

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY.

Pursuant to the Criminal Justice Act of 1964, as amended, (codified at section 3006A of title 18, United States Code, and hereinafter referred to as “the Act” or “the CJA”), section 3005 of title 18, United States Code, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (hereinafter “CJA Guidelines”), the Judges of the United States District Court for the District of Maryland adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation.

II. STATEMENT OF POLICY.

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all criminally accused persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the Act, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. The further objective of this Plan is to guide the implementation of the Act, the USA Patriot Improvement and Reauthorization Act of 2005 (18 U.S.C. § 3599), and the CJA Guidelines in a way that meets the needs of this district.

B. Compliance.

1. The Court and its constituent agencies, the Office of the Federal Public Defender, private attorneys appointed under the Act, and the United States and its attorneys shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. The Clerk of Court shall at all times keep posted on the Court’s official web site a current copy of this Plan. The Clerk shall maintain a current copy of the CJA Guidelines for the use of the members of the Panel of Private Attorneys under the Criminal Justice Act (the “CJA Panel” or the “Panel”).

III. DEFINITIONS.

- A. “Representation” includes counsel and investigative, expert, and other services.

- B. “Appointed Attorney” includes private attorneys appointed under the Act as well as the Federal Public Defender and his/her assistants or staff attorneys.
- C. “Judge” includes any United States District Judge or any United States Magistrate Judge.

IV. PROVISION OF REPRESENTATION.

A. Circumstance.

1. Mandatory. Representation shall 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 section 5031 of title 18, United States Code;
  - 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 (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
  - g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
  - h. is in custody as a material witness;
  - i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of title 28, United States Code;
  - j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of title 18, United States Code;
  - 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 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, other than to set aside or vacate a death sentence, under sections 2241, 2254, and/or 2255 of title 28, United States Code;
  - 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, and face loss of liberty;
- e. is proposed by the United States Attorney for processing under a pretrial diversion program;
- f. is held for international extradition under chapter 209 of title 18, United States Code;
- g. has standing to contest the forfeiture of property in a judicial civil forfeiture proceeding and is otherwise represented by counsel appointed under the CJA;
- h. is identified by the United States Attorney as the target of or a material witness in a proceeding that reasonably could result in the person's loss of liberty; or
- i. is or may be eligible for resentencing under an amendment to the United States Sentencing Guidelines.

- 3. Ancillary Matters. Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of section 3006A of title 18, United States Code.

B. When Counsel Shall Be Provided.

Counsel shall be provided to eligible persons as soon as feasible: (1) after they are taken into custody, (2) when they appear before a judge, (3) when they are formally charged or notified of charges if formal charges are sealed, (4) when they are notified by the United States Attorney or a federal law enforcement agency that they are the target of a proceeding that reasonably could result in their loss of liberty, or (5) when a judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualifications of Counsel.

- 1. Number. The CJA Panel is segregated by function into three distinct panels: Felony, Capital, and Misdemeanor (see PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT, also referred to as the "Appendix"). Upon order of the Court, an attorney from the appropriate panel shall be appointed. In an unusually complex case, upon motion of counsel, a second attorney may be appointed by the Court. In any case where a defendant by statute may be eligible for imposition of the death penalty, the defendant shall be provided two attorneys under 18 U.S.C. § 3005 as required by *United States v. Boone*, 245 F.3d 352 (4th Cir. 2001). At least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

2. Qualifications. In general, qualifications to serve as appointed counsel under the CJA will be determined by the Court and its standing Criminal Justice Act Committee having previously reviewed and considered the applicant's trial experience and federal criminal practice experience. An applicant lacking federal criminal practice experience, but otherwise qualified, may be referred to the CJA Mentor Program to gain additional federal criminal practice experience before being considered for admission to a CJA panel. In any case where the defendant may be eligible for the imposition of the federal death penalty, the Court is required under 18 U.S.C. § 3005 to consider the recommendation of the Federal Public Defender when appointing counsel. The Federal Public Defender shall make his/her recommendation by nominating the membership of the Capital Panel through appropriate consultation with the CJA Coordinating Attorney. Except in extraordinary circumstances, at least one of the attorneys appointed to represent a death-eligible defendant shall be a member of the Capital Panel. Members of the Capital Panel should meet the qualifications set out in 18 U.S.C. § 3599. In any case arising under 28 U.S.C. §§ 2254 or 2255 in which the inmate is under a sentence of death, at least one attorney appointed should meet the qualification requirements set forth in 18 U.S.C. § 3599. In any case, pursuant to section 18 U.S.C. § 3599(d), the presiding judge, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.
3. Substitution of Counsel. A judge may, in the interest of justice, substitute one appointed attorney for another at any stage of the proceedings in this Court.

D. Determination of Need for Counsel.

1. Appearance in Court. In every case in which a person entitled to representation pursuant to this Plan appears without counsel, the judge shall advise the party of the right to be represented by counsel throughout the case, and that counsel will be appointed on his/her behalf if the party so desires and is financially unable to obtain counsel.
2. Fact Finding. The determination of eligibility for representation under the Act is a judicial function to be performed by a judge after making appropriate inquiries concerning the person's financial condition. All statements made by a defendant in such financial inquiry shall be either (a) by affidavit sworn to before a judge or the Court Clerk or his/her deputy, (b) by certification under penalty of perjury, or (c) under oath in open court before a judge.
3. Change in Circumstances. If, at any stage of the proceedings, the judge finds that the defendant is financially unable to pay his/her retained counsel and is unable to obtain other counsel, the judge may appoint counsel in accordance with the general procedure set forth in this Plan. The judge will not appoint the attorney previously retained unless an inquiry has been made into the fee agreement and prior payments

to the attorney, and the judge finds that the interests of justice necessitate the appointment of the previously retained attorney.

4. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains nonprivileged information that a client is financially able to make payment, in whole or in substantial part, for legal or other services in connection with his/her representation, counsel shall advise the Court.
5. Questions Regarding Financial Eligibility. Under CJA Guideline 2.04, all questions regarding financial eligibility shall be resolved in favor of furnishing representation to the accused. Erroneous determinations may be corrected at a later date through an order requiring the defendant to reimburse the United States Treasury for part or all of such costs.
6. Challenges to Financial Eligibility. In any circumstance where an individual's financial eligibility under the Act is challenged, the determination of the individual's right to have appointed counsel shall be made by a judge of this Court.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION.

- A. The Federal Public Defender's Office for the District of Maryland, previously established in this district pursuant to the provisions of the CJA, is hereby recognized as the federal public defender organization for this district.
- B. The Federal Public Defender shall provide legal services consistent with the CJA throughout the district and shall maintain offices in each division of the district.
- C. The Court, in its discretion, will determine whether any party entitled to representation will be represented by the Federal Public Defender or by another appointed attorney. Ordinarily, in multiple defendant cases, the Federal Public Defender shall be appointed to represent the allegedly most culpable defendant requiring the appointment of counsel.
- D. The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender's Office. Accordingly, the Federal Public Defender shall be appointed in all cases assigned to that office. Subsequent assignment to assistants and staff attorneys will be made at the discretion of the Federal Public Defender.
- E. Neither the Federal Public Defender nor any assistant or staff attorney may engage in the private practice of law except as permitted by the Code of Conduct for Federal Public Defenders. The Federal Public Defender shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by the Director, reports of the activities, the financial position, and the proposed budget of the organization. Copies of such reports shall be furnished to this Court and to the Judicial Council of the Fourth Circuit.
- F. The Federal Public Defender shall furnish to the Court the roster of the personnel of his/her office and shall thereafter report any changes therein.

- G. The Federal Public Defender shall assist the Court in managing the CJA Panel by serving as a member of the Court's standing Criminal Justice Act Committee and, subject to that Committee's oversight, shall coordinate the training of CJA Panel members.

VI. PRIVATE ATTORNEYS.

- A. Establishment of CJA Panel(s). Pursuant to an earlier version of this Plan and procedures adopted by the Court, panels of private attorneys designated to represent persons in felony, capital, and misdemeanor cases, respectively, have been established and are now recognized under this Plan. Their members shall be appointed in appropriate circumstances to represent persons under the CJA.
- B. Organization. The PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT is found in the Appendix to this CJA Plan.
- C. Appointment of Panel Attorneys. In circumstances where it is necessary and appropriate to appoint a panel attorney in a case, selection of the panel attorney to be appointed should be made on a rotational basis, subject to the Court's authority to appoint any licensed attorney as the interests of justice may require. The individual to be represented does not have the right to select appointed counsel from the panel of attorneys or otherwise.
- D. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the Act. "Substantial" shall usually be defined as approximately 25% of the appointments under the Act annually throughout the district. For the sole purpose of allocation of cases between panel attorneys and the Federal Public Defender, a "case" shall be deemed to be (1) each person for whom a separate appointment of counsel has been made by the Court pursuant to the Act, and (2) each new trial following motion, mistrial, reversal, or remand on appeal. While this ratio may be monitored by the Court, the presumption is that the Federal Public Defender shall in each case be appointed to represent the allegedly most culpable defendant requiring appointed counsel.
- E. CJA Coordinating Attorney. To assist the Court in the discharge of its responsibilities under the Act, and to administer the CJA panels, the Court may appoint a CJA Coordinating Attorney. The CJA Coordinating Attorney shall be employed by and report to the Court and shall not be an employee of the Federal Public Defender. The CJA Coordinating Attorney shall perform those functions assigned to her/him in this Plan and the Appendix hereto, as well as other duties relating to administration of the Act.

VII. APPOINTMENTS IN CONNECTION WITH REQUESTS FOR RELIEF UNDER 28 U.S.C. §§ 2241, 2254, OR 2255.

- A. Appointment of Counsel. Any person seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 may apply to the Court to be furnished representation based on a showing (1) that the interests of justice so require and (2) that such person is financially eligible for appointment of counsel.
- B. Form of Application. Applications for appointment of counsel under 28 U.S.C. §§ 2241, 2254, and 2255 shall be verified and in such written form as is prescribed by the Judicial Conference of the United States. If the party applicant is not before the Court, the Court may, without requiring the personal appearance of the party for such purpose, act on the basis of the form alone or the form as supplemented by such information as may be made available by an officer or custodian or other responsible person, provided that such information is also made available to the party.
- C. Approval of Application for Appointed Counsel. The Court may approve such representation upon a determination that the interests of justice so require and that such person is financially eligible for appointment of counsel. The order for appointment of counsel shall be referred to the CJA Coordinating Attorney for assignment of qualified counsel, who may or may not be a member of a CJA panel.

VIII. APPOINTMENTS IN CONNECTION WITH CAPITAL HABEAS CASES UNDER 28 U.S.C. §§ 2254 OR 2255.

- A. Appointment of Counsel. Upon proper application, counsel shall be appointed to represent financially eligible persons seeking habeas corpus relief in death penalty proceedings under 28 U.S.C. §§ 2254 and 2255. The CJA Coordinating Attorney shall consult with the Federal Public Defender before recommending appointments under this section to the Court.
- B. Number and Qualifications of Counsel. Pursuant to 18 U.S.C. § 3599(a)(2), upon a petitioner's request, one or more qualified attorneys shall be appointed to represent the person seeking habeas corpus relief. Due to the complex, demanding, and protracted nature of death penalty proceedings, the Court will consider appointing at least two attorneys.
- C. Case Budgeting. In each capital habeas case in which counsel is appointed under the Act, a case budget shall be required. The budget process shall be confidential, and representatives of the Executive Branch of the United States government shall not participate. Final expenditures under the Act in capital habeas cases shall be made public, as required by law. The budgeting process shall be managed by the CJA Coordinating Attorney. The final budget shall be approved by the Chief Judge or his/her designee. Any funding disputes will be returned to the CJA Committee for resolution and, if necessary, to the presiding judge whose decision shall be final. Interim payment orders will not be approved by the Court until a budget agreement is reached, except in extraordinary circumstances.
- D. Compensation of Counsel. The Court will order compensation of counsel appointed under 18 U.S.C. § 3599(a)(2) at such rates or amounts as the Court determines to be

reasonable, with due regard to the complexity of such cases and the skill required to provide effective representation, and subject to the limits established by law.

- E. Attorneys' Fees in Excess of \$100,000.00; Other Service/Expert Fees in Excess of \$7,500.00. Whenever attorneys' fees in excess of \$100,000.00, or expert or other service provider fees and expenses in excess of \$7,500.00, are approved by this Court as an element of a budget in a capital habeas case, such elements of the budget shall be referred to the Chief Judge of the Fourth Circuit, or his/her designee, for review pursuant to Judicial Conference policy. Counsel and the CJA Coordinating Attorney shall confer with the Fourth Circuit Case Budgeting Attorney (CBA) prior to referral of the budget to the Chief Judge.

#### IX. APPOINTMENTS IN CONNECTION WITH CAPITAL PROSECUTIONS.

- A. Notification of Eligibility for Capital Punishment. In order to conserve scarce resources, to facilitate good administration under the Act, and to ensure the appointment of qualified counsel, the United States Attorney's Office shall, consistent with other lawful obligations, promptly notify the Court and its CJA Coordinating Attorney that a death-eligible offense is charged or is to be charged.
- B. Appointment of Counsel. In death-eligible cases the CJA Coordinating Attorney shall propose an attorney for appointment after considering the recommendation of the Federal Public Defender. To assist the recommendation process, the Federal Public Defender shall maintain a list of lawyers qualified to serve in capital cases under 18 U.S.C. § 3599. (The names on this list, once approved by the CJA Committee and the Court, constitute the Capital Panel.) Ordinarily, the Court will then appoint the proposed attorney to represent the defendant. At his/her initial appearance, the defendant shall be advised of his/her right to be represented by two appointed attorneys, at least one of whom shall be learned in the law applicable to capital cases under 18 U.S.C. § 3005. If the defendant requests the appointment of two attorneys, then two attorneys shall be appointed as required by *United States v. Boone*, 245 F.3d 352 (4th Cir. 2001).
- C. Case Budgeting. Appointed counsel in capital prosecutions shall, in consultation with the CJA Coordinating Attorney, prepare and submit a budget detailing the costs reasonably expected to be incurred in the representation of the defendant, including attorneys' fees and expert and other costs. The budgeting process shall be managed by the CJA Coordinating Attorney. The final budget shall be approved by the Chief Judge or his/her designee. Any funding disputes will be returned to the CJA Committee for resolution and, if necessary, to the presiding judge whose decision shall be final. Some elements of the budget may require the approval of the Chief Judge of the Fourth Circuit or his/her designee.

#### X. DUTIES OF APPOINTED COUNSEL.

- A. Standards. The services and quality of representation provided by appointed counsel to their CJA clients shall be equal to that provided to their clients who retain them.



- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the Rules of Professional Conduct as they have been adopted by the Court of Appeals of Maryland.
- C. 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 of their client in the matter for which they have been appointed (or for other contemporaneous representation of their client in any other matter) unless such payment is approved by order of the Court, after consultation with the CJA Committee. Appointed counsel must make any such request to accept a fee in writing to the Court and to the CJA Committee. The Court, after consultation with the CJA Committee, will grant approval only in extraordinary circumstances, since allowing court-appointed counsel to accept payment from a client or his/her family creates an appearance of impropriety that may undermine the integrity of the judicial process and suggests that appointed counsel would not provide effective representation if he/she were compensated only under the CJA.
- D. Vouchers. Claims for compensation shall be submitted no later than 45 days after the final disposition of the case, unless good cause is shown. The CJA Coordinating Attorney shall ensure that panel attorneys are complying with this time limit. Counsel shall make every effort to submit claims as soon as possible after the completion of the services rendered. The Court will process claims for payment promptly.
- E. Continuing Representation. In the event that a defendant is convicted following trial, counsel appointed under the Act shall advise the defendant of any right of appeal and of the right to counsel. If requested to do so by the defendant, counsel shall file a timely notice of appeal and shall continue to represent the defendant unless and until relieved by the U.S. Court of Appeals for the Fourth Circuit.
- F. Case Budgeting. In death-eligible cases counsel shall prepare and submit budgets as required above. Upon the advice of the CJA Coordinating Attorney, the Court, in its discretion, may require appointed counsel to prepare and submit budgets in non-capital cases, particularly when such cases involve multiple defendants or otherwise appear to be complex and/or extended.

## XI. CRIMINAL JUSTICE ACT COMMITTEE.

- A. Duties. The CJA Committee shall: (1) ensure that the Court is generally discharging its duties under the Act, and in so doing shall endeavor to ensure that each indigent person entitled to representation under the Act in the District of Maryland is competently, zealously, and effectively represented; (2) ensure that public funds expended under the authority of the Act in the District of Maryland are conserved, wisely allocated, and subject to proper accounting; (3) provide supervision and guidance to the CJA Coordinating Attorney; (4) make a diligent effort to ensure that the CJA Panels reflects the diversity of the community, encouraging qualified attorneys to apply for membership on the CJA Panel without regard to race, color, religion, sex, age, national origin, sexual

orientation, or disabling condition; and (5) recommend to the Court the names of those attorneys who should be admitted to panel membership (and those who should be disqualified) after review of the qualifications of applicants and current members and, with respect to the panel of attorneys recommended for appointment in capital cases, after review of the Federal Public Defender's recommendations.

- B. Membership. The CJA Committee shall consist of at least three District Judges, at least two Magistrate Judges, the Federal Public Defender, the CJA Coordinating Attorney, and at least two panel representatives, at least one of whom has a principal office located in the Northern Division and at least one of whom has a principal office located in the Southern Division.
- C. Meetings. The CJA Committee shall meet regularly and adhere to an annual schedule as set forth in the Appendix.
- D. Agenda and Minutes. The CJA Coordinating Attorney shall prepare, distribute, maintain, and archive the agendas and minutes of each meeting of the CJA Committee and its constituent subcommittees. The Committee's deliberations and minutes shall be confidential.

## XII. FUNDING FOR EXPERT, INVESTIGATIVE, OR OTHER SERVICES.

In consultation with the CJA Coordinating Attorney, the Court shall ensure that expert, investigative, and other necessary services are available to financially eligible persons to the extent allowed under the Act.

## XIII. MISCELLANEOUS.

- A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts or standard forms approved by the CJA Committee, shall be used, where applicable, in all proceedings under the Plan.
- B. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this Court.

## XIV. EFFECTIVE DATE.

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

ENTERED FOR THE COURT ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015.

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CATHERINE C. BLAKE

CHIEF JUDGE, UNITED STATES DISTRICT COURT  
APPROVED BY THE JUDICIAL COUNCIL OF THE FOURTH CIRCUIT ON THE \_\_\_\_ DAY  
OF \_\_\_\_\_, 2015.

See, Order of Judicial Council of the Fourth Circuit.

Appendix to the CJA Plan for the District of Maryland

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

I. CRIMINAL JUSTICE ACT (“CJA”) COMMITTEE

- A. Composition and Meetings. The CJA Committee shall be composed pursuant to the Court’s CJA Plan and shall meet regularly.
- B. Agenda. The CJA Coordinating Attorney shall prepare and circulate the agenda each month to the Committee members. Any Committee member may request that an item be added to the agenda. The agenda shall contain the relevant item from the CJA Committee’s annual schedule.
- C. Annual Schedule. To the extent reasonably possible, the CJA Committee will take up the listed items according to the following schedule:
1. January: review mentor program progress and panel attorney performance for the past year; review 1,000 hour report; review allocation of appointments among panel members;
  2. February: continue review of panel attorney performance and consider removal of panel members, if necessary;
  3. March: review of number/diversity/geographical location/special needs for panel composition;
  4. April: consider applications to felony panel and term renewals;
  5. May: continue consideration of panel applications;
  6. June: review CJA appointments and voucher procedures; review allocation of assignments between FPD and panel; FPD report on panel training;
  7. July: no regular meeting;
  8. August: no regular meeting;
  9. September: review of presumptive rates, procedures for requesting expert or investigative services, and consideration of related problems or concerns regarding experts or investigators;
  10. October: review/discuss annual mailing to panel attorneys; report on panel member diversity initiative;
  11. November: review budget matters;
  12. December: FPD report on panel training session; review allocation of assignments to panel members; review/discuss long-range planning.
- D. Panel Applications
1. Misdemeanor Panel Applications. The CJA Committee shall consider applications to the Misdemeanor Panel each month. The CJA Coordinating Attorney shall

review each application to ensure that the applicant is a member in good standing of the bar of this Court.

2. Felony Panel Applications. The CJA Committee shall consider applications to the Felony Panel each year in April and May. With respect to former Assistant Federal Public Defenders, former Assistant U.S. Attorneys, and other attorneys with obviously superior qualifications, applications may be considered at any time. Felony Panel applications will be considered along with the term renewal applications. The CJA Coordinating Attorney shall review each application, check the references supplied by each applicant, and make any further inquiry deemed necessary to an informed consideration of the application. The CJA Coordinating Attorney shall forward all pending applications to the Committee and provide additional information from the reference checks.
  3. Term Renewal Applications. The CJA Coordinating Attorney shall advise the Committee of the results of the judicial survey regarding a panel attorney's performance prior to consideration of the attorney's term renewal application.
  4. Capital Panel Membership. Consistent with the procedures set out in the Court's CJA Plan, the Federal Public Defender shall recommend the membership of the Capital Panel and, upon such recommendation and with the approval of the Committee and the Court, an attorney may become a member of the Capital Panel at any time.
- E. Vacancies on Panel. 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 CJA panel, the Committee shall solicit applications for the vacancies, convene to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval. Members selected in this fashion shall serve until the expiration of the term that was vacated.

## II. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

### A. CJA Panels.

1. Number. The Court has established three panels: Felony, Capital, and Misdemeanor.
2. Approval. The Court shall approve for membership on the panels (hereinafter referred to as the "Felony Panel," the "Capital Panel," and the "Misdemeanor Panel") private attorneys who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the panels after receiving recommendations from the CJA Committee. Capital Panel members must receive the recommendation of the Federal Public Defender. Members of the CJA panels serve at the pleasure of the Court.

3. Size. The CJA Committee shall periodically fix the size of the CJA panels. The panels shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work and thereby provide a high quality of representation.
4. Eligibility. Attorneys who serve on the CJA panels must be members in good standing of the federal bar of this district. To be considered for membership on the Felony Panel, attorneys must have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the United States Sentencing Guidelines.
5. Appointments. Generally, an attorney must be a member of the appropriate panel to be appointed on a CJA case. However, when the trial judge (or the Chief Judge or his/her designee if a judge has not yet been assigned to the case for trial) determines that the appointment of an attorney who is not a member of the CJA Panel is in the interests of justice, judicial economy, continuity of representation, or some other compelling circumstance warranting such appointment, that attorney may be admitted to the CJA panel *pro hac vice* and appointed to represent the defendant. Consideration for preserving the integrity of the panel selection process requires that such appointments be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such skills and qualities as would qualify him/her for admission to the district's CJA panel in the ordinary course of panel selection.
6. Equal Opportunity. The CJA Committee shall make a diligent effort to ensure that the CJA panels reflect the diversity of the community, encouraging qualified attorneys to apply for membership on the CJA panels without regard to race, color, religion, sex, age, national origin, sexual orientation, or disabling condition. At least once each year, the CJA Committee shall review the results of diversity initiatives for panel attorneys in each category of this section.
7. Terms. The term for membership on the Felony Panel is three years. The Felony Panel is divided into three groups, equal in number. Members are assigned to one of the three groups on a random basis. Each year the CJA Coordinating Attorney shall circulate applications for renewal of panel membership to those Felony Panel members whose terms are expiring. The applications for renewal of Felony Panel membership shall be considered along with all pending applications by the CJA Committee in accordance with its annual schedule. The CJA Committee's panel membership decisions, including renewal or removal decisions, may be appealed to the *en banc* U.S. District Court.
8. Applications. Application forms for membership on the Misdemeanor Panel and Felony Panel shall be made available, upon request, by the CJA Coordinating Attorney and made available on the Court's website. Completed applications shall

be submitted to the CJA Coordinating Attorney. The CJA Coordinating Attorney shall transmit the applications with recommendations to the CJA Committee in accordance with the Committee's annual schedule.

9. Training Requirement. Members of the Felony Panel are required to attend one training session per year. Training will be provided by the Office of the Federal Public Defender. One training session will be held in the Northern Division in May of each year, and one will be held in the Southern Division in November of each year. Attorneys may request permission from the CJA Committee to be absent from the annual training program for good cause. Permission to be absent generally will not be granted in consecutive years.
10. Removal from Panel. A member of a CJA panel may be removed from the Panel prior to the expiration of his or her term by the CJA Committee whenever the Committee determines that the member has failed to fulfill the obligations of Panel Membership or has engaged in other conduct that renders it inappropriate that he or she continue to serve as a Panel member.

All complaints concerning the conduct of Panel members shall be forwarded to the CJA Committee. After providing an opportunity for the Panel members to respond, and after making whatever inquiry it deems appropriate, the CJA Committee shall have the authority to remove the attorney from the Panel (by a majority vote) or to take such other action as it deems appropriate. The internal deliberations of the CJA Committee will be treated as confidential. However, the Panel member under review will be provided with a summary of the complaint, as well as a summary of the CJA Committee's final decision. During the course of the complaint review process outlined above, the CJA Committee has the discretion and authority to immediately suspend any further appointments to a Panel member under review. The decision of the CJA Committee to remove a Panel member may be appealed to the *en banc* U.S. District Court.

11. Mentor Program. The CJA Committee may refer applicants for the CJA Felony Panel to the mentor program. The applicants will be assigned to an Assistant Federal Public Defender or a Felony Panel member qualified by the CJA Committee to participate in the mentor program as a mentor. Applicants referred to the mentor program are not eligible to receive appointments independently and shall not be eligible to receive compensation for their services while participating in the mentor program. The program is designed to ensure that counsel have sufficient expertise in federal criminal procedure and the sentencing guidelines before admission to the Felony Panel. It shall be the duty of the mentor attorney to notify the CJA Committee regarding the progress and capability of the applicant.

### III. SELECTION FOR APPOINTMENT

- A. Maintenance of CJA Database. The CJA Coordinating Attorney shall maintain a database listing all panel members. New attorneys shall be added to the database upon admission to the CJA panel.
- B. Method of Selection.
  - 1. Appointments. Appointments from the list of private attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical and timing considerations. This procedure is designed to achieve a balanced distribution of appointments and compensation among the members of the CJA panel, while ensuring a high quality of representation for each defendant.
  - 2. Notification of Need for Appointment of Counsel. Upon determination of need and qualification for appointment of counsel, the judge then presiding in the case, or his/her designee, shall order the appointment of counsel. Other participants in the criminal justice process shall assist the judge to the full extent appropriate given their role in the overall process.
  - 3. Notification of Conflicts. It is the duty of the Assistant United States Attorney ("AUSA") assigned to the case to notify the deputy clerk and/or the Court as to those panel members (or the Federal Public Defender) the AUSA reasonably believes have conflicts that preclude their representation in any particular case.
  - 4. Complex Cases. In any large or multiple defendant case where the trial is expected to last more than two weeks, the AUSA assigned to the case should contact the CJA Coordinating Attorney in advance so that counsel may be appointed in a timely manner.

### IV. COMPENSATION: FILING AND PAYMENT OF VOUCHERS

- A. Format of Claim.
  - 1. Worksheets or Billing Records. All vouchers must be accompanied by detailed worksheets or billing records. The worksheets or billing records shall be fully itemized with individual narrative entries showing the date of service, a precise description of the service, actual time consumed for the service in hours and tenths of hours, the name of the individual providing the service, and a calculation of rate and hours equaling the charge for the individual entry.
  - 2. Excess Compensation Claims. CJA Form 20 vouchers requesting payment in excess of the statutory maximum provided by the Criminal Justice Act shall include the panel attorney's written justification for why the case should be considered



“extended” or “complex” and why the excess payment is necessary to provide fair compensation. Justifications shall be submitted on a CJA Form 26 or in a typewritten memo that contains all of the information required in the CJA Form 26. A voucher seeking excess compensation will not be considered for processing and payment unless it is accompanied by a comprehensive CJA Form 26.

3. Claim for Final Interim Payment. Final interim payment vouchers shall set forth in detail the time and expenses claimed for the entire case, including all appropriate documentation. A statement shall be attached to the final voucher that reflects all compensation received to date and the amount of compensation due.
4. Expert Service Vouchers. Vouchers submitted for payment of service provider fees in excess of \$800.00 must have prior court approval. Applications for the ratification of expenses incurred without prior court approval are not looked upon with favor and will not be approved, except in the most unusual situations, and then not exceeding the limitations set forth in the Criminal Justice Act.
  - a. Claims Under \$2,400.00. Vouchers for service provider fees in excess of \$800.00 shall be accompanied by an order pre-approving the services or contain the presiding judicial officer’s signature in box 17 of the CJA Form 21.
  - b. Claims in Excess of \$2,400.00. All service provider fees in excess of \$2,400.00 must have the prior approval of the presiding judge and of the Chief Judge of the Circuit or his/her designee. Requests for payment of service provider fees in excess of \$2,400.00 must be accompanied by the judicial order granting pre-approval.
  - c. CJA 31 Vouchers. Vouchers submitted for payment of service provider fees in capital cases must have the approval of the presiding judge. The total fees and expenses paid to experts, investigators, or other service providers may not exceed \$7,500.00 without approval of the Chief Judge of the Fourth Circuit or his/her designee. The CJA Coordinating Attorney will maintain a tally of all fees in capital cases.

B. Interim Payments.

1. Felony Cases. Counsel may request interim payments in extended cases. The request shall be made in writing and contain sufficient detail to support the request. The request must be sent to the CJA Coordinating Attorney for review. The request will be forwarded to the presiding judge with the CJA Coordinating Attorney’s recommendation. Interim payment requests must be approved by the presiding judge and the Chief Judge of the Fourth Circuit or his/her designee.
2. Capital Cases. Absent extraordinary circumstances, interim payments will not be approved in capital cases without an agreement on the case budget. After approval

of the budget for counsel's fees, an order will be entered by the District Court approving interim payments to counsel. If the expected fees and expenses to experts and other service providers total more than \$7,500.00, the budget and interim payment order for service providers will be forwarded to the Chief Judge of the Fourth Circuit or his/her designee for approval. If the expected fees and expenses to service providers total less than \$7,500.00, in appropriate cases the presiding judge will approve the request for interim payments to service providers.

C. Voucher Approval.

1. CJA Form 20. Authority to act on all CJA Form 20 interim vouchers and all CJA Form 20 final vouchers up to the statutory maximum is delegated to the CJA Coordinating Attorney pursuant to the administrative order adopted on December 4, 1998, and filed in Misc. Docket 706. CJA Form 20 vouchers requesting payment in excess of the statutory maximum will be reviewed by the CJA Coordinating Attorney and forwarded with a recommendation to the presiding judge. The presiding judge will determine if excess payment is necessary to provide fair compensation in accordance with the CJA Guidelines. If excess payment is certified by the presiding judge, the voucher will be submitted to the Chief Judge of the Fourth Circuit or his/her designee for review and approval for payment.
2. CJA Form 21. Vouchers submitted for the final payment of service provider fees totaling \$800.00 or less will be reviewed by the CJA Coordinating Attorney. After review, the CJA Coordinating Attorney shall approve such amounts deemed reasonable and appropriate under the CJA Guidelines. Authority to act on vouchers for service provider fees with prior judicial approval in excess of \$800.00 is delegated to the CJA Coordinating Attorney within the total amount previously approved by the presiding judge. All vouchers for service provider fees in excess of \$2,400.00 will be reviewed by the CJA Coordinating Attorney and forwarded with a recommendation to the presiding judge for his/her certification. If certified, the voucher and all supporting documentation will then be forwarded to the Chief Judge of the Fourth Circuit or his/her designee for review and approval for payment.
3. CJA Form 30. Vouchers submitted for payment in capital cases will be reviewed by the CJA Coordinating Attorney and monitored for compliance with the budget. Vouchers that are reasonable and in compliance with the budget will be forwarded with a recommendation to the presiding judge for approval for payment.
4. CJA Form 31. Vouchers submitted for payment of service provider fees in capital cases must have the approval of the presiding judicial officer. If an interim payment order has been entered in the case, the vouchers will be reviewed by the CJA Coordinating Attorney and forwarded with a recommendation to the presiding judge for two-thirds payment of the requested fee. The CJA Coordinating Attorney will monitor all payments to service providers in capital cases. At the conclusion of the case, final interim payment vouchers shall be filed with the CJA Coordinating

Attorney. The CJA Coordinating Attorney will refer all non-attorney claims (together with a recommendation) to the presiding judge for action on the voucher claim. If the total payments for non-attorneys' fees and expenses is in excess of \$7,500.00, the final interim payment vouchers will be submitted to the Chief Judge of the Fourth Circuit or his/her designee for review and approval of the payment.

D. Voucher Reduction.

1. Notice of Proposed Reduction. Prior to the reduction of any voucher or denial of certification to the Chief Judge of the Fourth Circuit, the CJA Coordinating Attorney will notify the panel attorney of the reason for the reduction or denial and allow the attorney the opportunity to comment and present additional information in writing to the Court. Any reduction of a voucher or denial of certification shall be in writing and a copy provided to the panel attorney.
2. Request for Reconsideration. A request for reconsideration must be submitted to the CJA Coordinating Attorney within 10 calendar days of notification of the proposed reduction or denial of certification unless good cause is shown. The CJA Coordinating Attorney shall review the request for reconsideration and may grant it in full, in part, or not at all. Any decision shall be communicated to the panel attorney in writing.
3. Appeal of Denial of Reconsideration. Within 10 calendar days of such notice, the panel attorney may appeal the denial of reconsideration to the presiding judge. The appeal shall be submitted directly to the CJA Coordinating Attorney who shall refer the matter for decision, together with the complete voucher file, to the presiding judge. The presiding judge's decision on appeal shall be final.
4. Consultation with CJA Panel Representatives. At any time during the process of a proposed voucher reduction or denial of certification, the panel attorney, the CJA Coordinating Attorney, and/or the presiding judge may consult with a CJA Panel Representative to provide assistance in resolving the matter.

V. CASE BUDGETING

A. Capital Prosecutions.

1. Attorneys' Fees. After appointment in a capital case, attorneys must begin the budgeting process. The budgeting process will be supervised by the CJA Coordinating Attorney. The budgeting process prior to the death-authorization hearing at the Department of Justice will focus on expert and investigative fees, as the attorneys at this stage of the proceedings often do not have sufficient information to frame a knowledgeable request for attorneys' fees. The CJA Coordinating Attorney will contact defense counsel following their appointment in a death-eligible case and provide them with information on the budgeting process during the pre-authorization phase of a capital case.

2. Expert and Investigative Fees. The court will make every reasonable effort to hold expert and investigative fees to the \$7,500.00 statutory maximum during the period preceding the Department of Justice's determination of whether the death penalty will be sought. Counsel are urged to consider the statutory maximums for expert and investigative fees when submitting a proposed budget for the pre-authorization phase of a capital case. As with attorneys' fees, if the Department of Justice authorizes the United States Attorney's Office to seek the death penalty and a full case budget including all expert and investigative expenditures has not yet been approved, a post-authorization budget will be required.
3. Case Budget. No later than thirty days following DOJ authorization to seek the death penalty, counsel shall submit a budget request to the Chief Judge of the District Court, if one has not yet been submitted. A budget meeting shall be held as soon as possible following the receipt of the budget request with the Chief Judge or his/her designee. If the Chief Judge or his/her designee finds that a sufficient showing of a need for confidentiality is made, the budget meeting shall be held *ex parte*. The budget meeting shall be on the record but, if ordered by the Court, under seal. The CJA Coordinating Attorney shall assist the Court during the budget meeting. After the meeting, the CJA Coordinating Attorney shall prepare a case memorandum for the Chief Judge detailing the budget agreement on expert witnesses and investigators. After consultation with the Fourth Circuit Case Budgeting Attorney, that memorandum and counsel's *ex parte* motion seeking authorization for investigative and expert expenses shall be forwarded to the Chief Judge of the Fourth Circuit or his/her designee for review and approval. The CJA Coordinating Attorney shall prepare a case budget order detailing the agreement regarding counsel fees and expenses. The case budget order shall be signed by counsel and approved by the Chief Judge of the District Court. The order, along with counsel's *ex parte* proposed case budget for attorneys' fees and expenses, shall be filed under seal.
4. Compliance. The CJA Coordinating Attorney shall monitor compliance with the budget and shall periodically advise the Court regarding the state of the budget. The Court views the expert and investigative budgets as a total budget allocation. Thus, within reason and justification, counsel will be allowed to reallocate funds from one expert expenditure to another expert expenditure in the same case, but only provided the net total is not increased.
5. Budget Modifications. Counsel are urged to view the case budget as an agreement between counsel and the Court that will not be modified except under the circumstances outlined in the agreement, or if an unanticipated change in circumstances materially alters the scope of the case. To this end, when submitting a budget, counsel should include any underlying assumptions upon which the budget request is based. This provides budget certainty but also allows counsel to seek a modification of the budget under enumerated circumstances or in the event

there are significant changed circumstances materially altering the assumptions upon which the original budget agreement is reached.

B. Capital Habeas Case Budgets.

1. Initial Appointment to Represent a Petitioner. At the initial appointment meeting, the hourly rates for appointed counsel will be negotiated, and an appointment order will be entered by the Court. Following the initial appointment meeting, the CJA Coordinating Attorney shall meet with appointed counsel and provide counsel with the information they will need to frame their budget request.
2. AO Software Package. Budget requests shall be submitted using the budget software provided by the Administrative Office of the U.S. Courts. The CJA Coordinating Attorney will provide the software to counsel.
3. Budget Request. Within ninety days of the initial appointment meeting, counsel shall file a case budget detailing the expected attorneys' fees and expert expenses. The CJA Coordinating Attorney shall review the budget request, and, if appropriate, shall negotiate the budget request with appointed counsel. Counsel are urged to note any special circumstances that might cause them to seek to amend the budget after it is approved.
4. Case Budget Meeting. A meeting with the Chief Judge of the District Court or his/her designee shall be held as soon as possible following the case budget submission. If a proper showing of a need for confidentiality is made, the meeting shall be held *ex parte* in chambers. The meeting shall be held on the record but, if ordered by the Court, under seal. The approved case budget will be filed under seal in the Court file.
5. Compliance. The CJA Coordinating Attorney shall monitor compliance with the budget and shall periodically advise the Court on the state of the budget.
6. Request to Amend the Budget. Any request for additional funding shall be sent to the CJA Coordinating Attorney. That request, along with his/her recommendation, shall be forwarded to the Chief Judge of the District Court or his/her designee. Absent special circumstances, counsel's request for additional funding will be denied.
7. Attorneys' Fees. After consultation with the Fourth Circuit Case Budgeting Attorney, capital habeas case budgets containing approved attorneys' fees totaling more than \$100,000.00 shall be forwarded to the Chief Judge of the Fourth Circuit or his/her designee for review and comment.
8. Expert/Investigative Fees and Expenses. After consultation with the Fourth Circuit Case Budgeting Attorney, capital habeas case budgets containing expert or investigative fees and expenses in excess of \$7,500.00 that have been certified by

the District Court as reasonably necessary to adequate representation shall be forwarded to the Chief Judge of the Fourth Circuit or his/her designee for review and approval.

- C. Complex Cases. Upon the advice of the CJA Coordinating Attorney, after conferring with the Fourth Circuit Case Budgeting Attorney, the Court in its discretion may require appointed counsel to prepare and submit budgets in non-capital cases, particularly when such cases involve multiple defendants or otherwise appear to be complex.

VI. ELECTRONIC VOUCHER PROCESS AND POLICY

[Reserved for future implementation]