is hereby recognized. For future CJA Panel appointments, the CJA Committee, through its Chair, will recommend CJA Panel membership to the Chief District Judge for approval.

B. Panel Size

The CJA Panel size will be determined by the CJA Committee based on CJA Panel member caseloads and activity and by case filings, subject to the Chief District Judge's review. The CJA Panel must be large enough so its members can accept

approximately 25% of all District counsel appointments, yet small enough so CJA Panel members will each receive an adequate number of appointments to maintain their federal criminal defense work proficiency.

C. CJA Panel Qualifications for Membership

1. Applications.

CJA Panel membership application forms will be available online at the FD-CAE website. They may also be obtained directly from the CJA Panel Administrators.

2. Eligibility.

New applicants practicing at least three years with federal criminal law experience will receive membership preference. CJA Panel applicants must:

- a. be members in good standing of the California State Bar, the Eastern District of California bar, and the Ninth Circuit Court of Appeals;
- b. for the general panel, maintain a primary, satellite, or shared office in this District (not applicable to post-conviction panel applicants); and
- c. possess strong litigation and writing skills, and demonstrate proficiency with the Federal Rules of Evidence, the Federal Rules of Criminal Procedures, the Federal Rules of Appellate Procedure, federal sentencing procedures, the Bail Reform Act, and this District's *Local Rules*.

3. Panel Appointment Types.

CJA Panel memberships are divided into two categories.

- a. Post-conviction panel, which is further divided into direct appeals, habeas representations, and habeas appeals.
- b. General panel for all other matters, which is further divided into:
 - 1) "A List" for the most experienced CJA Panel members, eligible for all case appointments, including the most complex and difficult;
 - 2) "B List" for CJA Panel members, eligible for all other case appointments; and
 - 3) "C List" for less experienced CJA Panel members, eligible for misdemeanor appointments, witnesses, and relatively simple felony appointments.

Capital case appointment procedures are contained in section XIV of this *Plan*. CJA members may be appointed to more than one category of case representation.

4. Panel Terms.

Attorneys must serve as a CJA Panel member for three years unless otherwise designated by the CJA Committee and approved by the Chief District Judge. C List attorneys must serve an initial one-year term. All attorneys are eligible for unlimited additional terms. The CJA Panel Administrator will notify CJA Panel members before their terms expire of their need to apply for CJA Panel reappointment. The Court will remove from the CJA Panel members who do not reapply when their terms expire. Voluntary CJA Panel resignations before term expiration should be in writing directed to the CJA Panel Administrator or the Federal Defender.

5. CJA Panel Membership Appointment.

After considering the CJA Committee recommendations, the Chief District Judge will determine whether to approve CJA Panel membership appointments or reappointments. The Chief District Judge will send the written decision back to the CJA Committee. The Federal Defender will notify all applicants of the outcome and provide them with this *Plan*.

6. Training.

The Court expects CJA Panel members to attend mandatory training sessions offered by the FD-CAE. Alternate criminal defense trainings, such as those provided by the Defender Services Training Branch, the National Association of Criminal Defense Lawyers (NACDL), the California Attorneys for Criminal Justice (CACJ), and the National Criminal Defense College (NCDC) and applicable to federal practice may be substituted.

7. Removal from the CJA Panel.

a. *Mandatory Removal.*

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

b. *Automatic Disciplinary Review.*

The CJA Committee will meet and conduct an automatic disciplinary review of any CJA Panel member against whom any state bar has issued a sanction or reprimand, or any CJA Panel member sanctioned or found in contempt by any federal or state court judge. Panel members must promptly self-report such events to the CJA Panel Administrator or the CJA Committee Chair.

c. *Discretionary Disciplinary Review.*

A *complaint* against a CJA Panel member may be initiated by the CJA Committee, any federal judge of the District, another panel member, a

defendant, or an FD-CAE lawyer. A *complaint* need not follow any particular form but

- must be in writing,
- not anonymous, and
- state the alleged deficiency with specificity.

Complaints should be directed to the Federal Defender for the CJA Committee which will determine whether a full disciplinary review is necessary.

d. Disciplinary Review Procedures.

(1) REVIEWING BODY.

The CJA Committee may conduct the review before the full committee or may designate a subcommittee for this review.

(2) NOTICE.

If the CJA Committee conducts a disciplinary review, it will notify the CJA Panel member of the specific allegations under review.

(3) RESPONSE.

A CJA Panel member under review may respond to the allegations in writing and may request to appear before the CJA Committee. The CJA Committee may designate someone to investigate the *Complaint* and *Response*, including contacting relevant persons who may have information concerning them.

(4) PROTECTIVE ACTION.

Prior to deciding the matter, the CJA Committee may recommend the CJA Panel member's suspension or removal from any pending appointed case or from the CJA Panel, and may take any other protective action, acting in the best interest of the client or the *Plan's* administration, pending this review's outcome. The Federal Defender, or their designee, may take any temporary protective action, acting in the best interests of the panel member's appointed clients or the *Plan's* administration, pending the CJA Committee's review decision.

(5) REVIEW AND RECOMMENDATION.

After investigation and review, the CJA Committee may recommend closing the matter with no further action, or may recommend appropriate remedial action which might include:

- removing the attorney from the CJA Panel,

- limiting the attorney’s participation to particular categories of cases,
 - directing the attorney to complete specific training before receiving further panel appointments,
 - assigning the attorney an experienced panel attorney as a mentor,
 - directing the attorney to attend counseling for substance abuse or mental health issues, or
 - any other appropriate remedial action.
- (6) FINAL DISPOSITION BY THE COURT. The CJA Committee will forward its recommendation to the Chief District Judge for consideration and final approval.
- (7) CONFIDENTIALITY. Unless otherwise directed in the final disposition, information concerning the complaint, the disciplinary review, and the disposition will be kept confidential by the CJA Committee to the extent possible.

None of these procedures creates a property interest in being on or remaining on the CJA Panel.

XI. CJA PANEL APPOINTMENTS

A. Appointment List

The CJA Panel Administrator will maintain a current list of all CJA Panel attorneys with current office addresses, email addresses, and telephone numbers. This list will also indicate the CJA Panel lawyer’s eligible representation categories.

B. Appointment Procedure

CJA Panel member case appointments will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, or in a case that would benefit from particular talents (such as a foreign language or expertise in a certain subject area), the CJA Panel Administrator may appoint counsel outside of the normal rotation. The CJA Panel Administrator might also vary from the rotation because CJA Panel members indicate, for whatever reason, they are unable to accept new cases for a period of time, to get counsel appointed expeditiously when the situation warrants, or when CJA Panel counsel has a large number of continuing representations still pending.

C. Appointing Attorneys Not on the CJA Panel

When a judge of this District finds special circumstances to exist, an attorney not on this District’s CJA Panel may be appointed to represent a defendant on an ad hoc basis, provided the attorney has the experience level and knowledge that otherwise would qualify the attorney for CJA Panel membership. Reasons for

such an appointment may include cost and time efficiencies, for example, if an attorney has previous experience with the particular defendant from a prior, concurrent, or related civil or administrative representation. The Court must report such appointments to the CJA Panel Administrator. An attorney appointed under this provision is expected to adhere to the same rules and procedures as a CJA Panel attorney. An attorney appointed under this provision will be compensated at the same rate and subject to the same rules as a CJA Panel attorney.

D. Appointing CJA Panel Counsel Previously Retained

A CJA Panel attorney may request CJA appointment to a criminal case or investigation concerning a person who previously retained that attorney. When considering this request, the judicial officer must consult with the CJA Panel Administrator or the Federal Defender. To decide whether or not to grant this request, the judicial officer should consider, among other information, how long the attorney was working with the now-financially-eligible person, their fee agreement, and whether the attorney previously made such a request.

XII. CJA PANEL MEMBER DUTIES

A. Continuing Representation

Once counsel is appointed under the CJA, counsel will continue the representation until:

- the matter, including the appellate process, is complete,
- substitute counsel has been appointed and counsel has been relieved,
- an order is entered allowing the client to proceed pro se, or
- the appointment is otherwise terminated by court order.

B. Case Budgeting & Discovery Consultation

1. In complex non-capital representations likely to become extraordinary in their costs, any stakeholder (judge, appointed attorney, CJA Administrator, etc.) may refer the case to the Ninth Circuit Case Budgeting Attorney (CBA) for case budgeting. Case budgeting is **optional** if any stakeholder expects the representation to or it does exceed \$50,000. Case budgeting is **mandatory** if (a) any stakeholder expects the representation to or it does exceed \$100,000 and (b) for all capital cases. See Section XIV for more capital case information.
2. CJA Panel attorneys must consult with the Ninth Circuit CBA or with the National Litigation Support Team (NLST) before contracting for discovery-related services (such as scanning or OCRing documents) exceeding \$10,000.
3. This *Plan* expects CJA Panel attorneys to use lower-cost service providers

such as investigators or paralegals to undertake tasks not requiring attorney expertise. In multi-defendant cases with multiple CJA attorneys, counsel should make all reasonable efforts to coordinate with each other to reduce costs, including coordinating discovery management and other shared services, to the extent possible and without creating any conflicts.

C. Financial Eligibility & Acceptance of Payment

1. If, at any time after appointment, CJA Panel counsel reasonably believes a client is financially able to retain or partially pay for counsel, and CJA Panel counsel's information source is not protected as a privileged communication, CJA Panel counsel will advise the Court.
2. In no circumstance may appointed CJA counsel require, request, or accept any payment, promise of payment, or any other valuable consideration for representation, unless, for some extraordinary reason, such payment is approved by court order.

D. Duty to Report Disciplinary Action

CJA Panel attorneys must immediately notify the Federal Defender or the CJA Panel Administrator, in writing, if they are disbarred, suspended, sanctioned, or reprimanded by the Bar of any State. CJA Panel members must also notify the Federal Defender or the CJA Panel Administrator, in writing, within 30 days, if they are sanctioned or found in contempt by any state or federal court judge.

E. Training and Continuing Legal Education

CJA Panel attorneys must:

1. remain current with developments in federal criminal defense law, practice, and procedure;
2. attend FD-CAE sponsored trainings on a regular basis; and
3. know and comply with procedures related to eVoucher and procuring investigative, expert, and other services necessary for efficient and effective representation.

F. Facilities and Technology Requirements

CJA Panel attorneys must:

1. have and maintain facilities, resources, and technological capability to effectively and efficiently manage assigned cases and
2. comply with electronic filing and eVoucher requirements.

Please see the Federal Defender's website, www.cae-fd.org, for California Eastern District's current minimum technology requirements for CJA Panel attorneys.

XIII. CJA PANEL ATTORNEY COMPENSATION

A. Policy

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

B. Payment Procedures

1. Compensation claims must be submitted on the appropriate CJA form through the eVoucher system.
2. Counsel must submit interim vouchers quarterly in all cases where they accrued \$5,000 or more of billable services, unless the Court finds good cause for a lower threshold for a particular voucher or series of vouchers.
3. Counsel must submit the interim vouchers described in #2 above quarterly no later than the 10th of the month (January 10, April 10, July 10, October 10).
4. CJA Panel attorneys must submit their final billing within 90 days after the Court files judgment or terminates the individual Panel attorney's representation (e.g., appointing substitute counsel). Submissions after 90 days, which may impact the ability to adequately substantiate claims, must be accompanied by a statement justifying the delay. Voucher reductions based **solely** on the voucher being submitted outside the 90-day time limit are not authorized. However, an untimely voucher submission may be considered by the Court when assessing reappointment to the Panel.
5. The CJA Panel Administrator will review the claim for mathematical and technical accuracy, compensability, and conformity with local, circuit, and national billing guidelines and, if correct, will forward the claim for consideration and action by the presiding judge.
6. Absent extraordinary circumstances, the Court should act on CJA compensation claims and requests for funding within 30 days of submission. The Court should not delay or reduce vouchers and funding requests to save Defender Services program costs as a response to adverse financial or budgetary circumstances.
7. Payment vouchers and amounts paid to counsel or service providers will not be disclosed except as required by law or the *Guide*, Volume 7A.

C. Delegated Approval

1. The Court delegates to the FD-CAE and its designees authority to approve vouchers submitted to the Court for payment under 18 U.S.C. § 3006A(d)(5), including those submitted for investigators, experts, and other service

providers, in the following limited scenarios and while retaining ultimate review and approval authority:

- a. Combined claims for compensation (i.e., vouchers) for appointed counsel's **and** associate/contract attorney's representation less than or equal to \$2,500 per voucher **and** where total attorney fees on the representation are at or below the statutory case compensation maximum under 18 U.S.C. § 3006A(d)(2) and the *Guide*, Volume 7, § 230.23.
 - b. Claims for compensation (i.e., vouchers) for investigators, experts, and other service providers (excluding interpreters and court reporters) already preauthorized by the Court (either via General Order 575 or its successor or with an AUTH/Budget-AUTH) **and** are less than or equal to the service provider statutory maximum under 18 U.S.C. § 3006A(e)(3), 18 U.S.C. § 3599(g)(2), and CJA Guidelines §§ 310.20.20 & 660.20.20.
 - c. Claims for compensation (i.e., vouchers) for interpreter or court reporter services already preauthorized by the Court.
2. When approving vouchers for the Court, the FD-CAE may not reduce or increase the amount payable for any reason other than to correct mathematical or technical errors, including whether the work billed is compensable under the CJA Guidelines. Any voucher where the FD-CAE identifies a reasonableness or other question will be forwarded to the presiding judge.

D. Voucher Review

1. In determining the reasonableness of out-of-court time, the Court must consider three factors:
 - a. whether the work was performed,
 - b. whether the work was reasonable to achieving the client's litigation aims, and
 - c. whether the time spent to accomplish that work was reasonable.
2. Vouchers for attorneys and service providers should be considered presumptively reasonable and voucher reductions limited to:
 - a. mathematical errors,
 - b. instances in which work billed was not compensable, undertaken, or completed, and
 - c. instances in which the hours billed clearly exceed what was reasonably required to complete the task.

E. Independent Review of Voucher Reductions and Funding Denials

Claims for compensation for attorneys and service providers and requests for funding under the CJA will not be reduced without affording the panel attorney notice and an opportunity to be heard.

1. Informal Peer Review Prior to Reduction/Denial.

A judge may at any time informally request a payment voucher review for attorney or service provider services (CJA-20/21/30/31), including excess fees, or a funding request (AUTH or Budget-AUTH) by the CJA Panel Administrator or the Federal Defender or their designee, who may consult counsel directly, review the voucher and docket, and will provide directly to the judge their recommendation, to which the judge will give due weight. If this informal review does not resolve the judge's concern and the Court still intends to reduce a voucher or deny funding in whole or in part, then the Court will give the attorney or service provider notice pursuant to section XII.E.2, *infra*.

2. Notice of Reduction or Denial.

If the Court or CJA Administrator determines, for any reason other than a clear mathematical or other error, that a claim for compensation or expense should be reduced or a request for funding denied in whole or in part, the CJA Administrator will provide counsel or service provider with the following:

- a. Prior notice of the proposed reduction or denial and reasons therefor; and
- b. Instructions for submitting additional information or justification and seeking independent review of the reduction or denial.

3. Opportunity to Submit Additional Information.

Counsel or the service provider may submit directly to the CJA Administrator, who will share the information with the Court, additional information or justification in writing within ten (10) days of being notified of the potential reduction/denial.

If counsel or the service provider indicates the reduction or denial is not contested, or if no response is received within ten (10) days, the Court will process the reduced voucher or funding denial as noticed.

If the Court finds counsel's or the service provider's justification meritorious, the voucher or funding request will be approved as submitted.

4. Informal Peer Review.

If informal peer review has not been conducted previously under section XII.E.1, *supra*, counsel or the service provider may seek informal review by

the CJA Panel Administrator or the Federal Defender or their designee, who may consult counsel or the service provider directly, review the voucher and docket, and will submit a written review and recommendation directly to the judge, copying counsel or the service provider, to which the judge will give due weight.

5. Independent Review.

If, after reviewing counsel's or the service provider's response and the informal peer review report and recommendation, the Court still intends to reduce the voucher or funding request in whole or in part, the CJA Administrator will notify counsel or service provider and provide instructions for seeking independent review.

- a. Counsel may seek formal review of a voucher reduction or funding denial by the Chief District Judge or their designee within ten (10) days of the reduction/denial notice. If the Chief District Judge is the presiding judge who issued the reduction/denial, the review will be conducted by the Chief Circuit Judge or their designee. If a magistrate judge issued the reduction/denial, the presiding district judge will conduct the review. Deadline extensions may be granted for good cause.
- b. The reviewing judge's decision will be final and should be completed within thirty (30) days of the review request.
- c. Any determination that a voucher or funding request should be reduced or denied does not necessarily constitute a finding of counsel's or the service provider's wrongdoing.

XIV. INVESTIGATIVE, EXPERT AND OTHER SERVICES

A. Authorization

Counsel for a person 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 the services are necessary and the person is financially unable to obtain them, the Court must authorize counsel to obtain the services.

B. Requests for Funds

Requests to authorize funds for investigative, expert, and other services must be submitted in an *ex parte* application to the Court using the eVoucher system and must not be disclosed except with the consent of the person represented or as required by law or the policies set forth in the *Guide*, Volume 7A.

C. Service Provider Rates and Rules

Counsel must comply with rates and rules contained within the *Guide*, Volume

7A; the *Judicial Council of the Ninth Circuit's Criminal Justice Act Policies and Procedures* and Appendix 2 thereto (setting forth the Circuit's presumptive ranges for various provider types); the *CJA Service Provider Rate Schedule for the Eastern District of California* (setting forth district-specific rates); and General Order No. 575 or its successor (regarding limits on services provided without pre-authorization). Copies of these policies will be provided to new Panel members, are available on the FD-CAE's website, and can be electronically provided, upon request, by the CJA Panel Administrator.

For all service providers for which the Court has not set a district-specific presumptive rate, the Court adopts the presumptive rates and ranges as set forth in Appendix 2 of the *Judicial Council of the Ninth Circuit's Criminal Justice Act Policies and Procedures* (as periodically amended).

D. Associate Attorneys

It is the California Eastern District' policy to encourage using associate attorneys, consistent with the *Guide*, to assist with representations upon the presiding judge's prior approval. The purpose of this policy is to reduce costs and to enlarge the pool of potential CJA Panel applicants. Lead counsel maintains primary responsibility for the representation and associated work-product.

E. Engagement Letters

CJA Panel attorneys must use an engagement letter when hiring service providers. A sample letter can be found in the *Judicial Council of the Ninth Circuit Criminal Justice Act Policies and Procedures*, Appendix 3, page 34.

F. Services Obtained by Person Represented by Retained Counsel

Pursuant to 18 U.S.C. § 3006A(e), upon an *ex parte* application, the Court may authorize a person represented by retained counsel to obtain investigative, expert, or other services. The Court must assess the defendant's financial eligibility by requiring submission of a financial eligibility affidavit (Form CJA 23) and may also request a copy of the legal services contract or other documentation deemed informative to the Application. If the request is granted in full or in part, retained counsel must make funding requests and submit vouchers for payment through eVoucher. Retained counsel must use engagement letters for service providers funded in this manner (see XIII.E., above) and inform third parties of the proper billing practices for submission of vouchers. All funding requests and vouchers made pursuant to this provision are subject to the same reasonableness review as any CJA request or voucher.

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

A. Applicable Legal Authority

Appointing and compensating counsel in capital cases, and authorizing use and payment of persons providing investigative, expert, and other services, are

governed by 18 U.S.C. §§ 3005, 3006A, and 3599; the *Guide*, Vol. 7A, Ch. 6; and the Ninth Circuit CJA Policies and Procedures manual.

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 punishable by death who is or becomes financially unable to retain representation is entitled to appointed counsel assistance 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) and the Defender Services Death Penalty Resource Counsel projects (“Resource Counsel projects”) which include:
 - a. Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials),
 - b. Federal Capital Appellate Resource Counsel Project,
 - c. Federal Capital Habeas § 2255 Project, and
 - d. National and Regional Habeas Assistance and Training Counsel Projects (§ 2254)

These projects include death penalty experts who the Court may rely upon to assist in selecting and appointing counsel, case budgeting, and legal, practical, and other matters arising in federal and state habeas capital cases.

The Federal Defender or their designee 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 court-appointed counsel.

The presiding judge may appoint an attorney furnished by a state or local public defender organization, 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 the attorney is fully qualified. Such appointments may be in place of, or in addition to, appointing a federal defender organization, a CJA Panel attorney, or an attorney appointed *pro hac vice*. See 18 U.S.C. § 3006A(a)(3).

5. 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.
6. All attorneys appointed in federal capital cases must have sufficient time and resources to devote to the representation, considering their current caseloads and the extraordinary demands of federal capital cases.
7. 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 their *2008 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*.
8. All attorneys appointed in federal capital cases should consult regularly with their appropriate Resource Counsel projects.
9. 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. Appointing Trial Counsel in Federal Death-Eligible Cases

1. General Requirements
 - a. Appointing qualified capital trial counsel must occur no later than when a defendant is charged with a federal criminal offense where the death penalty is possible. See 18 U.S.C. § 3005.
 - b. To protect the rights of an individual who, although uncharged, is the subject of a federal death-eligible case investigation, the Court may appoint capital-qualified counsel upon request, consistent with Sections C.1, 2, and 3 of this *Plan*.

- 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 effective representation, more than two attorneys may be appointed to represent a defendant in a capital case. See 18 U.S.C. § 3005.
- d. When appointing counsel, the Court must consider the recommendation of the Federal Defender or their designee, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. See 18 U.S.C. § 3005.
- e. To effectuate 18 U.S.C. § 3005’s requirement that the Federal Defender’s recommendation be provided to the Court, the judge should ensure the Federal Defender has been notified of the need to appoint capital-qualified counsel.
- f. Relying on a list for capital counsel appointment is not recommended because trial counsel selection should account for the particular case’s and defendant’s needs and be based on individualized recommendations from the Federal Defender or their designee 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 capital trial appointment to achieve high-quality representation together with cost and other efficiencies. Out-of-district counsel must be eligible for admission *pro hac vice* based on their qualifications. If eligible for *pro hac vice* admission, all *pro hac vice* fees and the designation of local counsel are waived for the appointed case. Counsel appointment from outside the jurisdiction is common in federal capital cases due to possible conflicts and to achieve cost and other efficiencies together with high-quality representation.
- h. In evaluating proposed trial counsel’s qualifications, the Court should consider counsel’s commitment to defending capital cases, their current caseload including other capital cases, and their willingness to effectively represent the client’s interests.

2. Learned Counsel Qualifications

- a. Learned counsel must either be a member of this District’s bar or be eligible for admission *pro hac vice* based on their qualifications. If eligible for *pro hac vice* admission, all *pro hac vice* fees and designation of local counsel are waived for the appointed case. Counsel appointment from outside the jurisdiction is common in federal capital cases due to possible conflicts and 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 outside the district where the matter arises.
- e. Learned counsel’s suitability should be assessed considering the case’s particular demands, the litigation stage, 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 capital case representation.

3. Second and Additional Counsel Qualifications

- a. Second and additional counsel may be appointed. These counsel may, but are not required to, satisfy the learned counsel qualifications, as set forth above, or have a special area of expertise relevant to death-penalty prosecutions or the particular appointed case, or may be an added experienced attorney as described below.
- 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 capital representation requires.
- d. Second and additional counsel suitability should be assessed considering the individual case’s demands, the litigation stage, and the defendant.

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

1. When appointing capital appellate counsel, the Court must consider the recommendation of the Federal Defender or their designee, 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 death-sentenced defendant on appeal.
4. Out-of-district counsel, including Federal Defender Organization staff, who possess the requisite expertise may be considered for capital appeal appointments to achieve high-quality representation together with cost and other efficiencies.
5. Capital 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 capital appellate counsel must have the requisite background, knowledge, and experience required by 18 U.S.C. § 3599(c) or (d).
7. In evaluating proposed capital appellate counsel's qualifications, the Court should consider the qualification standards set by statute and endorsed by bar associations and other legal organizations regarding the quality of capital case legal representation.
8. In evaluating proposed capital appellate counsel's qualifications, the Court should consider their commitment to defending capital cases, their current caseload including other capital cases, and their willingness to effectively represent the client's interests.

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

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 § 2255 proceedings, the Court should consider appointing at least two attorneys.
3. Considering the accelerated timeline applicable to capital § 2255 proceedings, prompt counsel appointment is essential. Wherever possible, appointment should occur before the United States Supreme Court denies

certiorari on direct appeal.

4. When appointing counsel in a capital § 2255 matter, the Court must consider the recommendation of the Federal Defender or their designee, 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 capital § 2255 case appointments to achieve high-quality representation together with cost and other efficiencies. Capital § 2255 counsel must either be a member of this District's bar or be eligible for admission *pro hac vice* based on their qualifications. If eligible for *pro hac vice* admission, all *pro hac vice* fees and designation of local counsel are waived for the appointed case. Counsel appointment from outside the jurisdiction is common in capital § 2255 cases due to possible conflicts and to achieve cost and other efficiencies together with high-quality representation.
6. Counsel in § 2255 cases should have distinguished prior experience in federal post-conviction proceedings and capital post-conviction proceedings.
7. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.
8. In evaluating proposed post-conviction counsel's qualifications, the Court should consider the qualification standards set by statute and endorsed by bar associations and other legal organizations regarding the quality of capital case legal representation.
9. In evaluating proposed post-conviction § 2255 counsel's qualification, the Court should consider their commitment to defending capital cases, their current caseload including other capital cases, and their willingness to effectively represent the client's interests.

F. Counsel in Federal Capital Habeas Corpus Proceedings (28 U.S.C. § 2254 and Local Rule 191) - Appointment and Qualifications

1. A financially eligible person seeking to vacate or set aside a death sentence under 28 U.S.C. § 2254 proceedings (petitioner) is entitled to appointed 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. Pursuant to Eastern District of California Local Rule 191, the Eastern District Selection Board (Board), as approved by the Chief District Judge, will be the appointing authority for capital § 2254 matters. The Board include the Federal Defender or their designee, the Executive Director of the California Appellate Project, the Executive Director of the Habeas Corpus Resource Center, the State Public Defender, and a member of the California State Bar.

4. Capital § 2254 counsel must either be a member of this District's bar or be eligible for admission *pro hac vice* based on their qualifications. If eligible for *pro hac vice* admission, all *pro hac vice* fees and designation of local counsel are waived for the appointed case. Counsel appointment from outside the jurisdiction is common in capital § 2254 cases due to possible conflicts and to achieve cost and other efficiencies together with high-quality representation.
5. Out-of-district counsel, including Federal Defender Organization staff, who possess the requisite expertise may be considered for capital § 2254 case appointment to achieve cost and other efficiencies together with high-quality representation.
6. For federal counsel to avail themselves of the full capital §2254 statute of limitations period to prepare a petition, the Court should appoint counsel and provide appropriate litigation resources at the earliest possible time permitted by law.
7. Unless precluded by a conflict of interest, or replaced by similarly qualified counsel upon the appointed attorney's or the petitioner's motion, capital § 2254 counsel must represent the petitioner throughout every subsequent and available judicial proceeding stage and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, and must also represent the petitioner in such competency proceedings and proceedings for executive or other clemency as the petitioner may have available. *See* 18 U.S.C. § 3599(e).
8. Capital § 2254 case counsel should have distinguished prior experience in federal post-conviction proceedings and capital post-conviction proceedings.
9. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.
10. In evaluating proposed capital § 2254 counsel's qualifications, the Court should consider the qualification standards set by statute and endorsed by bar associations and other legal organizations regarding the quality of capital case legal representation.
11. In evaluating proposed capital § 2254 counsel's qualifications, the Court should consider proposed counsel's commitment to defending capital cases, their current caseload including other capital cases, and their willingness to represent effectively the client's interests.

XVI. EFFECTIVE DATE

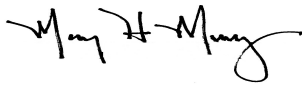
This *Plan* will become effective when approved by the Judicial Council of the Ninth Circuit.

ENTERED FOR THE COURT ON THIS 31st DAY OF OCTOBER, 2023.

A handwritten signature in blue ink, appearing to read 'G. Amelle', written over a horizontal line.

CHIEF JUDGE, EASTERN DISTRICT OF CALIFORNIA

APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT ON THIS 11th DAY OF OCTOBER, 2023.

A handwritten signature in black ink, appearing to read 'Mary H. Murray', written over a horizontal line.

CHIEF JUDGE, NINTH CIRCUIT COURT OF APPEALS