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AUGUST 7, 2018

CLERK US DISTRICT COURT  
DISTRICT OF ARIZONA

BY s/ M. Everette DEPUTY

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

In the matter of  
  
PLAN FOR COMPOSITION,  
ADMINISTRATION AND  
MANAGEMENT OF THE PANEL OF  
PRIVATE ATTORNEYS UNDER THE  
CRIMINAL JUSTICE ACT

GENERAL ORDER 18-12

**SUPERSEDES GENERAL ORDER 16-22**

The Judges of this District have adopted the attached Plan for the Composition, Administration and Management of the Panel of Private Attorneys under The Criminal Justice Act which was approved by the Ninth Circuit Judicial Council on July 17, 2018.

**IT IS THEREFORE ORDERED** that the Criminal Justice Act Plan attached hereto, is adopted for use in the District of Arizona.

Dated this 7<sup>th</sup> day of August, 2018.



\_\_\_\_\_  
Raner C. Collins  
Chief United States District Judge

United States District Court  
For the District of Arizona  
Criminal Justice Act Plan

I. Authority

Under the [Criminal Justice Act \(CJA\) of 1964, as amended, 18 U.S.C. § 3006A](#), and the [Guide to Judiciary Policy \(Guide\), Volume 7A](#), the judges of the United States District Court for the District of Arizona adopt this CJA Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation.

II. Policy Statement

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](#)), the Ninth Circuit CJA Policies and Procedures, and the *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 Court Executive and Clerk of Court, the Office of the Federal Public Defender, and private attorneys appointed under the CJA (CJA Panel) must comply with the *Guide*, Vol. 7A, as approved by the Judicial Conference of the United States or its Committee on Defender Services, and with this Plan, the CJA policies of the Ninth Circuit Judicial Council, and any general orders or guidelines issued by the District of Arizona relating to the CJA.

2. The Clerk of Court will ensure that a current copy of the CJA Plan is made available on the Court's website and provided to each private attorney upon the attorney's designation as a member of the CJA Panel.

### III. Definitions

- A. "Representation" includes counsel and investigative, expert, and other services.
- B. "Appointed attorney" is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys and attorneys with the Office of the Federal Public Defender.
- C. "Court" means the United States District Court for the District of Arizona.
- D. "CJA Voucher Review Unit" refers to staff employed by the Clerk of Court to process and review CJA vouchers. The Unit is managed by the "CJA Administrator."
- E. "Panel Administrator" is the person designated by the Federal Public Defender to manage the appointment of cases to the CJA Panel.

### IV. Determining Eligibility for CJA Representation

#### A. Subject Matter Eligibility

##### 1. Mandatory

Representation must be provided for any financially eligible person who:

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

- f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
- g. is subject to a mental condition hearing under [18 U.S.C. chapter 313](#);
- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255;
- j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under [18 U.S.C. § 4109](#);
- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary

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

- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
- b. is seeking relief under [28 U.S.C. §§ 2241](#), [2254](#), or [2255](#) other than to set aside or vacate a death sentence;
- c. is charged with civil or criminal contempt and faces loss of liberty;
- d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;

- e. has been advised by the United States attorney or a law enforcement officer that they are the target of a grand jury investigation;
- f. is proposed by the United States attorney for processing under a pretrial diversion program; or
- g. is held for international extradition under [18 U.S.C. chapter 209](#).

3. Ancillary Matters

Representation may also be provided for financially eligible persons in ancillary matters appropriate to the criminal proceedings under 18 U.S.C. § 3006A(c). Such representation is compensable as part of the representation in the principal matter for which counsel has been appointed and is not considered a separate appointment for which a separate compensable maximum applies. 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 Office of 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, and where the defendant has not retained or waived counsel, the United States Attorney's Office will promptly notify, telephonically or electronically, appropriate court personnel, who in turn will notify the Office of the Federal Public Defender.
- (ii) When issuing a target letter, the United States Attorney's Office will notify the target in writing that the target may contact the Office of the Federal Public Defender if the target would like an attorney and cannot afford to retain private counsel. If the United States Attorney's Office is aware of a potential conflict, it must immediately notify the Office of the Federal Public Defender of the potential conflict to enable them to make the appropriate determination and to contact CJA counsel, if necessary.
- (iii) Employees of the United States Attorney's Office should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

(iv) In any potential death penalty prosecution, and in order for the Federal Public Defender to carry out its responsibilities pursuant to 18 U.S.C. § 3005 and 18 U.S.C. § 3599, the United States Attorney's Office shall provide prompt notification to the Federal Public Defender of any case where the death penalty may be sought or is a possible statutory sentence. This notification shall be before initial appearance or as soon as a complaint is filed and an accused is arrested.

c. Duties of the Office of the Federal Public Defender

The duties of the Office of the Federal Public Defender will be consistent with the Code of Conduct for Federal Public Defender Employees, set forth in the *Guide*, Volume 2A, Chapter 4.

d. Duties of Pretrial Services Office

The duties of the Pretrial Services Office will be consistent with the Court's general orders and the Memo of Understanding between the Pretrial Services Office and the Office of the Federal Public Defender.

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. Retroactive Appointment of Counsel

Appointment of counsel may be made retroactive to include representation provided prior to appointment. The Court's CJA Voucher Review Unit may, upon verification with the Office of the Federal Public Defender, assign as the date of appointment that date which the CJA Panel attorney was first contacted and agreed to represent the defendant.

VI. Provision of Representational Services

A. Office of the Federal Public Defender and Private Counsel

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

B. 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.

C. Number of Counsel

More than one attorney may be appointed in any case determined by the Court to be extremely difficult or when necessary in the interests 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 of this Plan](#).

VII. Office of the Federal Public Defender

A. Establishment

The Office of the Federal Public Defender was established in this district under the CJA and is responsible for rendering defense services on appointment throughout this District.

B. Supervision of Defender Organization

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

C. Training

The Federal Public Defender will assess the training needs of federal public defender staff and, in coordination with the CJA Panel Attorney District Representative (see Part VIII.A.3), the training needs of the local panel attorneys, and provide training opportunities and other educational resources.

## VIII. Establishment of CJA Panel

A. Approval

1. The Court will approve attorneys for membership on the CJA Panel after receiving recommendations from the Panel Selection Committee.
2. The existing, previously established CJA Panel lists of attorneys who are eligible and willing to be appointed to provide representation under the CJA are hereby recognized. These lists are contained in general orders of the Court and correspond to geographic area and representation type.
3. A CJA Panel Attorney District Representative (PADR) and back-up PADR will be selected from the CJA Panel list by the Chief Judge after consultation with the Federal Public Defender. The PADR will serve a three-year term and serve as the representative of the CJA Panel for the national Defender Services CJA PADR program.

B. Size

1. The size of the CJA Panel lists will be determined by the Court with input from the Panel Selection Committee, based on the caseload and activity of the panel members.
2. The CJA Panel must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that CJA Panel members will receive an adequate number of appointments to maintain their proficiency in federal

criminal defense work enabling them to provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.

C. Qualifications and Membership

1. Application

Application forms for membership or reappointment on the CJA Panel are available from the Office of the Federal Public Defender at [www.fpdaz.org](http://www.fpdaz.org) in the Courts and CJA Panel section. Completed applications will be submitted to the Federal Public Defender, who will transmit the applications to the appropriate Panel Selection Committee.

2. Equal Opportunity

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

3. Eligibility

- a. Applicants for the CJA Panel must be members in good standing of the federal bar of this District and the Ninth Circuit Court of Appeals.
- b. Except applicants for the appellate panels, applicants must maintain a primary, satellite, or shared office in this district.
- 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 Panel Selection Committee's consideration.

4. Term of Appointment

Members of the CJA Panel will serve for a term of three years with the opportunity to reapply for successive terms, but such service shall at all times be at the pleasure of the Court.

5. Reappointment

- a. The Office of the Federal Public Defender will notify CJA Panel members, prior to the expiration of their current term, of the need to apply for reappointment to the CJA Panel.
- b. A member of the CJA Panel who wishes to be considered for reappointment must apply for appointment to an additional term at least three months prior to the expiration of his or her current term.
- c. The Panel Selection Committee will solicit input concerning the quality of representation provided by lawyers seeking reappointment.
- d. The Panel Selection Committee also will 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 this Plan.

6. Removal from the CJA Panel

a. By the Court

A member of the CJA Panel may be removed from the Panel prior to expiration of his or her term whenever the district judges sitting in Tucson or Phoenix so determine.

b. 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.

c. Automatic disciplinary review

The Panel Selection 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.

d. Notification

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

7. Removal from a Case

A member of the CJA Panel may be removed from an individual case if the presiding district judge deems it necessary.

## IX. CJA Panel Selection Committees

### A. Establishment of CJA Panel Selection Committees

1. Two Panel Selection Committees will be established by the Court, by general order, one for the Phoenix/Prescott Division and one for the Tucson Division. The Federal Public Defender, or his or her designated representative, will be a member and serve as chair of the Panel Selection Committees. In addition, each Panel Selection Committee will consist of at least five members, but no more than seven members, exclusive of the representative of the Federal Public Defender, and shall be selected from the following categories of individuals:

a. For the Panel Selection Committee for the Phoenix/Prescott Division, at least two judges or commissioners of the Superior Court of Arizona who serve within the Phoenix/Prescott Division. For the Panel Selection Committee for the Tucson Division, at least one judge or commissioner of the Superior Court of Arizona who serves within the Tucson Division.

b. A county public defender representative from within the Division.

- c. A representative from the current CJA Panel.
  - d. At least one or more lawyers selected from the appropriate division.
2. Other than the Federal Public Defender, each member shall serve for a term of five years unless reappointed by the Court. Members' terms will be staggered to ensure continuity on the Panel Selection Committee.

B. Panel Selection Committee Duties

- 1. The Panel Selection Committee shall meet at least annually to consider applications for vacancies on the CJA Panel lists and review the continued eligibility of CJA Panel members. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies. The Committee will specify for each applicant whether it is recommending approval for the felony, misdemeanor, or appeal list, as needed.
- 2. At its annual meeting, the Committee shall review the operation and administration of the panel, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and panel management, including 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.
- 3. The Committee shall report annually as to the continued availability and willingness of each panel member to accept appointments.
- 4. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of a panel, the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval.

## X. CJA Panel Attorney Appointment in Non-Capital Cases

### A. Panel Lists

The Federal Public Defender's Panel Administrator 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, experience, and proficiency in the Spanish language.

### B. Appointment Procedures

1. Upon determination of the need for appointment of counsel, the district judge or magistrate judge shall notify the Federal Public Defender of the nature of the case and the need to locate counsel. The Federal Public Defender shall either (1) recommend appointment of counsel from the Office of the Federal Public Defender, or (2) locate and recommend for appointment a suitable and available CJA Panel member. The Court may then make the recommended appointment or, in its discretion, locate and appoint a different lawyer.
2. The Federal Public Defender's Panel Administrator will maintain a record of panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the federal public defender office and panel attorneys.
3. Appointment of cases to CJA Panel members will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, the Federal Public Defender may recommend counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel.
4. 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 Federal Public Defender.

## XI. CJA Panel Member Duties

### 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.
2. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to local rules, general orders, Arizona Rules of Professional Conduct, and other standards for professional conduct adopted by the court. Such conduct includes being accessible to clients by telephone.
3. CJA Panel members must notify within 30 days the chair of the Panel Selection Committee when any licensing authority, grievance committee, or administrative body has taken action against them, or when a finding of contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.

### B. Training and Continuing Legal Education

1. Attorneys on the CJA Panel are expected to remain current with developments in federal criminal defense law, practice, and procedure, including the Recommendation for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases.
2. Attorneys on the CJA Panel are expected to attend trainings sponsored by the Federal Public Defender.
3. CJA Panel members must participate annually in at least three (3) hours of continuing legal education relevant to federal criminal practice.
4. CLE must be completed by July 1 of the calendar year. Annual written CLE certification shall be submitted by each panel member to the Federal Public Defender, as Chair of the Panel Selection Committee, by September 15 of each calendar year. Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel.

C. Facilities and Technology Requirements

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

D. Continuing Representation

Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals (unless provided otherwise by the Ninth 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. If trial counsel prefers to withdraw in favor of new counsel for the appeal, trial counsel should move to withdraw in the Court of Appeals and ask for the appointment of substitute counsel but only after filing the notice of appeal in the district court and preserving the client's rights in the appeal.

E. Miscellaneous

1. Case budgeting

In non-capital representations of unusual complexity that are likely to become extraordinary in terms of cost, the case may be referred to a Ninth Circuit Case Managing Attorney (CMA) by any stakeholder (Judge, appointed attorney, CJA Administrator) for case budgeting, 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 in any type of legal 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.

4. Minimum number of appointments

Panel members are expected to accept a minimum of four appointments per year, absent extraordinary circumstances or acceptance of a very large or complicated case.

## XII. 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. Claims for compensation should be submitted no later than 45 days after final disposition of the case, unless good cause is shown.
3. The Court's CJA Voucher Review Unit will review all claims for reasonableness, mathematical and technical accuracy, and for conformity with the *Guide*, Vol. 7A and the District of Arizona Guidelines. After review, a claim will be forwarded for consideration and action by the presiding judge.
4. Absent extraordinary circumstances, the court should act on CJA compensation claims within 30 days of submission, and vouchers should not be delayed or reduced for the purpose of diminishing Defender Services program costs in response to adverse financial circumstances.
5. Counsel will be given notice and afforded an opportunity to respond within five days of reasonableness reduction recommendations exceeding \$300.00 per voucher. In the event a voucher is reduced

by the judicial officer, the claimant may seek further payment review either orally or in writing with the approving judicial officer. Counsel will be given notice of mathematical or technical reductions exceeding \$300.00 per voucher with no response allowed.

C. Delegated Authority

Authority to approve vouchers submitted to the court for payment pursuant to 18 U.S.C. § 3006A(d)(5), including those submitted for service providers, is delegated to the CJA Voucher Review Unit, subject to the following:

1. Total amount claimed for counsel's representation must be equal to or less than \$2,500 per voucher.
2. Total amount claimed for expert or other service providers up to \$800.00 per case without prior authorization, or with a maximum of \$2,000 per service provider where prior judicial authorization was received.
3. Vouchers exceeding case compensation maximums will be sent to the presiding judicial officer for approval, regardless of amount claimed.
4. A voucher reviewer as the approving official may not reduce or increase the amount payable for any reason other than to reflect a correction to a mathematical error.
5. Any voucher submitted in excess of \$2,500, as well as any voucher for which the reviewer identifies a reasonableness or other question, will be forwarded to the appropriate judicial officer for final review and approval.
6. Any claimant who wishes to object to or otherwise appeal the action taken by the voucher reviewer as approving official may file such objection or appeal with the appropriate judicial officer.

XIII. Investigative, Expert, and Other Services

A. Financial Eligibility

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

person is financially unable to obtain them, the court must authorize counsel to obtain the services.

B. Applications

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

C. Multi-Defendant Cases

In multi-defendant cases where multiple CJA attorneys are appointed, counsel must make all reasonable efforts to coordinate with each other to reduce costs, including coordinating and sharing discovery to the extent possible and making joint funding applications for investigators and other services. Such joint applications should be submitted by whichever attorney intends to coordinate and manage the service provider.

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

A. Applicable Legal Authority

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

B. General Applicability and Appointment of Counsel Requirements

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

2. Any person charged with a crime that may be punishable by death who is or becomes financially unable to obtain representation is entitled to the assistance of appointed counsel throughout every stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, competency proceedings, and proceedings for executive or other clemency as may be available to the defendant. See [18 U.S.C. § 3599\(e\)](#).
3. Qualified counsel must be appointed in capital cases at the earliest possible opportunity.
4. Given the complex and demanding nature of capital cases, where appropriate, the court will utilize the expert services available through the Administrative Office of the United States Courts (AO), Defender Services Death Penalty Resource Counsel projects (“Resource Counsel projects”) which include: (1) Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials), (2) Federal Capital Appellate Resource Counsel Project, (3) Federal Capital Habeas § 2255 Project, and (4) National and Regional Habeas Assistance and Training Counsel Projects (§ 2254). These counsel are death penalty experts who may be relied upon by the court for assistance with selection and appointment of counsel and legal, practical, and other matters arising in federal capital cases.
5. The Federal Public Defender should promptly notify and consult with the appropriate Resource Counsel projects about potential and actual federal capital trial, appellate, and habeas corpus cases, and consider their recommendations for appointment of counsel.
6. The presiding judge may appoint an attorney furnished by a state or local public defender organization or legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief provided that the attorney is fully qualified. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA Panel attorney or an attorney appointed pro hac vice. See [18 U.S.C. § 3006A\(a\)\(3\)](#).
7. All attorneys appointed in federal capital cases 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](#), as well as the *Guide*, Vol. 7A, the CJA policies of the Ninth Circuit Judicial Council, and any general orders or guidelines issued by the District of Arizona relating to the CJA.

8. All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.
9. As early as practicable after appointment, appointed counsel in capital cases shall contact a Ninth Circuit Case Managing Attorney to submit an initial case budget that will be subject to modification in light of facts and developments that emerge as the case proceeds. 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 also 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](mailto:ods_lpb@ao.uscourts.gov).
10. The Office of the Federal Public Defender is authorized by this Plan to provide assistance, consultation, information, and other related services to eligible persons and appointed attorneys in connection with state or federal capital proceedings.

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

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 Federal Public Defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. See [18 U.S.C. § 3005](#).
- e. To effectuate the intent of 18 U.S.C. § 3005 that the Federal Public Defender's recommendation be provided to the court, the judge should ensure the Federal Public Defender has been notified of the need to appoint capital-qualified counsel.
- f. Reliance on a list for appointment of capital counsel is not recommended because selection of trial counsel should account for the particular needs of the case and the defendant, and be based on individualized recommendations from the Federal Public Defender in conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel projects.
- g. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital trials to achieve high quality representation.
- h. In evaluating the qualifications of proposed trial counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

## 2. Qualifications of Learned Counsel

- a. Learned counsel must either be a member of this district's bar or be eligible for admission pro hac vice based on his or her qualifications.
- b. Learned counsel must meet the minimum experience standards set forth in [18 U.S.C. §§ 3005](#) and [3599](#).
- c. Learned counsel should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high quality representation.

- d. “Distinguished prior experience” contemplates excellence, not simply prior experience. Counsel with distinguished prior experience should be appointed even if meeting this standard requires appointing counsel from outside the district where the matter arises.
- e. The suitability of learned counsel should be assessed with respect to the particular demands of the case, the stage of the litigation, and the defendant.
- f. Learned counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
- g. Learned counsel should satisfy the qualification standards endorsed by bar associations and other legal organizations regarding the quality of representation in capital cases.

3. Qualifications of Second and Additional Counsel

- a. Second and additional counsel may, but are not required to, satisfy the qualifications for learned counsel, as set forth above.
- b. Second and additional counsel must be well qualified, by virtue of their distinguished prior criminal defense experience, training and commitment, to serve as counsel in this highly specialized and demanding litigation.
- c. Second and additional counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
- d. The suitability of second and additional counsel should be assessed with respect to the demands of the individual case, the stage of the litigation, and the defendant.

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

- 1. When appointing appellate counsel, the judge must consider the recommendation of the Federal Public Defender, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.

2. Counsel appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial.
  3. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.
  4. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital appeals to achieve high quality representation.
  5. Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals and capital appeals.
  6. At least one of the attorneys appointed as appellate counsel must have the requisite background, knowledge, and experience required by [18 U.S.C. § 3599\(c\) or \(d\)](#).
  7. In evaluating the qualifications of proposed appellate counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
  8. In evaluating the qualifications of proposed appellate counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.
- E. Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases ([28 U.S.C. § 2255](#))
1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2255 is entitled to appointment of fully qualified counsel. See [18 U.S.C. § 3599\(a\)\(2\)](#).
  2. 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.
  3. When appointing counsel in a capital § 2255 matter, the appointing authority should appoint the Office of the Federal Public Defender

to represent the petitioner unless the Federal Public Defender determines that a conflict exists or is otherwise unavailable.

4. If the Federal Public Defender has a conflict or is otherwise unavailable, the Federal Public Defender shall recommend the appointment of an out-of-district Federal Defender or Community Defender organization that has a Capital Habeas Unit (CHU) specializing in the representation of death-sentenced individuals in post-conviction proceedings.
5. If an out-of-district CHU is not available, the Federal Public Defender shall recommend private counsel who qualify for appointment under 18 U.S.C. § 3599 and this Plan. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.
6. Counsel in capital § 2255 cases should have distinguished prior experience in the areas of federal post-conviction proceedings, capital post-conviction proceedings, and, when possible, capital § 2255 representations.
7. 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.
8. 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. When appointing counsel in a capital § 2254 matter, the appointing authority should appoint the Federal Public Defender to represent the petitioner unless the Federal Public Defender determines that a conflict exists or is otherwise unavailable.

3. To ensure that representation is provided to persons under a sentence of death, the Federal Public Defender has the authority to perform the following functions:
  - a. Monitor and track capital litigation in the state and federal courts in Arizona;
  - b. Coordinate with other local, state, and national organizations providing legal support to death-sentenced individuals and counsel representing persons facing the death penalty;
  - c. Provide training to counsel representing persons facing the death penalty;
  - d. Provide assistance, consultation, information, and other related services to eligible persons and appointed attorneys in connection with state and federal capital proceedings, except that the Federal Public Defender may not represent a death-sentenced individual in state court without prior authorization of the Court.
4. If the Federal Public Defender has a conflict or is otherwise unavailable, the Federal Public Defender shall recommend the appointment of an out-of-district Federal Defender or Community Defender organization that has a Capital Habeas Unit (CHU) specializing in the representation of death-sentenced individuals in post-conviction proceedings.
5. If an out-of-district CHU is not available, the Federal Public Defender shall recommend private counsel who qualify for appointment under 18 U.S.C. § 3599 and this Plan. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.
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 areas of federal post-conviction proceedings, capital post-conviction proceedings, and, when possible, capital § 2254 representations.
9. 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.
10. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to proposed counsel's commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to represent effectively the interests of the client.

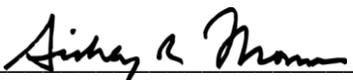
#### XV. Effective Date

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

ENTER FOR THE COURT ON July 17, 2018.

  
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CHIEF JUDGE, DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT ON July 17, 2018.

  
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CHIEF JUDGE, COURT OF APPEALS