

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

BY: Toni Appelt
DEPUTY

REVIEWING PANEL — CRIMINAL JUSTICE ACT PLAN

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

Entered for the Reviewing Panel at New Orleans, Louisiana, this 1st day of May, 2023.



Lorie A. Robinson
Secretary to the Judicial Council
of the Fifth Circuit

The following judges comprised and acted as the Reviewing Panel:

(a) The Judicial Council of the Fifth Circuit:

Priscilla Richman
Jennifer Walker Elrod
Edith H. Jones
Carl E. Stewart
Leslie H. Southwick
Catharina Haynes
James E. Graves
Stephen A. Higginson
Cory T. Wilson
Dana M. Douglas
Jay C. Zainey
John W. deGravelles
Terry A. Doughty
Michael P. Mills
Kristi H. Johnson
Reed O'Connor
Randy Crane
Rodney Gilstrap
Alia Moses

(b) Chief United States District Judge:



Alia Moses
Chief United States District Judge
Western District of Texas

**UNITED STATES COURTS
FIFTH JUDICIAL CIRCUIT**
600 CAMP STREET, ROOM 100
NEW ORLEANS, LOUISIANA 70130

LORIE A. ROBINSON
CIRCUIT EXECUTIVE

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May 1, 2023

Honorable Alia Moses
Chief U.S. District Judge
Western District of Texas
United States Courthouse
111 East Broadway Street, Room A202
Del Rio, TX 78840-5582

Re: Criminal Justice Act Plan – Western District of Texas

Dear Chief Judge Moses:

The Judicial Council of the Fifth Circuit, acting as the Reviewing Panel, has approved the amended Criminal Justice Act Plan for the Western District of Texas.

After signature by you, please file copies of (1) the action of the Reviewing Panel and (2) the Order adopting the amended Plan with the:

Director, Administrative Office of the United States Courts;

Attorney General of the United States;

Circuit Executive, Fifth Circuit;

Clerk, United States Court of Appeals for the Fifth Circuit;

Federal Public Defender, Western District of Texas; and

Clerk, U.S. District Court for the Western District of Texas.

Sincerely,



Kate Padbury
Assistant Circuit Executive

Enclosure

cc: All Judicial Council Members
Mr. Philip J. Devlin, Clerk
Ms. Elizabeth Brown Luck, Chief, Defender Services Office

United States District Court for the Western District of Texas Amended Criminal Justice Act Plan

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United States District Court for the Western District of Texas Amended 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 7, the judges of the United States District Court for the Western District of Texas, adopt this Plan (“District Plan”), as approved by the Judicial Council of the Fifth Circuit Court of Appeals, for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA. This District Plan supersedes all prior district and divisional CJA plans, including the Modification of Plan for the Implementation of the Criminal Justice Act (W.D. Tex. Feb. 24, 1975).

II. Statement of Policy

A. Objectives

The objectives of the District 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 the Guide, Vol. 7, in a way that meets the needs of this district.

The District 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, employees of the Federal Public Defender, and private attorneys appointed under the CJA must comply with

the Guide, Vol. 7, and with the District Plan.

2. The Court will ensure that a current copy of the District 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.
3. *Divisional Plans.* The judges of any division of this District may adopt a divisional plan for implementation of the CJA. Nothing in this District CJA Plan should be interpreted as limiting or preventing a divisional plan which reflects the unique needs of the division, provided that the divisional plan does not conflict with the CJA or the District CJA Plan. Any procedures established or implemented in any division must first be approved by the District and subsequently be approved by the Judicial Council of the Fifth Circuit.

III. Definitions

A. Representation

"Representation" includes representation by counsel as well as investigative, expert, and other services.

B. Appointed Attorney

"Appointed attorney" is an attorney designated to represent a financially eligible person under the CJA and the District Plan. Such attorneys include private attorneys and the Federal Public Defender.

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 who is detained, or who is 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 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 participation in 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 proceedings under 18 U.S.C. § 3006A(c). In determining whether representation in an ancillary matter is appropriate to the proceedings, the Court should consider whether such representation is reasonably necessary:

- a. to protect a constitutional right;
- b. to contribute in some significant way to the defense of the principal criminal charge;
- c. to aid in preparation for the trial or disposition of the principal criminal charge;
- d. to enforce the terms of a plea agreement in the principal criminal charge;
- e. to preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under 18 U.S.C. § 983, 19 U.S.C. § 1602, 21 U.S.C. § 881, or similar statutes, which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f); or
- f. effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f).

B. Financial Eligibility

1. Presentation of Accused for Financial Eligibility Determination

a. Duties of Law Enforcement

- (i) Upon arrest of an individual in connection with a federal criminal charge, where the individual has not retained counsel, federal law enforcement officials must promptly notify the appropriate court personnel.
- (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 or unsealing of a criminal information, where the defendant has not retained counsel, the United States Attorney, or his or her delegate, will promptly notify appropriate court personnel.
- (ii) Upon issuance of a target letter, and where the individual has not retained counsel, the United States Attorney, or his or her delegate, must promptly notify, the appropriate court personnel.
- (iii) In the event the United States Attorney's Office is aware of an actual or potential conflict between the target and the Federal Public Defender, the United States Attorney's Office must promptly notify the Court.
- (iv) 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 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) Once 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 court personnel 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 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 the District Plan.
- i. If, at any stage of the proceedings, a judge finds that a person who can afford retained counsel cannot afford investigatory, expert, or other needed services, such services may be approved in accordance with the general provisions set forth in the District Plan. *See also* Section XIII(A).

V. Timely Appointment of Counsel

A. Timing of Appointment

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

1. after they are taken into custody;
2. when they appear before a magistrate or district court judge;
3. when they are formally charged, or notified of charges if formal

charges are sealed; or

4. when a magistrate or district court judge otherwise considers appointment of counsel appropriate under the CJA and related statutes.

B. Court's Responsibility

The Court, in cooperation with the Federal Public Defender, the CJA Panel Attorney District Representative,¹ and the United States Attorney, will make such arrangements with federal, state, and local investigative and police agencies as will ensure timely appointment of counsel.

C. Pretrial Service Interview

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

D. Retroactive Appointment of Counsel

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

E. Conflicts of Interest

As soon as possible after appointment, appointed counsel should investigate and determine whether an actual or potential conflict arises from the appointment. In the event of an actual or potential conflict, counsel must promptly notify the Court to facilitate the timely appointment of other counsel.

VI. Provision of Representational Services

A. Federal Public Defender and Private Counsel

The District Plan provides for representational services by the Federal Public Defender and for the appointment and compensation of private counsel from the CJA panel list(s) maintained by the Court in cases authorized under the CJA and related statutes.

B. Apportionment of Cases

Where practical and cost effective, private attorneys from the CJA panel list(s) will be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" will usually be defined as a minimum of twenty-five percent (25%) of the annual CJA appointments.

¹ The Panel District Representative is selected by the Federal Public Defender with acquiescence from the Chief Judge and serves a three-year term, subject to renewal.

C. Number of Counsel

In an extremely difficult case, the Court may appoint more than one attorney to represent an individual in the interest of justice.

D. 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.

VII. The Federal Public Defender

A. Establishment

The Federal Public Defender for the Western District of Texas, established in 1975, is responsible for rendering defense services by appointment throughout this district.

B. Standards

The Federal Public Defender must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. See *Polk Cnty. 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 § 4-3.9 (2d ed. 1980))).

C. Workload

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

D. Professional Conduct

The Federal Public Defender must conform to the highest standards of professional conduct, including but not limited to the *Code of Conduct for Federal Public Defender Employees* and the standards set out in Section XI(A)(2).

E. Private Practice of Law

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

F. Supervision of the Defender Organization

The Federal Public Defender will be responsible for the supervision and management of the defender organization. Accordingly, the Federal Public Defender will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at his or her discretion.

G. Training

The Federal Public Defender will assess the training needs of defender staff and provide training opportunities and other educational resources for the defender organization.

VIII. District and Divisional CJA Panel Committees

A. District CJA Panel Committee

1. The District CJA Panel Committee is an advisory committee reporting directly to the Chief Judge. It is comprised of the following members:

- a. A judicial officer of the District, as designated by the Chief Judge;
- b. The Federal Public Defender;
- c. The Panel Attorney District Representative; and
- d. At least one private defense attorney member from each of the Divisional CJA Panel Committees described in Section VIII(B) below.

The Federal Public Defender and Panel Attorney District Representative constitute permanent members of the committee. The private defense attorney members will serve for three-year terms, which may be extended for an additional three years. Terms may be staggered if necessary to ensure continuity on the committee. The Court should make a diligent effort to ensure that the composition of the committee reflects the racial, ethnic, gender, and geographic diversity of the District.

2. The District CJA Panel Committee will meet at least once a year and at any time the Court asks the Committee to consider an issue.

3. The District CJA Panel Committee has the following duties:

a. Annual Report

Reviewing the operation and administration of the District Plan over the preceding year, and recommending any necessary or appropriate changes to the Chief Judge concerning recurring issues or difficulties encountered by CJA panel members or their clients.

b. Training

Assisting the Court in providing training for the CJA panel in each division on substantive and procedural legal matters affecting representation of CJA clients.

c. Voucher Review

At the request of the Court or any Divisional CJA Panel Committee, reviewing and, if necessary, making recommendations to the Chief Judge regarding the processing and payment of CJA vouchers in those cases when the Court, for reasons other than mathematical or technical errors, authorizes payment for less than the amount of compensation claimed by CJA counsel.

d. Other Duties

At the request of the Court or any Divisional CJA Panel Committee, assisting in the performance of the duties set out in Section VIII(B)(3).

B. Divisional CJA Panel Committees

1. Each Division must establish a Divisional CJA Panel Committee. Membership of the committee is to be determined by the Court in each division, but must include at least one judicial officer, one attorney from the Federal Public Defender's office in the division, and one criminal defense attorney who is a member of the panel in that division and who practices regularly there. The committee may also include an employee of the Clerk's Office in the division. The Court should make a diligent effort to ensure that the composition of the committee reflects the racial, ethnic, gender, and geographic diversity of the division.

The judicial officer and defender representative constitute permanent members of the Divisional CJA Panel Committee. The criminal defense attorney member(s) will serve for three-year terms, which may be extended for an additional three years. Terms will be staggered if necessary to ensure continuity on the committee.

2. The Divisional CJA Panel Committee will meet at least twice a year and at any time the Court asks the Committee to consider an issue.

3. Duties of the Divisional CJA Panel Committee may include the following:

a. Membership

Examining the qualifications of applicants for membership on the CJA Panel in each respective division of the District, and recommending the approval of applications of those attorneys who are deemed qualified and the rejection of the applications of those attorneys deemed unqualified.

b. Recruitment

Engaging 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.

c. Removal

Recommending to the presiding district judge in the division the removal of any CJA panel member who 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 who has engaged in other conduct such that his or her continued service on the CJA panel is inappropriate. *See also* Section IX.C.7.

d. Training

Assisting the Court, the Federal Public Defender, the Panel Attorney District Representative, and the District CJA Panel Committee in providing training for the CJA Panel on substantive and procedural legal matters affecting representation of CJA clients.

e. Voucher Review

Assisting the Court, upon request, when the Court contemplates reduction of a CJA voucher for reasons other than technical or mathematical errors. *See also* Section XII.B.6.

f. Mentoring

Appointing experienced CJA panel members to serve in a mentoring program designed to identify and help prepare viable candidates to qualify for consideration for appointment to the CJA panel. Experienced members of the criminal defense bar who have practiced extensively in the federal courts will be selected to serve as mentors. The Divisional CJA Panel Committee may 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.

IX. Establishment of CJA Panels

A. Approval of CJA Panels

1. The existing, previously established panels of attorneys who are eligible and willing to be appointed to provide representation under the CJA in each division of the District are hereby recognized.
2. Either the presiding district judge in each division, or a majority of the district judges regularly handling criminal matters in that division, may approve attorneys for membership on the CJA panel(s) after receiving recommendations from the Divisional CJA Panel Committee.

B. Size of CJA Panels

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

1. Application

The Clerk of Court shall ensure that applications for membership on the CJA panel(s) in each division are available from the Court, including online.

2. Equal Opportunity

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

3. Eligibility

- a. Applicants for CJA panel membership must be members in good standing with the federal bar of this District and, when applicable, the Fifth Circuit Court of Appeals.
- b. Unless otherwise authorized by the Court, applicants must maintain an office in the division to which they seek to be admitted.
- 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 Divisional CJA Panel Committee's consideration.

4. Appointment to CJA Panels

Approval of attorneys for membership on CJA panel(s) for each division, in accordance with Section IX(A)(2), will be made after consideration of the recommendation of the Divisional CJA Panel Committee. 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.

5. Terms of CJA Panel Members

To establish staggered CJA membership terms, the current CJA panel in each Division will be divided into three groups, equal in number. Initially, members will be assigned to one of the three groups on a random basis. Members of the first group will continue to serve on the CJA panel for a term of one year, members of the second group will continue to serve on the CJA panel for a term of two years, and members of the third group will continue to serve on the CJA panel for a term of three years. Thereafter, attorneys admitted to membership on the CJA panel will each serve for a term of three years, subject to the reappointment procedures set forth in the District Plan.

6. Reappointment of CJA Panel Members

- a. The Court will notify CJA panel members, prior to the expiration of their current term, of the need to apply for reappointment to the CJA panel.
- b. A member of a CJA panel who wishes to be considered for reappointment must apply for appointment to an additional term prior to the expiration of his or her current term.
- c. The Divisional CJA Panel Committee may solicit input concerning the quality of representation provided by attorneys seeking reappointment.
- d. In making recommendations to the presiding judge regarding reappointment, the Divisional CJA Panel Committee also may consider how many cases the CJA panel member has accepted and declined during the review period, whether the member has participated in training opportunities, whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of CJA panel members as set forth in the District Plan .

7. Disciplinary Suspension or Removal from a CJA Panel

a. Mandatory suspension or removal

Any member of a CJA panel who is suspended or disbarred from the practice of law by any state or federal court will immediately be suspended or removed from the CJA panel.

b. Automatic review

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

c. Complaints

(i) Initiation

A complaint against a panel member may be initiated by any member of a District or Divisional CJA Panel Committee, a judge, another panel member, a defendant, or a member of the Federal Public Defender's 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 Divisional CJA Panel Committee, which will determine whether further investigation is necessary.

(ii) Notice

When conducting an investigation, the Divisional CJA Panel 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 Divisional CJA Panel Committee or its subcommittee.

(iv) Protective Action

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

(v) Review and Recommendation

After investigation, the Divisional CJA Panel 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. The Divisional CJA Panel Committee may also refer any matter to the District CJA Panel Committee or the District Disciplinary Committee for further action.

(vi) Final Disposition by the Court

The Divisional CJA Panel Committee will forward its recommendation either to the Chief Judge, or to the presiding judge of the appropriate division, for consideration and final disposition.

(vii) Confidentiality

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

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

8. Non-Disciplinary Suspension or Removal

In the event of physical or other incapacity, the Court may suspend or remove a panel member in the interests of justice. In the event that a panel member is suspended or removed under this provision, the Divisional CJA Panel Committee may be called upon to assist the Court in arranging for reassignment of the panel member's pending cases.

X. CJA Panel Attorney Appointment in Non-Capital Cases

A. Appointment List

The Court will maintain, for each division of the District, a current list of all attorneys included on the CJA panel(s), with current office addresses, email addresses, and telephone numbers. These lists will be provided to the District CJA Panel Committee, and to the Divisional CJA Panel Committee for the respective division.

B. Appointment Procedures

1. The Court is responsible for overseeing the appointment of cases to panel attorneys. The Court will maintain a record of panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the Federal Public Defender's office and panel attorneys.
2. Appointment of cases to CJA panel members will ordinarily be made on a rotational basis.
3. Under special circumstances, the Court may appoint counsel outside of the normal rotation, and may appoint an attorney who is not a member of a 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. For example, a special appointment may be appropriate due to the particular needs of a defendant or a case, or the specialized knowledge, expertise, or language ability of a particular attorney. It is not anticipated that special circumstances will arise often, and the procedures set forth in the District Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed. Appointments made under this section must be reported to the Divisional CJA Panel Committee.

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 Cnty. V. Dodson*, 454 U.S. at 318. (“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 § 4-3.9 (2d ed. 1980))).
2. Attorneys appointed under the CJA must conform to the highest standards of professional conduct as set out in the Texas Disciplinary Rules of Professional Conduct which have been adopted by the Western District of Texas as the standards of professional conduct. This specification is not exhaustive of the standards of professional conduct. For matters not covered by the Texas rules, the American Bar Association’s Model Rules of Professional Conduct should be consulted.
3. A CJA panel member must notify the Divisional CJA Panel Committee within 30 days (i) when charged with or convicted of a felony, or any other serious crime as defined in Texas Rule of Disciplinary Procedure 1.06(AA), or (ii) when any licensing authority, grievance committee, or administrative body has taken action against them, or when a finding of contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.

B. Training and Continuing Legal Education

1. CJA panel members are expected to remain current with developments in federal criminal defense law, practice, and

procedure, including the Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases, available at <https://www.fd.org>.

2. Attorneys appointed to a CJA panel are expected to attend trainings on federal criminal practice sponsored by the Court and the Federal Public Defender's office.
3. CJA panel members must attend at least 6 continuing legal education ("CLE") hours relevant to federal criminal practice annually.
4. While low-cost or no-cost CLE may be made available to panel members, the responsibility for timely compliance with the CLE requirements of the District Plan rests with the panel member.
5. Failure to timely comply with the training and legal education requirements of the District Plan 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 (1) the matter, including appeals or review by certiorari, is closed; (2) substitute counsel has been approved by the Court, and a notice of appearance has been entered; or (3) 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 the 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 Court order.

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 must 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.

B. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the Court’s eVoucher system.
2. Claims for compensation should be submitted no later than 45 days after final disposition of the case, unless good cause is shown.
3. The Clerk’s Office will review the claim for mathematical and technical accuracy and for conformity with the Guide, Vol. 7A and, if correct, will forward the claim for consideration and action by the presiding judge.

4. Absent extraordinary circumstances, the Court should act on CJA compensation claims within 30 days of submission. 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 or technical corrections, no claim for compensation submitted for services provided under the CJA may 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 technical or mathematical reasons, may refer the voucher to the Divisional CJA Panel Committee for review and recommendation before final action on the claim is taken. If any claim for compensation is reduced, either the Court or the Divisional CJA Panel Committee may refer the matter to the District CJA Panel Committee for review and, if needed, recommendation to the Chief Judge.
7. Notwithstanding the procedure described above, the Court may, in the first instance, contact appointed counsel regarding questions or concerns with a claim for compensation.

C. Compensation Under a Mentoring Program

A mentoring program established under Section VIII(f) may provide compensation for attorney mentees, either (1) at the prevailing hourly CJA rate when the mentee is appointed as second counsel in appropriate cases as determined by the Court; or (2) under the CJA at a reduced rate with prior authorization by the Court.

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 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. In seeking investigative, expert, or other services, counsel must comply with Judicial Conference policies set forth in the Guide, Vol. 7A, Ch. 3.

B. *Ex parte* Applications

In non-capital cases,² requests for authorization of funds for investigative, expert, and other services must be submitted in an *ex parte* application to the Court and must not be disclosed except with the consent of the person represented or as required by law or Judicial Conference policy.

C. Division of Labor

Appointed counsel are encouraged to seek authorization to use law clerks, paralegals, investigators, and other cost-effective service providers to reduce costs for those tasks that, in the attorney's view, need not be performed directly by the attorney.

D. Spanish Language Services

Services under this section include Spanish-language interpretation services in the appropriate case. An attorney who seeks to be appointed to represent Spanish-speaking persons without interpretation services may be required to establish the language proficiency of the attorney or the attorney's staff.

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 3599³; Guide, Vol. 7A, Ch. 6, § 620; and the Plan for Representation on Appeal Under the Criminal Justice Act (Fifth Circuit CJA Plan), Section 7.B.2.

B. General Applicability and Appointment of Counsel Requirements

1. Unless otherwise specified, the provisions of 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

² For requests in capital cases, see Section XIV(A) & note 4, *infra*.

³ As to investigative, expert, and other services, Section 3599(f) provides:

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

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 may utilize the expert services available through the Administrative Office of the U.S. 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 Resource Counsel Projects are staffed by death penalty experts who may be relied upon by the Court for assistance with selection and appointment of counsel, with case budgeting, and with legal, practical, and other matters arising in federal capital cases.
5. The Federal Public Defender should promptly notify and consult with the appropriate Resource Counsel Project(s) 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, the Court may consider and give due weight to the recommendations made by the Federal Public Defender and Resource Counsel Projects.
7. The presiding judge may appoint an attorney recommended by a state or local public defender organization, a legal aid agency, or another private, non-profit organization to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief provided that the attorney is fully qualified. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed pro hac vice. *See* [18 U.S.C. § 3006A\(a\)\(3\)](#).

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.
 10. All attorneys appointed in federal capital cases may take into account, but are not bound by 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 with the appropriate Resource Counsel Project(s).
 12. The District will establish no formal non-statutory budgetary caps on capital cases, whether in a capital trial, direct appeal, or habeas matter.
 13. All capital cases should be budgeted with the assistance of case- budgeting attorneys and/or resource counsel where appropriate.
 14. Questions about the appointment and compensation of counsel, and the authorization and payment of investigative, expert, and other service providers in federal capital cases may be directed to the FPD or to the AO's Defender Services Office, Legal and Policy Division Duty Attorney, who may be contacted at 202-502-3030, or by email atods_lpb@ao.uscourts.gov.
 15. Reliance on a list for appointment of capital counsel must account for the particular needs of the case and the defendant and may be based on individualized recommendations from the Federal Public Defender in conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects.
- C. Appointment and Qualifications of Trial Counsel in Federal Death-Eligible Cases⁴
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 potential federal death-eligible case, the

⁴ 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.

Court may appoint capitably 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. In rare instances and only if absolutely necessary for adequate representation, as explained by the Court on the record, more than two attorneys may be appointed to represent a defendant in a capital case. *See* [18 U.S.C. § 3005](#).
- d. When appointing counsel, the judge must consider the recommendation of the Federal Public Defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel.
- e. In appointing counsel, the Court may give due weight to the recommendations made by the Federal Public Defender and resource counsel.
- f. To effectuate the intent of 18 U.S.C. § 3005 that the Federal Public Defender’s recommendation be provided to the Court, the appointing judge should ensure the Federal Public Defender has been notified of the need to appoint capitably qualified counsel.
- g. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital trials to achieve high quality representation together with cost and other efficiencies.
- h. In evaluating the qualifications of proposed trial counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

2. Qualifications of Learned Counsel

- a. Learned counsel must either be a member of this district’s bar or be eligible for admission pro hac vice. 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 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.

3. Qualifications of Second and Additional Counsel

- a. Second counsel may, but are not required to, satisfy the qualifications for learned counsel, as provided above.
- b. Second 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 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, subject to the strictures of Part XIV(C)(1)(c)) 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 may consider the recommendation of the Federal Public Defender, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.
- 2. In appointing appellate counsel, the Court may give due weight to the recommendations made by Federal Public Defender and resource counsel.
- 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 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. If more than two attorneys are appointed, the Court should articulate its reasons for doing so.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 may consider the recommendation of the Federal Public Defender, who will consult with the Federal Capital Habeas § 2255 Project.
 5. When appointing counsel in a capital § 2255 matter, the Court may consider the recommendation of the federal public defender who will consult with the National or Regional Habeas Assistance and Training Counsel Projects. The defender's recommendation may be to appoint this district's CHU, a CHU from another district, or other counsel who qualify for appointment under 18 U.S.C. § 3599 and this Plan, or any combination of the foregoing appropriate under the circumstances.
 6. In appointing post-conviction counsel, the Court may give due weight to the recommendations made by the Federal Public Defender and resource counsel.
 7. 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.
 8. The District Plan imposes no restrictions prohibiting the Western District capital habeas unit (CHU), or any other CHU, from engaging in cross-district or cross-circuit representation in a capital § 2255 case.
 9. Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.

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 may consider appointing at least two attorneys.
 3. When appointing counsel in a capital § 2254 matter, the appointing authority may consider the recommendation of the Federal Public Defender who will consult with the National or Regional Habeas Assistance and Training Counsel Projects. The defender's recommendation may be to appoint this district's CHU, a CHU from another district, or other counsel who qualify for appointment under 18 U.S.C. § 3599 and this Plan, or any combination of the foregoing appropriate under the circumstances.
 4. In appointing counsel in a capital § 2254 matter, the Court may consider the recommendations made by the Federal Public Defender and resource counsel.
 5. The District Plan imposes no restrictions prohibiting the Western District CHU, or any other CHU, from engaging in cross-district or cross-circuit representation in a capital § 2254 case.
 6. 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.
 7. 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.
 8. 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\(e\)](#).
 9. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.

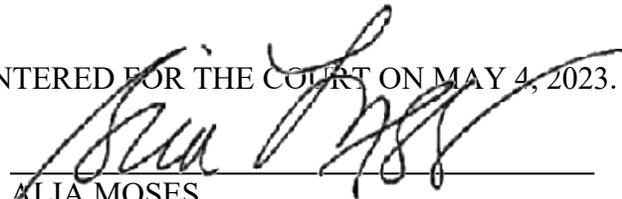
10. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.

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

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

ENTERED FOR THE COURT ON MAY 4, 2023.



ALIA MOSES

CHIEF JUDGE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS