FILED: January 22, 2026

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JUDICIAL COUNCIL

In the Matter of the Review of the	*	
Plan of the United States District	*	
Court for the Western District of North Carolina	*	No. 506
in Implementation of the Criminal Justice Act	*	
	*	

O R D E R

The Plan of the United States District Court for the Western District of North Carolina, which is attached to and made a part of this Order, is hereby approved by the Judicial Council of the Fourth Circuit, and it is so ORDERED.

FOR THE COUNCIL:

James N. Ishida
Secretary

Date: January 22, 2026

United States District Court
For the Western District of North Carolina
Criminal Justice Act Plan

I. Authority 5
II. Statement of Policy 5
A. Objectives 5
B. Compliance 5
III. Definitions 6
A. Representation 6
B. Appointed Attorney 6
C. CJA Panel 6
D. CJA Panel Attorney 6
E. CJA Panel Committee 6
F. CJA Coordinating Attorney 6
G. CJA Team 6
H. Panel Attorney District Representative 7
IV. Determination of 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 Accused for Financial Eligibility Determination 9
2. Factual Determination of Financial Eligibility 11
V. Timely Appointment of Counsel 12
A. Timing of Appointment 12
B. Court's Responsibility 12
C. Pretrial Service Interview 12
D. Retroactive Appointment of Counsel 12
VI. Provision of Representational Services 13
A. Federal Public Defender and CJA Panel Attorneys 13
B. Administration 13
C. Apportionment of Cases 13

D. Number of Counsel 13
E. Capital Cases 13
VII. Federal Public Defender Organization 13
A. Establishment 13
B. Standards 13
C. Workload 14
D. Professional Conduct 14
E. Private Practice of Law 14
F. Supervision of Defender Organization 14
G. Voucher Review 14
H. Mentorship 14
I. Training 15
VIII. CJA Panel of Private Attorneys 15
A. CJA Panel Committee 15
B. Duties of the CJA Committee 15
1. Membership 15
2. Recruitment 15
3. Annual Report 16
4. Removal 16
5. Voucher Review 16
6. Mentoring 16
IX. Establishment of a CJA Panel 17
A. Approval of CJA Panel 17
B. Size of CJA Panel 17
C. Qualifications and Membership on the CJA Panel 17
1. Application 17
2. Equal Opportunity 17
3. Eligibility 17
4. Appointment to CJA Panel 18
5. Terms of CJA Panel Members 18
6. Reappointment of CJA Panel Members 19
7. Removal from the CJA Panel 19
D. Withdrawal and Inactive Status 21

X. Management of the Training Panel 22
A. Purpose of Training Panel 22
B. Open Application to the General Panel 22
C. Operation of Training Panel and Duties and Obligations of Membership. 23
D. Compensation of Training Panel Members 24
E. Removal from Training Panel 24
XI. CJA Panel Attorney Appointment in Non-Capital Cases 25
A. Appointment List 25
B. Appointment Procedures 25
XII. Duties of CJA Panel Members 25
A. Standards and Professional Conduct 25
B. Training and Continuing Legal Education 26
C. Mentorship 27
D. Facilities and Technology Requirements 27
E. Continuing Representation 27
F. Miscellaneous 27
XIII. Compensation of CJA Panel Attorneys 28
A. Policy of the Court Regarding Compensation 28
B. Payment Procedures 28
XIV. Investigative, Expert, and Other Services 29
A. Financial Eligibility 29
B. Applications 29
C. Compliance 29
XV. Appointment of Counsel and Case Management in CJA Capital Cases 30
A. Applicable Legal Authority 30
B. General Applicability and Appointment of Counsel Requirements 30
C. Appointment of Trial Counsel in Federal Death-Eligible Cases 32
1. General Requirements 32
2. Qualifications of Learned Counsel 33
3. Qualifications of Second and Additional Counsel 34
D. Appointment and Qualifications of Direct Appeal Counsel in Federal Death Penalty Cases 34
E. Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. § 2255) 35

F. Appointment and Qualifications of Counsel in Federal Capital Habeas Corpus Proceedings (28 U.S.C. § 2254) 36

XVI. Effective Date 38

United States District Court
For the Western District of North Carolina
Criminal Justice Act Plan

I. Authority

Under the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and *Guide to Judiciary Policy (Guide)*, Volume 7A, the judges of the United States District Court for the Western District of North Carolina adopt this Plan, as approved by the circuit, for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA. This plan supersedes all prior CJA plans previously approved by this Court.

II. Statement of Policy

A. Objectives

The objectives of this Plan are:

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

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

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

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

B. Compliance

1. The Court, its Clerk, the Federal Public Defender (FPD), the Federal Public Defender's Office (FPDO), private attorneys appointed under the CJA, and the United States Probation Office must comply with the *Guide*, Vol. 7A, and with this Plan.

2. The Court will ensure that a current copy of the CJA Plan is made available on the court's website.

3. The FPDO will ensure that a current copy of the CJA plan is available on the FPDO's website and provided to CJA panel attorneys upon designation as a member of the CJA Panel.

III. Definitions

A. Representation

"Representation" includes counsel and investigative, expert, and other services.

B. Appointed Attorney

"Appointed Attorney is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys, the FPD and the assistant federal public defenders (AFPDs) of the FPDO."

C. CJA Panel

"CJA Panel" is a panel of private attorneys appointed under this plan who provide representation for financially eligible individuals who are not represented by the FPDO. The CJA Panel consists of a General Panel and a Training Panel. When used, the term "CJA Panel" applies to both groups.

D. CJA Panel Attorney

"CJA panel attorney" is a private attorney appointed under this plan who provides representation for financially eligible individual who are not represented by the FPDO.

E. CJA Panel Committee

"CJA Panel Committee" is a committee that consist of one district court judge, one magistrate judge, the FPD who acts as Chair, the CJA Coordinating Attorney, the Clerk of Court or their representative, the Panel Attorney District Representative (PADR), a criminal defense attorney who practices regularly in the Charlotte and Asheville divisions, and members of the FPDO CJA Team who will act as administrative coordinators.

F. CJA Coordinating Attorney

"CJA Coordinating Attorney" is an attorney employed by the FPDO who has been designated by the FPD to manage the CJA program within in the district.

G. CJA Team

"CJA Team" consists of the CJA Coordinating Attorney and such other individuals identified by the FPD to assist with the administration of the CJA program.

H. Panel Attorney District Representative

"Panel Attorney District Representative" is a member of the CJA Panel who is selected by the FPD, with the acquiescence from the Chief Judge, to serve as the representative of the District's CJA Panel for the national Defender Services CJA PADR program and on local Court committees.

IV. Determination of Eligibility for CJA Representation

A. Subject Matter Eligibility

1. Mandatory

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

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

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

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

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

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

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

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

h. is in custody as a material witness;

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

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

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

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

2. Discretionary

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

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

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

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

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

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

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

g. is held for international extradition under 18 U.S.C. Chapter 209; or

h. is seeking sentence reduction as a result of a newly enacted federal law

3. Ancillary Matters

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

a. to protect a constitutional right;

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

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

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

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

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

B. Financial Eligibility

1. Presentation of Accused for Financial Eligibility Determination

a. Duties of Law Enforcement

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

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

b. Duties of United States Attorney's Office

(i) Upon the return or unsealing of an indictment or the filing of a criminal information, or the filing or unsealing of a petition to modify or revoke probation or supervised release, and where the defendant has not retained or waived counsel, the United States Attorney or their delegate will promptly notify,

telephonically or electronically, appropriate Court personnel, who in turn will promptly notify the Federal Public Defender.

(i) Upon issuance of a target letter, and where the individual has not retained or waived counsel, the United States Attorney or their delegate must promptly notify , telephonically or electronically, the CJA Team. The USAO's notification will include any known actual or potential conflict with the target, the FPDO and/or any panel attorney.

c. Duties of Federal Public Defender Office

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.

(i) In all cases requiring appointed counsel, the CJA Team will immediately investigate and determine whether an actual or potential conflict exists and facilitate the timely appointment of counsel.

(i) When a conflict with the FPDO is identified before the initial appearance, the CJA Team will normally locate a panel attorney to represent the person at the initial appearance. Panel attorneys will be compensated for a reasonable amount of preparation in advance of the initial appearance. In extraordinary circumstances, the FPDO duty attorney may represent a conflicted person for the limited purpose of the initial appearance.

d. Duties of Appointed Attorney

When practicable, the FPDO duty attorney or appointed CJA Panel attorney will discuss with the person who indicates that he or she is not financially able to secure representation the right to appointed counsel and, if appointment of counsel seems likely, assist in the completion of a financial affidavit (Form CJA 23) and arrange to have the person promptly presented before a magistrate judge or district judge of this court for determination of financial eligibility and appointment of counsel.

e. Duties of Pretrial Services Office

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

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

2. Factual Determination of Financial Eligibility

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

b. The determination of eligibility for representation under the CJA is a judicial function to be performed by the court after making appropriate inquiries concerning the person's financial eligibility. Other employees of the court may be designated to obtain or verify the facts relevant to the financial eligibility determination.

c. In determining whether a person is "financially unable to obtain counsel," consideration should be given to the cost of providing the person and his or her dependents with the necessities of life, the cost of securing pretrial release, asset encumbrance, and the likely cost of retained counsel.

d. The initial determination of eligibility must be made without regard to the financial ability of the person's family to retain counsel unless their family indicates willingness and ability to do so promptly.

e. Any doubts about a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected at a later time.

f. Relevant information bearing on the person's financial eligibility should be reflected on a financial eligibility affidavit (Form CJA 23).

g. If at any time after the appointment of counsel a judge finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the judge may terminate the appointment of counsel or direct that any funds available to the defendant be paid as provided in 18 U.S.C. § 3006A(f).

h. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel may be appointed in accordance with the general provisions set forth in this Plan.

V. Timely Appointment of Counsel

A. Timing of Appointment

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

1. after they are taken into custody;

2. when they appear before a magistrate or district court judge;

3. when they are formally charged or notified of charges if formal charges are sealed; or

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

B. Court's Responsibility

The Court, in cooperation with the FPDO 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. When counsel has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release or detention hearing.

D. Retroactive Appointment of Counsel

Appointment of counsel may be made retroactive to include representation

provided prior to appointment.

VI. Provision of Representational Services

A. Federal Public Defender and CJA Panel Attorneys

This Plan provides for representational services by the FPD and for the appointment and compensation of private counsel from a CJA Panel list maintained by the FPD in cases authorized under the CJA and related statutes.

B. Administration

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

C. Apportionment of Cases

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

D. Number of Counsel

More than one attorney may be appointed in any case determined by the Court to be difficult or an appropriate case for a member of the Training Panel to serve as second chair.

E. Capital Cases

Procedures for appointment of counsel in cases where the defendant is charged with a crime that may be punishable by death, or is seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§ 2241, 2254 or 2255, are set forth in section XV of this Plan.

VII. Federal Public Defender Organization

A. Establishment

The Federal Public Defender’s Office for the Western District of North Carolina, has been established in this District under the CJA and is responsible for rendering defense services on appointment throughout this district.

B. Standards

The FPDO must provide high quality representation consistent with the best practices of the legal profession and commensurate with those

services rendered when counsel is privately retained. See *Polk County v. Dodson*, 454 U.S. 312, 318 (1981) ("'Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.'" (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980))).

C. Workload

The FPD will continually monitor the workloads of the FPDO to ensure high quality representation for all clients.

D. Professional Conduct

The FPDO 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 North Carolina Rules of Professional Conduct, Federal Adaptation of the National Legal Aid and Defender Association's *Performance Guidelines for Criminal Defense Representations*; The American Bar Association's *Criminal Justice Standards for the Defense Function* and *Model Rules of Professional Conduct;* North Carolina Commission on Indigent Defense Services *Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level;* and any other standards published by the FPD.

E. Private Practice of Law

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

F. Supervision of Defender Organization

The FPD will be responsible for the supervision and management of the FPDO. Accordingly, the FPD will be appointed in all cases assigned to the FPDO with subsequent assignment or reassignment to assistant federal public defenders at the discretion of the FPD.

G. Voucher Review

The CJA Team will assist the Court in ensuring compliance with mandated billing guidelines and accurate record keeping, assessing the reasonableness of vouchers and individual time entries, and providing due process and fairness in voucher reviews.

H. Mentorship

The CJA Coordinating Attorney, in coordination with the PADR, will oversee the Training Panel Mentorship Program described in Section X below.

I. Training

The FPD will assess the training needs of the FPDO and, in coordination with the CJA Coordinating Attorney and the PADR the training needs of the CJA Panel and provide training opportunities and other educational resources that include but are not limited to updates regarding substantive law, sharing best practices in federal criminal defense, ethics, and presentations on courtroom and office technology. The FPDO will publish on its website the opportunities for continuing legal education available to panel attorneys

VIII. CJA Panel of Private Attorneys

A. CJA Panel Committee

1. A CJA Panel Committee ("CJA Committee") has been established in the District. The CJA Committee consists of one district court judge, one magistrate judge, the FPD who acts as Chair, the CJA Coordinating Attorney, the Clerk of Court or their representative, the CJA Panel Attorney District Representative (PADR), criminal defense attorney who practices regularly in the Asheville and Charlotte divisions, and members of the CJA Team who act as administrative coordinators.

2. The FPD, the CJA Coordinating Attorney, , the Clerk of Court or their representative, and the district's PADR are permanent members of the CJA Committee.

Membership on the CJA Committee will otherwise be for a term of three years and may be extended for an additional three years. Members' terms will be staggered to ensure continuity on the CJA Committee. Judicial vacancies will be filled by appointment of the Chief Judge. Criminal defense attorney vacancies will be filled upon a majority vote of the Committee.

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

B. Duties of the CJA Committee

1. Membership

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

2. Recruitment

Engage in recruitment efforts to establish a diverse panel and

ensure that all qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.

3. Annual Report

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

a. the size of the CJA Panel;

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

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

4. Removal

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

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

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

See also Section IX.C.7

5. Voucher Review

As requested, review and make recommendations on the processing and payment of CJA vouchers in those cases where the court, for reasons other than mathematical errors, is considering authorizing payment for less than the amount of compensation claimed by CJA counsel and has not been able to resolve the issue through the CJA Coordinating Attorney. The judge will, at the time the voucher is submitted to the CJA Committee, provide a statement describing questions or concerns they have with the voucher. Counsel will be notified of the potential voucher reduction and given the opportunity to provide information or documentation relevant to the voucher and concerns raised by the judge. The CJA Committee will issue a written recommendation to the judge.

6. Mentoring

A mentoring program overseen by the CJA Coordinating Attorney and PADR will be administered in compliance with Section X.

IX. Establishment of a CJA Panel

A. Approval of CJA Panel

The existing, previously established panel of attorneys under the previous CJA Plan is hereby recognized. The Panel will consist of two groups – the General Panel and the Training Panel.

B. Size of CJA Panel

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

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

C. Qualifications and Membership on the CJA Panel

1. Application

Application forms for membership on the CJA Panel are available from the FPDO from the beginning of April to the end of June. In exceptional circumstances, the CJA Committee may accept out of cycle applications.

2. Equal Opportunity

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

3. Eligibility

a. Applicants for the CJA Panel must be members in good standing of the federal bar of this district, the North Carolina state bar and the Fourth Circuit Court of Appeals.

b. Applicants must maintain (i) a primary, satellite, or shared office in this district; (ii) access to online or other computer-assisted legal research; (iii) a computer with unlimited internet access; (iv) an active account with this District's and the Fourth Circuit's CM/ECF electronic filing systems; (v) business voicemail, an answering service, or equivalent mechanism and a business telephone system with the

capability to accept collect calls from detention facilities.

General Panel 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 and 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, including:

(i) Two years or more experience practicing federal criminal law or five years or more experience practicing state law;

(ii) Significant trial experience, including serving as lead counsel in two or more jury trials (civil or criminal); and

(iii) Serving as either lead or "second chair" counsel in at least two federal felony criminal cases. Second chair participation means significant involvement in Bail Act issues, discovery review, defense investigation, witness interviewing, plea negotiations and/or trial preparation, and PSR review and sentencing preparation.

c. Training Panel applicants must demonstrate prior experience in criminal law, whether at the state or federal level, and must demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.

d. Even an applicant fulfilling all of the above qualifications is not guaranteed admittance to CJA Panel.

4. Appointment to CJA Panel

The CJA Committee will evaluate attorneys for membership on and reappointment to the CJA Panel and make recommendations to the Court. After considering these recommendations, the Court will appoint or reappoint attorneys to the CJA Panel. Due to the highly complex and demanding nature of capital and habeas corpus cases, special procedures will be followed for the eligibility and appointment of counsel in such cases. See Section XV of this Plan.

5. Terms of CJA Panel Members

Attorneys admitted to membership on the CJA Panel will each serve for a term of three years, subject to the removal and

reappointment procedures set forth in this plan.

6. Reappointment of CJA Panel Members

   a. The CJA Team 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 panel member who wishes to be considered for reappointment must apply during the annual application period immediately prior to the expiration of his or her current term.

   c. Reappointment to the CJA Panel is not automatic.

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

   e. The CJA Committee will also consider how many cases the panel member has accepted and declined during the review period, whether the member has participated in training opportunities, whether the member has completed the required federal criminal related CLE during the previous term (*see §* XII.B.4), whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of CJA panel members as set forth in this Plan.

7. Removal from the CJA Panel

   a. Mandatory removal

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

   b. Automatic disciplinary review

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

   c. Discretionary Removal. The CJA Committee may recommend to the District Court the removal of a panel attorney who fails to fulfill the obligations of CJA Panel membership.

d. Complaints

(i) CJA Complaint Subcommittee ("Complaint Subcommittee) consists of the FPD or delegee, CJA Coordinating Attorney, and the PADR.

(ii) Initiation

A complaint against a panel member may be initiated by the CJA Committee, a judge, another panel member, a defendant, or a member of the federal public defender office. A complaint need not follow any particular form, but it must be in writing, provide the complainant's identity and contact information, state the alleged deficiency with specificity, and provide supporting documentation, if available. Any complaint should be directed to the CJA Complaint Subcommittee, which will determine whether further investigation is necessary

(iii) Notice

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

(iv) Response

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

(v) Protective action

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

(vi) Review and recommendation

After investigation, the Complaint Subcommittee will forward the complaint to the CJA Committee who may dismiss the complaint, or take appropriate remedial action, including removing the attorney from the Panel, limiting the attorney's participation to particular types or categories of cases, directing the attorney to

complete specific CLE requirements before receiving further panel appointments, limiting the attorney's participation to handling cases that are directly supervised or overseen by another panel member or other experienced practitioner, or any other appropriate remedial action.

(vi) Final disposition by the Court

When removal is recommended the CJA Committee will forward its recommendation to the Chief Judge for consideration and final disposition.

(vii) Confidentiality

Information about complaints and potential disciplinary action will remain confidential unless otherwise directed by the Court or required by applicable ethical standards. Unless the complainant is a member of the judiciary, the complainant will receive only confirmation that the complaint was received.,

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

e. Notification

The FPD will be immediately notified when any member of the CJA Panel is removed or suspended.

D. Withdrawal and Inactive Status

1. Withdrawal.

An attorney may withdraw from the CJA Panel by submitting a letter to the FPD, as Chair of the CJA Panel Committee. The letter must include a list of pending appointments. Unless otherwise ordered by the Court, the panel attorney will remain responsible for representing clients in appointed cases until the Court enters an order appointing substitute counsel.

2. Inactive Status.

Members of the CJA Panel may voluntarily place themselves on inactive status. Panel attorneys must obtain approval from the CJA Coordinating Attorney to remain on inactive status for more than twelve months during one appointment term,

The FPD may place a member of the CJA Panel on inactive status based on the following considerations:

a. The need to achieve an appropriate distribution of appointed cases;

b. The pendency of an investigation by the CJA Complaint Subcommittee; or

c. Another specified reason consistent with the objectives and intent of this Plan.

X. Management of the Training Panel

A. Purpose of Training Panel

The Training Panel was established:

1. to provide promising attorneys with sufficient training, mentoring, and experience to enable them to meet the eligibility requirements of the CJA Panel and to excel at the provision of representation to indigent criminal defendants in the District;

2. to aid in recruitment of qualified attorneys from diverse backgrounds to serve on the CJA Panel; and

3. to ensure sufficient eligible attorneys are available within the District to maintain a high and consistent standard of excellence in representation for all indigent criminal defendants.

B. Open Application to the General Panel

1. At any time during their three-year term, a member of the Training Panel who meets the qualification requirements set forth in § IX.C.3 and the mentoring program requirements set forth in § X.C.4 may apply for membership to the General Panel, without regard to the annual open-application window referenced in § IX.C.1. The application must include an evaluation from the applicant's mentor. Any such application will be considered at a time determined by the chair of the CJA Committee, but no later than the next regularly scheduled meeting of the CJA Committee.

2. A member of the Training Panel who applies for and is denied admission to the General Panel may continue to serve the remainder of their term on the Training Panel, and may reapply for admission to the General Panel at any time during the remainder of their term.

C. Operation of Training Panel and Duties and Obligations of Membership

1. Appointment to Non-Felony Cases

Members of the Training Panel are authorized to accept CJA appointments for non-felony cases, including Supervised Release Violation and Central Violations Bureau cases.

2. Second Chair Appointments in Felony Cases

Members of the Training Panel may also be appointed as second chair to felony cases where appropriate.

3. Training

a. Orientation for New Members

(i) The CJA Coordinating Attorney shall organize orientation sessions at least annually for new members to the Panel.,.

(i) Training Panel members must attend an orientation session within their first year and will not be appointed to cases until such attendance is complete..

b. Additional Training Events

(i) The CJA Coordinating Attorney shall ensure that additional training opportunities are reasonably available for Training Panel members.,.

(i) The CJA Coordinating Attorney, the FPD, or the PADR shall have the discretion to make attendance at any training event mandatory for Training Panel members, subject to reasonable accommodation.

4. Mentoring Program

a. The CJA Coordinating Attorney, in conjunction with the PADR, shall create and administer a mentoring program for first term members of the Training Panel. The FPD may provide guidance to mentors as appropriate.

b. Mentors shall be experienced and respected criminal defense attorneys who have practiced extensively in federal court.

c. Responsibilities of Mentors

Mentors shall make themselves reasonably available to their mentees for advice and guidance and shall provide their

mentees with opportunities to serve as second-chair counsel, as defined in Section IX.C.3.b(iii) of this Plan.

d. Responsibilities of Mentees

Mentees must actively participate in the mentoring program and shall be responsible for taking advantage of mentoring opportunities provided them by their mentors, diligently performing all duties and responsibilities of second-chair counsel as assigned by their mentors, and making arrangements with their mentors as needed to receive advice and guidance.

D. Compensation of Training Panel Members

1. Non-Felony Cases

In non-felony cases where counsel has been appointed under the CJA, Training Panel members shall be compensated under the same terms and guidelines as a member of the CJA Panel.

2. Second Chair Cases

Training Panel members appointed as second-chair counsel shall be compensated at half the rate as lead counsel unless the Court determines the case to be unusually difficult, in which case the Training Panel member will be compensated at the prevailing hourly rate under the CJA.

3. Training, Consulting with Mentors, and Other Non-representation Duties

Generally, Training Panel members shall not be compensated for any functions that do not directly involve representation under the CJA. At its discretion, however, the Court may choose to provide compensation from the Court's Bar and Bench fund for some non-representational functions, at a rate determined by the Court,

E. Removal from Training Panel

1. A member of the Training Panel shall be subject to the removal provisions set forth in § IX.C.7.

2. Other than unethical conduct, malpractice, or similarly egregious issues, it is generally expected that complaints or concerns regarding Training Panel members that do not involve unethical conduct or malpractice will be referred to their mentor to address in context of the mentoring relationship.

XI. CJA Panel Attorney Appointment in Non-Capital Cases

A. Appointment List

The CJA Coordinating Attorney will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience. Panel attorneys are required to timely provide updated contact information to the FPD CJA Team.

B. Appointment Procedures

1. The FPD is responsible for overseeing the appointment of cases to panel attorneys. The FPD will maintain a record of panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the FPDO and panel attorneys.

2. Appointment of cases to CJA panel members will ordinarily be made on a rotational basis, subject to the Court's, the FPD's, or CJA Coordinating Attorney's discretion to make exceptions due to conflict of interest, the nature and complexity of the case, an attorney's experience, the attorney's availability, and geographical or other relevant considerations. This procedure should strive for a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each person eligible for representation under the CJA.

3. Under special circumstances the Court may appoint a member of the bar of the Court who is not a member of the CJA Panel. Such special circumstances may include cases in which the Court determines that the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason. It is not anticipated that special circumstances will arise often, and the procedures set forth in the Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed. Appointments made under this section will be reported to the CJA Coordinating Attorney

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

XII. Duties of CJA Panel Members

A. Standards and Professional Conduct

1. CJA panel members must provide high quality representation consistent with the best practices of the legal profession and

commensurate with those services rendered when counsel is privately retained. See Polk County v. Dodson, 454 U.S. 312, 318 (1981) ("'Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.'" (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980))).

2. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, as guided by the following authorities as relevant;

   a. Federal Adaptation of the National Legal Aid and Defender Association's *Performance Guidelines for Criminal Defense Representations*;

   b. The American Bar Association's *Criminal Justice Standards for the Defense Function* and *Model Rules of Professional Conduct;*

   c. Code of Conduct for Federal Public Defender Employees;

   d. North Carolina's *Rules of Professional Conduct;*

   e. North Carolina Commission on Indigent Defense Services *Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level;*

   f. Any other standards published by the FPD.

3. CJA panel members must notify the Chair of the CJA Committee within 30 days when any licensing authority, grievance committee, or administrative body has taken action against them, or when a finding of contempt, sanction, or reprimand has been issued against the panel member by any state of federal court.

B. Training and Continuing Legal Education

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

2. Attorneys on the CJA Panel are expected to attend trainings coordinated by the CJA Coordinating Attorney.

3. Attorneys on the CJA Panel will be guided in their practice by the Federal Adaptation of the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense

Representations.

4. CJA panel members must attend 12 continuing legal education hours relevant to federal criminal practice every two years.

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

C. Mentorship

a. General panel members must be willing to serve (i) as a mentor and lead counsel to attorneys on the CJA Training Panel; (ii) on CJA training programs for the district; **or** (iii) on the CJA Committee.

b. Training panel members must actively participate in the mentorship program set forth in § X.

D. Facilities and Technology Requirements

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

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

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

E. Continuing Representation

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

proceed pro se; or until the appointment is terminated by court order.

F. Miscellaneous

1. Case budgeting

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

2. No receipt of other payment

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

3. Redetermination of need

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

XIII. Compensation of CJA Panel Attorneys

A. Policy of the Court Regarding Compensation

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

B. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the court's eVoucher system.

2. The use of interim vouchers is encouraged.

3. Claims for compensation should be submitted no later than 45 days after final disposition of the case, unless good cause is shown.

4. The CJA Team will review the claim for mathematical and technical accuracy and for conformity with Guide, Vol. 7A and, if correct, will forward the claim for consideration and action by the presiding judge.

5. Absent extraordinary circumstances, the court should act on CJA compensation claims within 30 days of submission, and vouchers should not be delayed or reduced for the purpose of diminishing Defender Services program costs in response to adverse financial circumstances.

6. Any voucher cuts should be limited to mathematical errors, instances in which work billed was not compensable, was not undertaken or completed, and instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.

7. Except in cases involving mathematical corrections, no claim for compensation submitted for services provided under the CJA will be reduced without affording counsel notice and the opportunity to be heard.

8. The court, when contemplating reduction of a CJA voucher for other than mathematical reasons, may refer the voucher to the CJA Committee for review and recommendation before final action on the claim is taken. See Section VIII of this Plan.

9. Notwithstanding the procedure described above, the Court may, in the first instance, contact appointed counsel to inquire regarding questions or concerns with a claim for compensation. In the event that the matter is resolved to the satisfaction of the court and CJA panel member, the claim for compensation need not be referred to the CJA Committee for review and recommendation.

XIV. Investigative, Expert, and Other Services

A. Financial Eligibility

Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request such services in an *ex parte* application to the court as provided in 18 U.S.C. § 3006A(e)(1), regardless of whether counsel is appointed under the CJA. Upon finding that the services are necessary, and that the person is financially unable to obtain them, the court must authorize counsel to obtain the services.

Upon application of the party, a court may choose to have applications for investigative, expert, and other services considered by a non-presiding judge to help ensure appointed counsel's ability to obtain the necessary resources in a manner that does not unreasonably compromise or interfere with the exercise of sound independent professional judgment.

B. Applications

Requests for authorization of funds for investigative, expert, and other services must be submitted in an *ex parte* application to the court (using the court's eVoucher system) and must not be disclosed except with the consent of the person represented or as required by law or Judicial Conference policy.

C. Compliance

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

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

A. Applicable Legal Authority

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

B. General Applicability and Appointment of Counsel Requirements

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

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

3. Qualified counsel must be appointed in capital cases at the earliest possible opportunity. The USAO will notify the FPDO of all cases involving capital crimes and provide a list of attorneys who may be subject to a conflict of interest as soon as practicable and no later than when such cases are placed on the public docket, to permit the FPD to perform her or his obligations under 18 U.S.C. § 3005 and this plan.

4. Given the complex and demanding nature of capital cases, where appropriate, the court will utilize the expert services available through the Administrative Office of the United States Courts (AO), Defender Services Death Penalty Resource Counsel projects ("Resource Counsel projects") which include: (1) Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects

(for federal capital trials), (2) Federal Capital Appellate Resource Counsel Project, (3) Federal Capital Habeas § 2255 Project, and (4) National and Regional Habeas Assistance and Training Counsel Projects (§ 2254). These counsel are death penalty experts who may be relied upon by the court for assistance with selection and appointment of counsel, case budgeting, and legal, practical, and other matters arising in federal capital cases.

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

6. In appointing counsel in capital cases, judges should consider and give due weight to the recommendation made by the FPD and resource counsel and articulate reasons for not doing so.

7. The presiding judge may appoint an attorney furnished by a state or local public defender organization or legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief provided that the attorney is fully qualified. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed pro hac vice. 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 should comply with the American Bar Association's 2003 Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (Guidelines 1.1 and 10.2 et seq.), and the 2008 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases.

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

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

13. 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 should be directed to the AO Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030 or via email at ods_lpb@ao.uscourts.gov.

C. Appointment of Trial Counsel in Federal Death-Eligible Cases[1]

1. General Requirements

a. Appointment of qualified capital trial counsel must occur no later than when a defendant is charged with a federal criminal offense where the penalty of death is possible. See 18 U.S.C. § 3005.

b. To protect the rights of an individual who, although uncharged, is the subject of an investigation in a federal death-eligible case, the court may appoint capitally-qualified counsel upon request, consistent with Sections C.1, 2, and 3 of these provisions.

c. At the outset of every capital case, the court must appoint two attorneys, at least one of whom meets the qualifications for "learned counsel" as described below. If necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in a capital case. See 18 U.S.C. § 3005.

d. When appointing counsel, the judge must consider the recommendation of the FPD, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. See 18 U.S.C. § 3005.

e. In appointing counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.

f. To effectuate the intent of 18 U.S.C. § 3005 that the FPD's recommendation be provided to the court, the judge should ensure the federal public defender has been notified of the

[1] he 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.

need to appoint capitally-qualified counsel.

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

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

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

2. Qualifications of Learned Counsel

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

b. Learned counsel must meet the minimum experience standards set forth in 18 U.S.C. §§ 3005 and 3599.

c. Learned counsel should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high quality representation.

d. "Distinguished prior experience" contemplates excellence, not simply prior experience. Counsel with distinguished prior experience should be appointed even if meeting this standard requires appointing counsel from outside the district where the matter arises.

e. The suitability of learned counsel should be assessed with respect to the particular demands of the case, the stage of the litigation, and the defendant.

f. Learned counsel must be willing and able to adjust other

caseload demands to accommodate the extraordinary time required by the capital representation.

g. Learned counsel should satisfy the qualification standards endorsed by bar associations and other legal organizations regarding the quality of representation in capital cases.

3. Qualifications of Second and Additional Counsel

a. Second and additional counsel may, but are not required to, satisfy the qualifications for learned counsel, as set forth above.

b. Second and additional counsel must be well qualified, by virtue of their distinguished prior criminal defense experience, training and commitment, to serve as counsel in this highly specialized and demanding litigation.

c. Second and additional counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.

d. The suitability of second and additional counsel should be assessed with respect to the demands of the individual case, the stage of the litigation, and the defendant.

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

1. When appointing appellate counsel, the judge must consider the recommendation of the FPD, who will consult

with Federal Capital Appellate Resource Counsel to recommend qualified counsel.

2. In appointing appellate counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.

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

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

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

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

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

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

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

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

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

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

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

4. When appointing counsel in a capital § 2255 matter, the court should consider the recommendation of the FPD, who will consult with the Federal Capital Habeas § 2255 Project.

5. In appointing post-conviction counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.

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

7. Counsel in § 2255 cases should have distinguished prior

experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.

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

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

10. In evaluating the qualifications of proposed post-conviction § 2255 counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

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

1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 is entitled to the appointment of qualified counsel. See 18 U.S.C. § 3599(a)(2).

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

3. When appointing counsel in a capital § 2254 matter, the appointing authority should consider the recommendation of the FPDO who will consult with the National or Regional Habeas Assistance and Training Counsel projects. The FPD's recommendation may be to appoint the FPDO's CHU, a CHU from another district of 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, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.

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

6. In order for federal counsel to avail themselves of the full statute of limitations period to prepare a petition, the court should appoint counsel and provide appropriate litigation resources at the earliest possible time permissible by law.

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

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

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

10. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.

11. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to proposed counsel's commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to represent effectively the interests of the client.

XVI. Effective Date

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