

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE



PLAN FOR THE ADEQUATE
REPRESENTATION OF DEFENDANTS
PURSUANT TO THE CRIMINAL
JUSTICE ACT OF 1964

Effective April 15, 2020

1 AUTHORITY

Under the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, the *Guide to Judiciary Policy (Guide)*, Volume 7 and with reference to the Model CJA Plan (see Appendix 2A of the Guide, Vol. 7, Ch. 2), the Judges of the United States District Court for the District of Maine adopt this Plan, as approved by the First Circuit, for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

2 STATEMENT OF POLICY

2.1 OBJECTIVES

The objectives of this Plan are:

- 2.1.1 to attain the goal of equal justice under the law for all persons;
- 2.1.2 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
- 2.1.3 to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), and the *Guide to Judiciary Policy*, 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.

2.2 COMPLIANCE

- 2.2.1 The Court, its Clerk, the Federal Public Defender, and private attorneys appointed under the CJA must comply with the *Guide*, Vol. 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, and with this Plan.
- 2.2.2 The Court will ensure that a current copy of the CJA Plan is made available on the Court's website and provided to CJA counsel upon the attorney's designation as a member of the CJA panel of private attorneys (CJA Panel).

3 DEFINITIONS

3.1 REPRESENTATION

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

3.2 APPOINTED ATTORNEY

“Appointed attorney” is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys, attorneys in the mentoring program, the Federal Public Defender and staff attorneys of the Federal Public Defender organization.

4 DETERMINATION OF ELIGIBILITY FOR CJA REPRESENTATION

4.1 SUBJECT MATTER ELIGIBILITY

4.1.1 Mandatory

Representation shall be provided for any financially eligible person who:

- 4.1.1.1 is charged with a felony or with a Class A misdemeanor;*
- 4.1.1.2 is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;*
- 4.1.1.3 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);*
- 4.1.1.4 is under arrest, when such representation is required by law;*
- 4.1.1.5 is entitled to appointment of counsel in parole proceedings;*
- 4.1.1.6 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;*
- 4.1.1.7 is subject to a mental condition hearing under Chapter 23 of Title 18;*
- 4.1.1.8 is in custody as a material witness;*
- 4.1.1.9 is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255;*
- 4.1.1.10 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;*
- 4.1.1.11 is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or*
- 4.1.1.12 faces loss of liberty in a case and federal law requires the appointment of counsel.*

4.1.2 Discretionary

Whenever the Court determines that the interests of justice so require, representation may be provided for any financially eligible person who:

- 4.1.2.1 is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;*
- 4.1.2.2 is seeking relief under 28 U.S.C. § 2242, 2254 or 2255, other than to set aside or vacate a death sentence;*
- 4.1.2.3 is charged with civil or criminal contempt and faces loss of liberty;*
- 4.1.2.4 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;*
- 4.1.2.5 has been advised by the United States attorney or a law enforcement officer that they are the target of a grand jury investigation;*
- 4.1.2.6 is proposed by the United States attorney for processing under a pretrial diversion program;*
- 4.1.2.7 is held for international extradition under 18 U.S.C. Chapter 209; or*
- 4.1.2.8 has standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute and who has been represented by counsel appointed under 18 U.S.C. § 3006A in connection with a related criminal case.*

4.1.3 Ancillary Matters

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

- 4.1.3.1 to protect a constitutional right;*
- 4.1.3.2 to contribute in some significant way to the defense of the principal criminal charge;*
- 4.1.3.3 to aid in preparation for the trial or disposition of the principal criminal charge;*
- 4.1.3.4 to enforce the terms of a plea agreement in the principal criminal charge;*

- 4.1.3.5** *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*
- 4.1.3.6** *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).*

4.2 FINANCIAL ELIGIBILITY

4.2.1 Factual Determination of Financial Eligibility

- 4.2.1.1** *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.*
- 4.2.1.2** *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.*
- 4.2.1.3** *In determining financial eligibility, the Court may act upon statements made by the defendant under oath in open court, by sworn affidavit, or upon other information the Court deems reliable. The personal appearance of the defendant is not required.*
- 4.2.1.4** *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.*
- 4.2.1.5** *The initial determination of eligibility must be made without regard to the financial ability of the person's family to retain counsel unless the family indicates willingness and ability to do so promptly.*
- 4.2.1.6** *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.*
- 4.2.1.7** *Relevant information bearing on the person's financial eligibility should be reflected on a financial eligibility affidavit (Form CJA 23).*

4.2.1.8 *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). Appointed counsel shall be under a continuing duty to report to the Court any circumstance indicating that the defendant is financially able to make full or partial payment for CJA representation.*

4.2.1.9 *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.*

5 TIMELY APPOINTMENT OF COUNSEL

5.1 TIMING OF APPOINTMENT

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

5.1.1 after they are taken into custody;

5.1.2 when they appear before a magistrate judge or district judge;

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

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

5.2 COURT'S RESPONSIBILITY

The Clerk's Office, in cooperation with the Federal Public Defender and the United States Attorney, will make such arrangements with federal, state, and local investigative and police agencies as will ensure timely appointment of counsel.

5.3 PRETRIAL SERVICES INTERVIEW

When practicable and when it will not delay a defendant's initial appearance, financially eligible defendants will be provided appointed counsel prior to being interviewed by a pretrial services officer unless the right to counsel is waived.

5.4 RETROACTIVE APPOINTMENT OF COUNSEL

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

6 PROVISION OF REPRESENTATIONAL SERVICES

6.1 FEDERAL PUBLIC DEFENDER AND PRIVATE COUNSEL

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

6.2 ADMINISTRATION

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

6.3 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.

6.4 NUMBER OF COUNSEL

More than one attorney may be appointed in any case determined by the Court to be extremely difficult or where the nature of the case so requires or when other good cause is shown.

6.5 SEPARATE COUNSEL

The Court will appoint separate counsel for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

6.6 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 14 of this Plan.

7 FEDERAL PUBLIC DEFENDER ORGANIZATION

7.1 ESTABLISHMENT

The Federal Public Defender Organization of the District of Maine is established in this District under the CJA and is responsible for rendering high quality defense services on appointment throughout this District.

7.2 WORKLOAD

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

7.3 PROFESSIONAL CONDUCT

The Federal Public Defender Organization will conform to the standards of professional conduct, including but not limited to the Maine Rules of Professional Conduct and the Code of Conduct for Federal Public Defender Employees.

7.4 PRIVATE PRACTICE OF LAW

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

7.5 SUPERVISION OF DEFENDER ORGANIZATION

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

7.6 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, the training needs of the mentoring program and local panel attorneys and provide training opportunities and other educational resources.

8 CJA COMMITTEE

8.1 ESTABLISHMENT OF THE CJA PANEL COMMITTEE

8.1.1 A CJA Panel Committee (“CJA Committee”) will be established by the Court in consultation with the Federal Public Defender. The CJA Committee will consist of the Clerk of the District Court or designee who shall serve *ex officio*; the Federal Public Defender or designee who shall serve *ex officio*; the CJA Panel Attorney District Representative (PADR); a criminal defense attorney who practices regularly in the U.S. District Court located in Portland who may be a CJA panel member; a criminal defense attorney who practices regularly in the U.S. District Court located in Bangor who may be a CJA panel member; and a designee from the Maine Association of Criminal Defense Lawyers. Additional attorneys may be asked to serve on this Committee by the Chief Judge. All attorneys who serve on the CJA Committee must be members in good standing of the federal bar of this District.

8.1.2 The Federal Public Defender or their representative and the district’s PADR are permanent members of the CJA Committee.

Membership on the CJA Committee will otherwise be for a term of three years and may be extended for an additional three (3) years. Members’ terms will be staggered to ensure continuity on the CJA Committee. Members of the CJA Committee serve at the pleasure of the Court; and the Court may fill any vacancies that occur.

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

8.2 DUTIES OF THE CJA COMMITTEE

8.2.1 Membership

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

8.2.2 Emeritus Panel

Recommend to the Court a list of Emeritus Attorneys. See Section 9.3.6.

8.2.3 Recruitment

Engage in recruitment efforts to establish a diverse panel and ensure that all qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.

8.2.4 Updates

Provide an update to the Court once a year or from time to time and recommend any necessary or appropriate changes to the Court concerning:

8.2.4.1 the size of the CJA Panel;

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

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

8.2.5 Removal

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

8.2.5.1 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

8.2.5.2 has engaged in other conduct such that his or her continued service on the CJA Panel is inappropriate. See also Section 9.3.8.

8.2.6 Training

Assist the Federal Public Defender office in providing training for the mentoring program and the CJA Panel on substantive and procedural legal matters affecting representation of CJA clients.

8.2.7 Vouchers

Assist the Court, if requested, with voucher issues and review and make recommendations on the processing and payment of CJA vouchers, as required under this plan.

9 ESTABLISHMENT OF A CJA PANEL OF PRIVATE ATTORNEYS

9.1 APPROVAL OF CJA PANEL

- 9.1.1 The existing, previously established panel of attorneys who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.**
- 9.1.2 The Court will approve attorneys for membership on the CJA Panel after receiving recommendations from the CJA Committee.**

9.2 SIZE OF CJA PANEL

- 9.2.1 The size of the CJA Panel will be determined by the CJA Committee based on the caseload and activity of the panel members, subject to review by the Court.**
- 9.2.2 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.**
- 9.2.3 If, at any time, the number of vacancies significantly decreases the size of the CJA Panel, such that it affects the ability of the panel to provide representation to indigent defendants under the CJA, 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.**

9.3 QUALIFICATIONS AND MEMBERSHIP ON THE CJA PANEL

- 9.3.1 Application**
Application forms for membership on the CJA Panel are available from the Clerk's Office. Completed applications will be transmitted by the Clerk of Court to the CJA Committee.
- 9.3.2 Equal Opportunity**
All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.

9.3.3 Eligibility

- 9.3.3.1 *Applicants for the CJA Panel must be members in good standing of the bar of this Court.***
- 9.3.3.2 *Applicants must maintain a primary, satellite, or shared office in the District of Maine.***
- 9.3.3.3 *Applicants must possess strong litigation skills and demonstrate proficiency with the advisory federal sentencing guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence.***
- 9.3.3.4 *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.***
- 9.3.3.5 *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 CJA Committee's consideration.***

9.3.3.6 *Mentoring*

Less experienced attorneys or those new to federal practice who wish to be considered for appointment to the CJA Panel may apply to participate in a mentoring program facilitated by the Federal Defender's Office, the Clerk's Office, and the CJA Committee, with assistance from the United States Probation Office and the United States Attorney's Office. The mentoring program is designed to identify, mentor, and train viable candidates who wish to be considered for appointment to the CJA Panel.

9.3.4 Appointment to CJA Panel

After considering the recommendations of the CJA Committee, the Chief Judge will appoint or reappoint attorneys to the CJA Panel. Due to the highly complex and demanding nature of capital and capital habeas corpus cases, special procedures will be followed for the eligibility and appointment of counsel in such cases. See Section 14 of this Plan.

9.3.5 Terms of CJA Panel Members

Members shall serve two-year terms, which shall commence on February 1st of a given year. Note: when the panel was established originally under the Court's previous plan, terms of the panel were staggered to manage turnover and renewal.

Approximately one half of the panel will be eligible for readmission each year in order to assure staggered terms. Members seeking readmission should apply on or before December 31st of the year prior to the expiration of their membership term. Should a panel member's term expire while the panel member is appointed to represent a defendant, the panel member shall continue to represent that defendant until the conclusion of the representation.

9.3.6 Emeritus Panel Members

The CJA Committee will recommend to the Court a list of highly experienced attorneys who are willing to serve as CJA counsel on complex or difficult cases to supplement the depth of the panel. The Emeritus Panel will be comprised of attorneys who are not part of the regular rotation of CJA appointments, but who are willing to serve the Court on cases requiring specific experience and expertise. Emeritus attorneys must demonstrate proficiency equivalent to the annual training requirements of the regular CJA panel attorneys and serve indefinitely subject to the Court's discretion and the periodic review by the CJA Committee.

9.3.7 Reappointment of CJA Panel Members

9.3.7.1 *The Clerk's Office will notify CJA panel members, prior to the expiration of their current term, of the need to apply for reappointment to the CJA Panel.*

9.3.7.2 *A member of the CJA Panel who wishes to be considered for reappointment must apply for appointment to an additional term at least one month prior to the expiration of his or her current term. See 9.3.5.*

9.3.7.3 *The CJA Committee may solicit input concerning the quality of representation provided by lawyers seeking reappointment.*

9.3.7.4 *The CJA Committee may also 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.*

9.3.8 Removal from the CJA Panel

9.3.8.1 Mandatory removal

Any member of the CJA Panel who is suspended or disbarred from the practice of law by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, or by any other duly authorized tribunal, will be removed from the CJA Panel immediately.

9.3.8.2 Automatic disciplinary review

Consistent with the Court's Local Rule on attorney discipline, the Court 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 duly authorized tribunal or state or federal court.

9.3.8.3 No Property Interest

Panel members serve at the pleasure of the Court and no procedure under this plan creates a property interest in being on or remaining on the CJA Panel.

10 PANEL ATTORNEY APPOINTMENT IN NON-CAPITAL CASES

10.1 APPOINTMENT LIST

The Clerk's Office will maintain a current list of all attorneys included on the CJA Panel and qualified mentees, with current office addresses, email addresses, and telephone numbers. Panel members and mentees are responsible for keeping all contact information current.

10.2 APPOINTMENT PROCEDURES

10.2.1 The Court is responsible for overseeing the appointment of cases to panel attorneys. The Clerk's Office 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.

10.2.2 Appointment of cases to CJA panel members will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, the Court may appoint counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel or if such appointment is in the interest of justice, judicial economy or continuity of representation. The goal of this procedure is a fairly balanced distribution of appointments and compensation among members of the CJA panel.

10.2.3 Under special or compelling circumstances, the Court may appoint a member of the bar of this Court who is not a member of the CJA Panel. The Court may also appoint an attorney who is not a member of the bar of this Court *pro hac vice* to represent a CJA defendant. 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.

10.2.4 The Federal Defender will notify the Clerk's Office of those attorneys in the mentoring program who are eligible to be appointed to assist CJA counsel in a case. Mentees will be appointed on a rotational basis. Appointed mentees will be compensated at 50% of the authorized CJA attorney rate and are subject to the same voucher obligations as CJA attorneys. See section 12.

11 DUTIES OF CJA PANEL MEMBERS

11.1 STANDARDS AND PROFESSIONAL CONDUCT

- 11.1.1 CJA panel members must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. See *Polk County v. Dodson*, 454 U.S. 312, 318 (1981) (“Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.” (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980))).**
- 11.1.2 Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the Maine Rules of Professional Conduct.**
- 11.1.3 CJA panel members must notify the Court within 30 days when any licensing authority, grievance committee, or administrative body has taken action against them, or when a finding of contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.**

11.2 TRAINING AND CONTINUING LEGAL EDUCATION

- 11.2.1 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.**
- 11.2.2 Attorneys on the CJA Panel are expected to attend trainings sponsored by the Federal Public Defender.**
- 11.2.3 CJA panel members must attend continuing legal education hours relevant to federal criminal practice annually. Attorneys, in the year before admission to the panel and annually while on the panel, must attend a minimum of 6 hours of qualified training or continuing legal education (CLE) on criminal defense at least 2 hours of which must be devoted to federal sentencing including the advisory sentencing guidelines. Qualified electronic media such as videos or DVD replays of a CLE or online or distance learning programs may be used to satisfy up to half of the time requirement.**

11.3 FACILITIES AND TECHNOLOGY REQUIREMENTS

- 11.3.1 CJA panel attorneys must have facilities, resources, and technological capability to effectively and efficiently manage assigned cases.**
- 11.3.2 CJA panel attorneys must comply with the requirements of electronic filing and eVoucher.**
- 11.3.3 CJA panel attorneys must know and abide by procedures related to requests for investigative, expert, and other services.**

11.4 CONTINUING REPRESENTATION

Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals (unless provided otherwise by the First 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.

11.5 MISCELLANEOUS

11.5.1 Case Budgeting

In non-capital representations of unusual complexity or which appear likely to become extraordinary in terms of cost, the Court requires development of a case budget consistent with the *Guide*, Vol. 7A, Ch. 2, §§ 230.26.10–20 and the Court's case budgeting policy. "Extraordinary" means a representation in which attorney hours are expected to exceed 300 hours or total expenditures for counsel and services in addition to counsel (e.g. experts, interpreters, investigators, travel expenses) are expected to exceed 300 times the prevailing CJA panel attorney non-capital hourly rate, rounded up to the nearest thousand, on behalf of an individual CJA defendant.

11.5.2 No receipt of other payment

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

11.5.3 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.

12 COMPENSATION OF CJA PANEL ATTORNEYS

12.1 POLICY OF THE COURT REGARDING COMPENSATION

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

12.1.2 Voucher cuts should be limited to:

12.1.2.1 Mathematical errors;

12.1.2.2 Instances in which the work billed was not compensable;

12.1.2.3 Instances in which work was not undertaken or completed; and

12.1.2.4 Instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.

12.1.3 With regard to payment of certain expenses, counsel must: comply with the provisions of Fed. R. Crim. P. 17(b) regarding the issuance of subpoenas; receive Court approval for transcripts by submission of a CJA 24 Authorization and Voucher for Payment of Transcript; and receive prior and final Court approval for investigative, expert, or other services by submission of a CJA 21 authorization and Voucher for Expert and Other Services.

12.1.4 Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records, which can be saved in the Court's eVoucher system, may be subject to audit and must be retained for three years after approval of the final voucher for an appointment.

12.2 PAYMENT PROCEDURES

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

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

12.2.3 The Clerk's Office will review the claim for mathematical and technical accuracy and for conformity with the *Guide*, Vol. 7A and, if correct, will forward the claim for consideration and action by the presiding judge.

- 12.2.4 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.**
- 12.2.5 Except in cases involving mathematical corrections, no claim for compensation submitted for services provided under the CJA will be reduced without affording counsel notice and the opportunity to be heard.**
- 12.2.6 The Court or its Clerk may confer with appointed counsel to inquire regarding questions or concerns with a claim for compensation. Additionally, the Court or its Clerk may consult with the First Circuit Case Budgeting Attorney for advice and recommendation.**
- 12.2.7 If the Court plans to reduce a voucher, it will confer with the panel attorney about the voucher in an effort to resolve the matter.**
- 12.2.7.1 If, after discussion with the panel attorney, the Court intends to reduce the voucher over the panel attorney's objection, the Court will refer the matter to the District's CJA Committee for independent review and recommendation. The Court will give due weight to the recommendations of the CJA Committee.*
- 12.2.7.2 If the Court disagrees with the recommendation of the CJA Committee, the Court will articulate its reasons for departing from the Committee's recommendation and approve the voucher at the amount that the Court determines is appropriate in light of the facts and the principles set forth in this Plan and in 18 U.S.C. § 3006A.*

13 INVESTIGATIVE, EXPERT, AND OTHER SERVICES

13.1 FINANCIAL ELIGIBILITY

13.1.1 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 shall authorize counsel to obtain the services.

13.1.2 If at any time after counsel has been authorized to obtain investigative, expert or other necessary services for a defendant, the Court finds that the defendant is financially able to obtain such services or to make partial payment therefor, the Court may terminate the authorization of such services or direct that any funds available to the defendant be paid as provided in 18 U.S.C. § 3006A(f). Appointed counsel shall be under a continuing duty to report to the Court any circumstance indicating that the defendant is financially able to make full or partial payment for such services.

13.2 APPLICATIONS

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

13.3 CLAIMS

A claim for compensation for investigative, expert or other services, and for reimbursement, must be promptly made to the Court. Each claim must be made using the Court's eVoucher system and should specify the time expended, services rendered and actual expenses incurred, along with the amount of any compensation and reimbursement applied for or received in the same case from any other source. The Court will, in each instance, determine the reasonable compensation for the services and process payment to the organization or person who rendered them via eVoucher.

13.4 COMPLIANCE

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

14 APPOINTMENT OF COUNSEL AND CASE MANAGEMENT IN CJA CAPITAL CASES

14.1 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 the *Guide*, Vol. 7A, Ch. 6.

14.2 GENERAL APPLICABILITY AND APPOINTMENT OF COUNSEL REQUIREMENTS

14.2.1 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.

14.2.2 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).

- 14.2.3 Qualified counsel must be appointed in capital cases at the earliest possible opportunity.**
- 14.2.4 Given the complex and demanding nature of capital cases, where appropriate, the Court will utilize the expert services available through the Administrative Office of the United States Courts (AO), Defender Services Death Penalty Resource Counsel projects (“Resource Counsel projects”) which include: (1) Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials); (2) Federal Capital Appellate Resource Counsel Project; (3) Federal Capital Habeas § 2255 Project; and (4) National and Regional Habeas Assistance and Training Counsel Projects (§ 2254). These counsel are death penalty experts who may be relied upon by the Court for assistance with selection and appointment of counsel, case budgeting, and legal, practical, and other matters arising in federal capital cases.**
- 14.2.5 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.**
- 14.2.6 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).**
- 14.2.7 All attorneys appointed in federal capital cases must be well qualified, by virtue of their training, commitment, and distinguished prior capital defense experience at the relevant stage of the proceeding, to serve as counsel in this highly specialized and demanding litigation.**
- 14.2.8 All attorneys appointed in federal capital cases must have sufficient time and resources to devote to the representation, taking into account their current caseloads and the extraordinary demands of federal capital cases.**
- 14.2.9 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.**
- 14.2.10 All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.**

14.2.11 Questions about the appointment and compensation of counsel and the authorization and payment of investigative, expert, and other service providers in federal capital cases should be directed to the AO Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030 or via email at ods_lpb@ao.uscourts.gov.

14.3 APPOINTMENT OF TRIAL COUNSEL IN FEDERAL DEATH-ELIGIBLE CASES

14.3.1 General Requirements

14.3.1.1 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.

14.3.1.2 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 14.3.1 through 3 of these provisions.

14.3.1.3 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.

14.3.1.4 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.

14.3.1.5 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 capitally-qualified counsel.

14.3.1.6 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.

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

14.3.1.8 *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.*

14.3.2 Qualifications of Learned Counsel

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

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

14.3.2.3 *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.*

14.3.2.4 *"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.*

14.3.2.5 *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.*

14.3.2.6 *Learned counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.*

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

14.3.3 Qualifications of Second and Additional Counsel

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

14.3.3.2 *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.*

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

14.3.3.4 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.

14.4 APPOINTMENT AND QUALIFICATIONS OF DIRECT APPEAL COUNSEL IN FEDERAL DEATH PENALTY CASES

14.4.1 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.

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

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

14.4.4 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 together with cost and other efficiencies.

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

14.4.6 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).

14.4.7 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.

14.4.8 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.

14.5 APPOINTMENT AND QUALIFICATIONS OF POST-CONVICTION COUNSEL IN FEDERAL DEATH PENALTY CASES (28 U.S.C. § 2255)

- 14.5.1 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).**
- 14.5.2 Due to the complex, demanding, and protracted nature of death penalty proceedings, the Court should consider appointing at least two attorneys.**
- 14.5.3 In light of the accelerated timeline applicable to capital § 2255 proceedings, prompt appointment of counsel is essential. Wherever possible, appointment should take place prior to the denial of certiorari on direct appeal by the United States Supreme Court.**
- 14.5.4 When appointing counsel in a capital § 2255 matter, the Court should consider the recommendation of the Federal Public Defender, who will consult with the Federal Capital Habeas § 2255 Project.**
- 14.5.5 Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2255 cases to achieve high quality representation together with cost and other efficiencies.**
- 14.5.6 Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.**
- 14.5.7 When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.**
- 14.5.8 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.**
- 14.5.9 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.**

14.6 APPOINTMENT AND QUALIFICATIONS OF COUNSEL IN FEDERAL CAPITAL HABEAS CORPUS PROCEEDINGS (28 U.S.C. § 2254)

- 14.6.1 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).**

- 14.6.2 Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.**
- 14.6.3 When appointing counsel in a capital § 2254 matter, the appointing authority should consider the recommendation of the Federal Public Defender who will consult with the National or Regional Habeas Assistance and Training Counsel projects.**
- 14.6.4 Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2254 cases to achieve cost and other efficiencies together with high quality representation.**
- 14.6.5 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.**
- 14.6.6 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).**
- 14.6.7 Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.**
- 14.6.8 When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.**
- 14.6.9 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.**
- 14.6.10 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.**

15 EFFECTIVE DATE

The effective date on the first page of this plan is the date when it was approved by the First Circuit Judicial Council after having first been approved by the District Court of the District of Maine.