SECOND JUDICIAL CIRCUIT OF THE UNITED STATES
UNITED STATES COURTHOUSE
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ROBERT A. KATZMANN
CHIEF JUDGE

KAREN GREVE MILTON
CIRCUIT EXECUTIVE

JUDICIAL COUNCIL
APPROVED
OCT 04 2018
C/E

MEMORANDUM
October 2, 2018

To: Second Circuit Judicial Council

From: Karen Greve Milton, Circuit Executive KGM

Re: Proposed Revisions to Amended Criminal Justice Act Plan – District of Connecticut

The Board of Judges for the District of Connecticut approved proposed revisions to amend the Criminal Justice Act Plan. The Board of Judges for the District of Connecticut requests the Second Circuit Judicial Councils final approval.

The proposals are reflected in the attached Amended Criminal Justice Act Plan. Also, attached is a redlined version of each plan that illustrates the specific changes.

Kindly return your ballot by fax 212 857-8680, or by email, by Friday, October 5, 2018.

Thank you.

BALLOT

Judge: _____

_____ Yes, I approve the proposed revisions to Amended Criminal Justice Act Plan – District of Connecticut

_____ No, I do not approve the proposed revisions to Amended Criminal Justice Act Plan – District of Connecticut

_____ I request additional information and/or further discussion

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT
AMENDED CRIMINAL JUSTICE ACT PLAN

I AUTHORITY

Pursuant to the Criminal Justice Act of 1964 (18 U.S.C. § 3006A) [hereafter referred to as the CJA"], and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (CJA Guidelines), the Judges of the United States District Court for the District of Connecticut adopt the following amended plan for furnishing representation[1] in federal court to any person who is eligible for same under the CJA.

II STATEMENT OF POLICY

A. Objectives

1. The objective of this Plan is to attain the goal of equality before the law for all persons. This plan, therefore, shall be administered so that those accused of a crime, or who are otherwise eligible for representation under the CJA, will not be deprived of any element of representation necessary to an effective defense because they are financially unable to pay.

2. The further objective of this Plan is 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 *CJA Guidelines* in a way that meets the needs of this District.

B. Compliance

In carrying out their responsibilities under the CJA, the Court, its Clerk, the Federal Defender Office, and private attorneys appointed under the CJA (hereafter "Panel Attorneys") shall comply in all respects with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services, and with this Plan.

III. PROVISION OF REPRESENTATION

A. Mandatory

Representation shall be provided in this District for any financially eligible person who is:

[1] "Representation" includes not only appointed counsel, but also investigative, expert and other services.

1. charged with a felony or Class A misdemeanor;

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

3. charged with a violation of probation or supervised release or faces modification of a condition or term thereof, unless the modification sought is favorable to the defendant and the government has not objected to the proposed change;

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

5. entitled to the appointment of counsel in parole proceedings;

6. subject to a mental condition hearing under 18 U.S.C. §§ 4241-4248;

7. in custody as a material witness;

8. seeking to set aside or vacate a death sentence under sections 2254 or 2255 of title 28, United States Code;

9. entitled to the 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 18 U.S.C. § 4109;

10. entitled to the appointment of counsel under the Sixth Amendment to the Constitution, or faces loss of liberty in a case and federal law requires the appointment of counsel.

B. <u>Discretionary</u>

Whenever the judicial officer determines that the interests of justice so require, representation <u>may</u> be provided in this District for a financially eligible person who is:

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

2. seeking relief, under 28 U.S.C. §§ 2241, 2254, or 2255; other than to set aside or vacate a death sentence, in which case the appointment of counsel is mandatory.

3. charged with civil contempt and faces a loss of liberty;

4. 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 otherwise face a loss of liberty;

5. proposed by the United States attorney for processing under a pretrial diversion program;

6. held for international extradition under chapter 209 of title 18, U.S. Code; or

7. a target of a federal criminal investigation and has been so notified by the U.S. Attorney's Office or a law enforcement agent.

C. Ancillary Matters

1. Representation may be furnished for financially eligible persons in "ancillary matters appropriate to the proceedings" under subsection (c) of the CJA.

2. In determining whether a matter is ancillary to the proceedings, the Court should consider whether the matter, or the issues of law or fact in the matter, arose from, or are the same as or closely related to, the facts and circumstances surrounding the principal criminal charge.

3. In determining whether representation in an ancillary matter is appropriate to the proceedings, the Court should consider whether such representation is reasonably necessary to accomplish, among other things, one of the following objectives:

a. to protect a Constitutional right;

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

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

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

e. to preserve the claim of the CJA client to an interest in real or personal property subject to a civil forfeiture proceeding under 21 U.S.C. § 881, 19 U.S.C. § 1602 or similar statutes, which property, if recovered by the

client, may be considered for reimbursement under subsection (f) of the CJA and § 210.40.30 of the CJA Guidelines; or

f. to 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(e), which property, if recovered by the CJA client, may be considered for reimbursement under subsection (f) of the CJA and § 210.40.30 of the CJA Guidelines.

D. Civil Forfeiture Proceedings

Under 18 U.S.C. § 983(b)(1), if a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under 18 U.S.C.§ 3006A in connection with a related criminal case, the Court may authorize counsel to represent that person with respect to the claim.

In determining whether to authorize counsel to represent a person in a judicial civil forfeiture proceeding under a civil forfeiture statute, the Court shall take into account such factors as:

- the person's standing to contest the forfeiture; and
- whether the claim appears to be made in good faith.

IV. CONTINUATION OF THE FEDERAL DEFENDERS OFFICE

A. The Court finds that the continued use of the Federal Defenders Office in this District is efficient, effective and appropriate.

B. The Federal Defender shall be responsible for the supervision and management of the attorneys and all other employees of the Federal Defenders Office. Accordingly, in making appointments the Court should appoint the Federal Defenders Office, rather than a particular attorney in that office.

C. The Federal Defender shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed, reports of the office's activities and the financial position and proposed budget of the office. Copies of the reports shall be furnished to this Court and to the Judicial Council for the Second Circuit.

D. Neither the Federal Defender, nor any Assistant Federal Defender or staff attorney in the Federal Defenders Office, may engage in the private practice of law.

E. The Federal Defender Office 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))).

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

G. The Federal Defender Office must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct and the Code of Conduct for Federal Public Defender Employees.

H. The Federal Defender will assess the training needs of its staff and, in coordination with the CJA Panel Attorney District Representative,[2] the training needs of the local Panel attorneys, and provide training opportunities and other educational resources.

V. STANDING COMMITTEE TO OVERSEE THE CJA PANEL

A. Continuation

The Standing Committee To Oversee the CJA Panel (CJA Committee) is hereby recognized and its current members shall remain in office until replaced.

B. Composition

The CJA Committee shall consist of the Federal Defender, or his or her designee, the CJA Panel Representative and five private attorneys who possess sufficient experience and interest in the federal criminal justice system to oversee the administration and composition of the CJA Panel. The Clerk, or his or her designee, shall be an ex-officio, non-voting member of the Committee. The remaining members shall be appointed by the Chief Judge to serve two year terms, staggered so that two appointments will be made in each odd-numbered year of the Plan, and three appointments will be made in each even-numbered year of the Plan. In making these appointments, the Chief Judge should seek members from throughout the District so that the Committee will maintain familiarity with the members of, and applicants to, the CJA Panel. The Chief Judge may re-appoint Committee members to serve a second term.

C. Duties

[2] The CJA Panel Attorney District Representative (PADR) is a member of the District's CJA Panel who is selected by the Federal Defender, with acquiescence from the Chief Judge of the District, to serve as the representative of the District's CJA Panel for the national Defender Services CJA PADR program and local CJA committees.

The Committee Shall:

1. Examine the qualifications of applicants for membership on the CJA Panel and recommend to the Court the approval of those attorneys who are deemed qualified, the rejection of the applications of those attorneys deemed unqualified at the time of the application, and recommend for placement on the Trial Panel with Probationary Status those attorneys who possess some relevant criminal law experience but who need additional training and experience in federal law, practice and/or procedure to become qualified members of the CJA Trial Panel. The Committee may interview any applicant for CJA Panel membership at its discretion.

2. Recommend to the Court the removal of any Panel member (a) who fails to satisfactorily fulfill the requirements of Panel membership during the term of the Panel member's service, including the failure to provide high quality representation to indigent clients or (b) who has engaged in other conduct such that his or her continued service is inappropriate. The Court's decision on removal (by a majority of the Board of Judges) shall be final.

3. Identify and define any operating difficulties encountered in the administration and management of the CJA Panel, and make recommendations to the Court for appropriate changes.

4. Assist the Federal Defender Office in providing training for the CJA Panel on substantive and procedural matters affecting representation of indigent criminal defendants. This training shall include regularly scheduled seminars for the CJA Panel, those members on Probationary Status, and members of the private bar.

5. 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.

6. The Committee shall meet formally at least two times per year.

VI. CJA PANEL MEMBERSHIP

A. ESTABLISHMENT OF THE TRIAL PANEL

1. Eligibility

Any attorney who seeks appointment as a member of the Trial Panel must be admitted to practice before the United Stated District Court for the District of Connecticut and

the United States Court of Appeals for the Second Circuit and be in good standing. All applicants must demonstrate a commitment to provide high quality representation to those individuals eligible for their services, 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."). Each applicant must certify that he or she has read and can demonstrate knowledge of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Federal Rules of Appellate Procedure, the Second Circuit Local Rules of Appellate Procedure, the United States Sentencing Guidelines, the Bail Reform Act of 1984, the Local Rules of Criminal Procedure and standing Orders, the Guidelines for the Administration of the Criminal Justice Act, and this CJA Plan.

In general, the Committee is seeking candidates who possess strong litigation skills, significant experience representing persons charged with serious criminal offenses, knowledge of federal criminal procedures, laws, and practices, and who are committed to the defense of indigent people. Factors that the Committee will consider include the following: Each applicant should have tried at least two felony jury cases to verdict in either state or federal court. Alternatively, an applicant must have appeared as defense counsel of record in at least two federal felony cases from initial appearance or arraignment through sentencing and have other significant litigation experience as determined by the Committee. Attorneys who do not possess the criteria 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 Committee's consideration. Unless specifically permitted by the Court in an individual case, applicants shall have their principal place of business within the District of Connecticut. If the attorney has substantial state court trial experience but limited or no federal experience, that applicant must, prior to filing the application, participate in a training program that covers, *inter alia*, practice under the federal Bail Reform Act and the Sentencing Guidelines.

2. Probationary Period

In the Committee's discretion, it may recommend to the Court that applicants with limited trial or federal criminal practice experience be accepted to the Trial Panel and placed on probationary status through completion of the first three cases assigned to them. During the probationary period, the Probationary Trial Panel member shall attend all training programs presented by the Federal Defender's Office, except for good cause shown, and shall participate in the mentoring program outlined in section IX of this Plan. Probationary Panel members will be eligible for the regular assignment of cases unless the judge requesting the assignment indicates that the matter would not be appropriate for assignment to a Probationary Panel member. The Committee shall be notified by the Panel member upon completion of his/her third probationary assignment. After consultation with the assigned mentors and the probationary member, the Committee will review and recommend to the Court either elevation to non-probationary status, a continuation of probation for a specific length of time, or removal from the Panel.

3. Application for Trial Panel Membership

An attorney who wishes to serve on the Trial Panel under this Plan must submit written application for Trial Panel Membership and must provide as references the names of at least one defense attorney, Judge and prosecutor with whom the attorney has dealt. This requirement applies to all attorneys without regard to any previous assignment under any previous CJA Plan. Application forms for Trial Panel membership shall be available from the Clerk of the Court and the Federal Defender's Office, within their offices and on their websites. Applications shall be submitted to the Federal Defender, who shall promptly forward all applications to the chairperson of the Committee. The Committee shall forward each application to the Chief Judge with a written recommendation for acceptance to the Trial Panel, acceptance to the Trial Panel with Probationary Status, or rejection.

4. Disputes

Any disputes regarding appointment to or continued service on the Trial Panel will be determined by a majority of the Board of Judges.

B. CAPITAL PANEL

The Committee will recommend to the Court a list of highly experienced attorneys who are willing to serve as CJA Counsel in capital cases. Due to the highly complex and demanding nature of these cases, special procedures will be followed for appointments of counsel in such cases. Those procedures are set forth below in Section XVII of this plan.

VII. TERM OF SERVICE

Attorneys appointed to any CJA Panel shall serve a term of three years. Membership in the CJA Panels is a privilege, not a right, which may be terminated at any time by a majority of the Board of Judges, as they, in their sole discretion, may determine. A majority of the Board of Judges of this Court may remove a CJA Panel member without resort to the formal complaint procedures set forth below in Section VIII(B)(2), if the Court determines that it already has sufficient information on which to proceed and that such action is required to protect the interests of indigent defendants. After a three year term expires, a panel member may be invited to serve additional terms or may apply to serve additional terms. Completion of a term does not create a right or a presumption for service of another term.

Within 45 days of the date this Plan is adopted, all attorneys interested in serving on the Panel are required to submit an application, whether or not they are presently members of the panel. Once the applications are reviewed and the composition of the Panel is determined, the

new Panel will be randomly divided into three parts. Part I of the Panel will be given a one-year term, Part II a two-year term, and part III a three-year term. These initial time periods are necessary to stagger reappointments, so that the panel and the Court can thereafter stagger appointments to the Panel. The newly constituted Panel will be used for appointments commencing 165 days after the date this Plan is adopted.

VIII. REMOVAL FROM THE PANELS

A. Mandatory Removal

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

B. Discretionary Removal

1. Automatic Disciplinary Review

There shall be an automatic disciplinary review of any CJA Panel member in each of the following circumstances:

a. When any public form of discipline has been taken against the Panel member by any licensing authority, grievance committee, or administrative body; or

b. When a finding of contempt, sanction or reprimand has been issued against the Panel member by any state or federal court.

c. **Notice**. In the case of any of the circumstances outlined in Part VIII(A) or (B)(1), the Panel member must immediately notify the Chair of the Committee of the background and nature of the action that has been taken against him or her.

2. Complaints

a. **Initiation**. A complaint against a Panel member may be initiated by the Committee, a judge, opposing counsel, another Panel member, or a member of the Federal Defender's Office. A complaint need not follow any particular form, but it must be in writing and state the alleged deficiency with specificity. Any complaint should be directed to the Committee. The Committee shall then determine whether further investigation is necessary.

b. **Notice**. If the Committee decides to conduct an investigation, the Panel

member against whom a complaint is lodged must be notified of the specific allegations against him or her.

c. **Response**. A Panel member against whom a complaint is lodged may respond in writing and shall, if so directed, appear before the Committee or subcommittee thereof.

d. **Protective Action**. Prior to disposition of any complaint, the Committee may recommend temporary removal of the Panel member from any pending case, or from the Panel, and may take any other protective action that is in the best interest of the client or the administration of this Plan.

e. **Review and Recommendation**. After investigation, the Committee may recommend:

i. Removing the attorney from the Panel;

ii. Limiting the attorney's participation to particular types or categories of cases;

iii. Directing that the attorney complete specific CLE requirements before receiving further Panel appointments;

iv. Limiting the attorney's participation to handling cases which are directly supervised or overseen by another Panel member or other experienced practitioner;

v. Any other appropriate remedial action;

vi. Dismissal of the complaint.

f. **Final Disposition by the Court**. The Committee will forward its recommendation to the Board of Judges for consideration and final disposition. The Board of Judges may take any action deemed appropriate, whether or not recommended by the Committee.

g. **Confidentiality**. Unless otherwise directed by the Court, any information acquired concerning any possible disciplinary action, including any complaint and any proceeding concerning it, shall be confidential.

h. None of these procedures should be deemed to create a proprietary interest in being on or remaining on the Panel. Roth v. King, 449 F.3d 1272 (D.C.Cir. 2006).

3. Re-application.

Any attorney removed from the Panel may reapply one year after removal, except that no attorney removed from the panel pursuant to VIII (A) is permitted to reapply until after any suspension is terminated.

IX. MENTORING PROGRAM

A. Trial Panel members are encouraged and expected to serve as mentors, without compensation, to Probationary Panel members. The privilege of being a Trial Panel member carries with it the obligation to serve as a mentor. Attorneys of the Federal Defender's Office will also serve as mentors, and the Committee can also solicit experienced attorneys not on the Panel to serve as mentors. Each Probationary Panel member, upon acquiring Probationary status, will be assigned three mentors – one for each of the Probationary Panel member's first three cases. In the event that a conflict of interest arises between the mentor and the Probationary Panel member, the Committee shall assign a new mentor. Each mentor will make himself/herself available to answer questions of and provide advice to a Probationary Panel member regarding that case. The mentor may also allow the Probationary Panel member to observe and to participate in, if appropriate, all aspects of a federal criminal case that the mentor has, including client conferences, decisions concerning defense strategy, motion and trial preparation, and court appearances, including hearings and trials.

B. Mentors will be expected to accommodate reasonable mentoring requests and endeavor to interact regularly with the Probationary Panel member while that Probationary Panel member is assigned a case, and to assist and enhance the Probationary Panel member's representation of CJA clients. At the conclusion of the case, the Mentor shall provide the Committee with a confidential assessment of the quality of representation that the Probationary Panel member provided. The Committee shall establish standards for the administration of this program.

X. APPOINTMENT OF COUNSEL

A. Ratio of Appointments

The Court, in its discretion, will determine whether a financially eligible person will be represented by The Federal Defender Office or a Panel attorney. In order to fully utilize the resources of the Federal Defender Office, it is anticipated that the appointment of that Office will be made in most cases except for those where the Office is disqualified by reason of a conflict of interest or other legitimate reason.

Consistent with the CJA and where practical and cost effective, Panel members should be

appointed in a substantial portion of the proceedings in which an accused is found eligible for appointed counsel. "Substantial" is defined as at least 25% of the annual CJA appointments throughout the District.

B. Prompt Appointments

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they first appear before a magistrate judge or district judge, when they are formally charged or notified of potential charges, or when a magistrate judge or district judge otherwise considers the appointment of counsel appropriate under the CJA, whichever occurs earliest. Counsel should be provided to an arrestee prior to the time he or she is interviewed by a Probation Officer regarding suitability for release on bond. Counsel is entitled to be present during any bail interview.

XI. DETERMINATION OF NEED FOR APPOINTED COUNSEL

A. Standards For Eligibility

A person is "financially unable to obtain counsel" within the meaning of subsection (b) of the CJA if his net financial resources and income are insufficient to enable him to obtain qualified counsel. In determining whether such insufficiency exists, consideration should be given to (a) the reasonable living expenses of the person and his dependents; (b) the cost of the defendant's bail bond if financial conditions are imposed, or the amount of the cash deposit defendant is required to make to secure his release on bond; and (c) the likely cost of representation by retained counsel.

Any doubts as to a person's eligibility should be resolved in his favor; erroneous determinations of eligibility may be corrected at a later time.

The initial determination of eligibility should be made without regard to the financial ability of the person's family unless his family indicates a willingness and financial ability to retain counsel promptly.

B. Counsel for Persons Appearing Without an Attorney

In every case in which a person is eligible for appointment of counsel pursuant to 18 U.S.C. § 3006A(a) and the person appears without counsel, the judicial officer shall advise that person that he or she has a right to be represented by counsel throughout the case and that counsel will be appointed to represent the person if so desired, if he or she is financially unable to obtain counsel.

Whenever the person states that he or she is financially unable to obtain counsel and

desires the appointment of counsel, the judicial officer shall inquire into and make a finding as to whether the person is financially able to obtain counsel. The judicial officer shall appoint separate counsel for each eligible person involved in a single proceeding or action.

C. Counsel for Persons Appearing With an Attorney

Where a person has been represented by counsel before his or her initial presentment before a judicial officer under circumstances where such representation would be authorized by 18 U.S.C. § 3006A(a), counsel may apply to the judicial officer for approval of a retroactive appointment. If such an application is made, and the judicial officer finds that the person has been and is then financially unable to obtain an adequate defense, and that the prior representation was appropriate under this Plan, the appointment may be made retroactive, pursuant to 18 U.S.C. § 3006A(b).

If at any stage of the proceedings, the judicial officer finds that a person is financially unable to continue to pay retained counsel, the judicial officer may make an original appointment of counsel in accordance with the general procedures set forth in this Plan.

D. Waiver

If a financially eligible person having a right to counsel (i.e., where the appointment of counsel is not discretionary) seeks to waive his or her right to appointed counsel, the judicial officer shall, on the record, make a full and adequate inquiry to determine whether such waiver is knowing and voluntary. If the waiver is found to be knowing and voluntary, the judicial officer shall make such a finding in the record of the proceedings. If not, the judicial officer shall appoint counsel to represent the person.

E. Subsequent Ineligibility

If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication and it is consistent with counsel's ethical obligations to do so, counsel shall so advise the Court.

XII. NUMBER AND QUALIFICATIONS OF COUNSEL

A. Non-Capital Cases

Generally, one attorney should be appointed to represent each eligible defendant in a given case. However, more than one attorney may be appointed if the Court determines that the case is complex and that it is in the interest of justice to appoint multiple attorneys.

B. Capital Cases and Post-Conviction Capital Proceedings

The procedures set forth with below in Section XVII governing capital cases shall govern the number and qualification of appointed counsel in capital cases and post-conviction capital proceedings.

XIII. INVESTIGATIVE, EXPERT AND OTHER SERVICES

Counsel (whether or not appointed under the Act) for a person who is financially unable to obtain investigative, expert or other services necessary for an adequate defense in his or her case may request authority to obtain and pay for such services in an ex parte application before a judicial officer, as provided in 18 U.S.C. § 3006A(e)(1). Upon finding that the services are necessary, and that the person is financially unable to obtain them, the judicial officer shall authorize counsel to obtain the services.

In limited circumstances, appointed counsel may obtain investigative, expert, or other services without prior authorization subject to later review. Expenditures without prior court authorization are not favored and are subject to the financial limitations set forth in 18 U.S.C. § 3006A(e)(2).

The provisions of this section do not apply to employees of the Federal Defender Office so long as that organization has budgeted funds available to pay for the required services.

XIV. APPOINTMENT OF CJA COUNSEL

A. Assignment of Cases

The Clerk's Office shall be responsible for overseeing the assignment of cases to Panel attorneys. Ordinarily, assignments are to be made on a randomized and rotational basis, except under exceptional circumstances or where a judicial officer directs otherwise. In complex or otherwise difficult cases, the Court may appoint counsel without reliance on the randomized and rotational list from the Clerk's Office to ensure that defendants in such cases have sufficiently experienced counsel to handle those matters. Under special circumstances, the Court may appoint directly a member of the bar of the Court who is not a member of the CJA Panel. Such special circumstances may include cases in which the Court determines that the appointment of a particular attorney is in the interest of justice, judicial economy or continuity of representation, or in the case of any other compelling circumstance. It is not anticipated that special circumstances will arise often, and the procedures set forth in this Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed.

B. Refusal to Accept Appointments

It may be grounds for removal from the Panel for an attorney to repeatedly decline

appointments. The Clerk's Office shall maintain a record of the date of each refusal, the case name and docket number, and the reason given (if any) for the refusal. The Clerk's Office shall notify the Committee if an attorney declines appointments on three successive occasions, and declining appointments on three successive occasions can constitute grounds for removal.

XV. RESPONSIBILITIES OF APPOINTED COUNSEL

A. Standard

Appointed counsel shall provide competent and effective representation; shall devote adequate time, attention and resources to the client's defense; shall consult with the client and keep him or her advised of the status of the case; and shall at all times conform to the highest standards of professional conduct for defense counsel.

B. Continuing Representation

Once appointed, counsel shall continue the representation until the matter, including appeals or review by certiorari (as governed by the Second Circuit CJA plan provisions concerning representation on appeal), is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed *pro se*; or until the appointment is terminated by court order.

C. Court Appearances

Appointed counsel shall appear personally at all proceedings. Substitute or additional appearances may be filed only with leave of the Court.

D. Appeals

In all cases in which the person represented is convicted of an offense, counsel shall advise that person of the right to appeal and the right to be represented by counsel on appeal. If requested, and regardless of his or her opinion as to the merits of an appeal, counsel shall file a timely Notice of Appeal and shall continue to provide representation until the appeal is concluded or counsel is relieved by the Court of Appeals. If the conviction or sentence is affirmed, counsel shall comply with the Rules of the Second Circuit Court of Appeals regarding the filing of a petition for a writ of certiorari to the United States Supreme Court.

E. Receipt of Other Compensation

Appointed counsel may not require, request, or accept any payment, promise of payment, or other valuable consideration for representation provided pursuant to the appointment, or as a retainer for future services, unless such payment or promise of payment is expressly approved by the Court.

F. Compensation - Filing of Vouchers

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk of the Court. The Clerk of the Court, or his or her designee, shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures) and, if correct, shall forward the claim form for the consideration and action of the presiding judge or magistrate judge. The Court will use its best efforts to avoid delays in reviewing payment vouchers and submitting them for further processing. If the Court determines that a claim might be reduced, counsel should be provided with prior notice of the proposed reduction, a statement of the reason(s) therefor, and an opportunity to address the matter.

G. CM/ECF

All CJA Panel attorneys are required to use the Court's Case Management/Electronic Case Filing (CM/ECF) system.

XVI. CONTINUING LEGAL EDUCATION

A. The Federal Defender's Office shall regularly schedule and conduct continuing legal education programs for Panel attorneys for the purpose of enhancing their professional knowledge and skills. The Federal Defender's Office shall present a minimum of four training programs each calendar year, one of which will cover the fundamentals of federal criminal defense practice, including sentencing law and practice under the federal sentencing guidelines. These programs will be conducted within the District, at a nominal cost to attendees. The CJA does not reimburse Panel attorneys for time spent at training programs or for the costs of attendance.

B. Each Trial Panel member shall be required to attend at least 50% of the annual training programs presented by the Federal Defender's Office, or, in the alternative, complete a minimum of six hours of federal criminal defense continuing legal education offered by a bona fide continuing legal education program each year, at his or her own expense, as a condition of maintaining membership on the Trial Panel. Each Panel Member with Probationary Status shall be required, absent good cause shown, to attend all training sessions presented by the Federal Defenders Office during the time of his or her probationary status. If a Probationary Panel member cannot attend training offered by the Federal Defenders Office, he/she must complete equivalent training as approved by the Committee. Attendance at Federal Defender programs, however, is the preferred method of compliance with this training requirement. Panel members must certify, on or before January 1st of each year, on forms available at the Federal Defender's Office, that they have satisfied the continuing legal education requirements as stated herein.

XVII. APPOINTMENT OF COUNSEL AND CASE MANAGEMENT IN CAPITAL CASES

A. Applicability and Purpose

The provisions set forth in this section shall govern in all capital cases. For the purposes of this section, "capital cases," or "cases involving the death penalty," are those criminal cases in which the death penalty may be or is being sought by the prosecution, as well as proceedings under 28 U.S.C. §§ 2254 or 2255 seeking to vacate or set aside a death sentence, motions for a new trial, direct appeal, application for a writ of certiorari to the Supreme Court of the United States, all postconviction proceedings, applications for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings. The provisions of this section shall be implemented by the presiding judge at the earliest opportunity in any potential capital case.

B. Trial Counsel

1. General Requirements

Due to the complex, demanding, and protracted nature of death penalty proceedings, a defendant who is or has become financially unable to obtain adequate capital representation and who applies for appointment of counsel shall be entitled, as required by 18 U.S.C. § 3005, to the assignment of at least two attorneys who meet the qualifications set forth in this section. At least one of the attorneys appointed to represent the defendant shall be learned in the law applicable to capital cases and shall possess the experience, training, and qualifications set forth below and in Sections 5.1 and 8.1 of the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, 31 Hofstra L. Rev. 913 (Feb. 2003) (defined as "learned counsel" in the statute, referred to here as "lead counsel"). In cases where two or more defendants are to be tried jointly, the presiding judge shall appoint separate teams of counsel for each defendant. One member of the team shall be designated lead counsel and the other member(s) shall be identified as assistant counsel.

2. Qualifications of Lead Counsel

To be eligible for appointment as lead counsel in a capital case, an attorney must

a. be a member of the bar of this Court, or must be admitted to practice *pro hac vice* based on his or her qualifications;

b. have at least ten years experience in the field of federal criminal defense practice;

c. have prior experience as sole or lead defense counsel in the trial of no fewer than three serious and complex felony cases that were tried to

completion in federal court;

d. have exemplary prior experience as defense counsel in a state or federal capital case;

e. have completed at least ten hours of approved continuing legal education in the defense of capital cases, and at least fifteen hours of approved continuing legal education focusing on federal criminal defense; and

f. have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to the defense of capital cases.

3. Qualifications of Assistant Counsel

To be eligible for appointment as assistant counsel in a capital case, an attorney must:

a. be a member of the bar of this Court, or be admitted to practice *pro hac vice* on the basis of his or her qualifications;

b. have at least five years experience in the field of federal criminal defense practice;

c. have prior experience as defense counsel, demonstrating adequate proficiency in connection with serious and complex felony cases;
d. have completed at least five hours of approved continuing legal education in the defense of capital cases, and at least fifteen hours of approved continuing legal education focusing on federal criminal defense; and

e. have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to the defense of capital cases.

4. Special Appointments: Discretionary, Additional, Stand-by, or Substitute Counsel.

The presiding judge may, for good cause, appoint attorneys who do not meet this section's requirements, but whose background, knowledge, or experience would otherwise enable them to effectively represent a defendant in a capital case, provided that lead counsel for each defendant shall have distinguished prior experience as defense counsel in a capital case, as required by Subsection XVII(B)(2) of this section. If necessary for adequate representation, more

than two attorneys may be appointed to represent a defendant in a capital case.

Where the defendant has retained counsel, the presiding judge may appoint additional, stand-by or substitute counsel in order to ensure the adequate representation of the defendant. Appointment of additional, stand-by or substitute counsel may take place during any stage in the proceedings.

C. Appointment Procedures

1. Appointment of Capital Trial Counsel

Appointment of capital trial counsel shall occur no later than when a defendant is charged with a federal criminal offense where the penalty of death is possible, unless the government issues written notice at or before the initial appearance before the presiding judge that the government will not seek the death penalty, or unless the judge orders that death is not an applicable punishment upon conviction. Where the government's written notice that it will not seek the death penalty is later permitted to be withdrawn, the provisions set forth in this Section shall be implemented as soon after the withdrawal of the notice as practicable. Where the current charge is not death eligible, but the underlying facts in a case could permit the subsequent filing of a death eligible criminal charge, the Court shall specifically inquire of the government whether it is considering a future charge. Where the government advises that such future charge is possible or fails to affirmatively state it will not bring such charge, capital counsel shall be appointed as soon as practicable. Before the appointment of counsel is made in a capital case, the judge presiding over the initial proceedings shall inform the Federal Defender that a capital case is pending and that counsel is needed. The Federal Defender shall provide the judge with the names of at least two attorneys who meet the guidelines for counsel in capital cases, as set forth in Section XVII (B)(2). The presiding judge shall either accept one of the suggested lead counsel or reject both submitted names, and shall notify the Federal Defender of the decision. In the event that both recommendations are not accepted, the presiding judge shall consult with the Federal Defender to identify other qualified counsel.

The Court may appoint counsel in advance of formal charges being filed if it learns of a potential capital case prior to charges being filed or arrests being made. In order to protect the rights of an individual who is the subject of an investigation in a capital case, the presiding judge may assign interim counsel at his or her own initiative, or upon the request of any interested party.

2. Appointment of Additional or Substitute Counsel

In cases where counsel has been retained or appointed before the government files notice of its intent to seek the death penalty, the appointment of additional or substitute counsel is permitted once the government files notice of intent to seek the death penalty or where the need for capital counsel otherwise becomes apparent. Appointment of additional or substitute counsel shall be made sufficiently in advance of trial to permit newly-appointed counsel an

adequate opportunity to prepare. Prior to adding or substituting assistant counsel, the Federal Defender and Court should consult with learned counsel.

3. Appointment of Counsel on Appeal

The attorneys appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial. Once appointed as appellate counsel, the attorney shall represent the defendant in every subsequent stage of available judicial and executive proceedings, unless replaced for good cause by a similarly qualified attorney. At least one attorney appointed on appeal must have been admitted to practice in the Court of Appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in that court in felony cases. Whenever practicable, at least one appellate attorney should have prior trial and/or appellate experience in capital cases.

4. Appointment of Counsel in Post-Conviction Proceedings

In the interests of justice and judicial economy, unless precluded by a conflict of interest, presiding judges are urged to continue the appointment of state postconviction counsel, if qualified under Section XVII (B)(2), when the case enters the federal system.

5. Conflicts of Interest

In the event that the Federal Defender's Office cannot aid in the selection of counsel without creating a conflict of interest, the duties of that Office under this section shall be completed by the Chair of the CJA Panel Selection Committee in consultation with the Office of Defender Services of the Administrative Office of the United States Courts, pursuant to Section 3005 of Title 18, U.S.C.

6. Termination of Appointment

a. If, following the appointment of counsel in a capital case, it is determined that the death penalty will not be sought, the Court may consider the question of the number of counsel and the rate of compensation needed for the duration of the proceeding. After considering whether the number of counsel initially appointed is necessary to ensure effective representation or to avoid disruption of the proceeding, the Court may continue the appointments or reduce the number of appointed counsel. After considering the need to fairly compensate appointed counsel, taking into account the commitment of time and resources appointed counsel has made and will continue to make, the Court may continue to pay the previously approved rate, or prospectively reduce the rate.

b. Should a defendant in a capital case be convicted, regardless of whether he or she is sentenced to death, counsel shall continue representing the defendant on appeal, unless removed by the presiding judge or the Court of Appeals for the Second Circuit.

D. Initial Status Conference and Case Management Schedule

1. In all identified capital cases, the presiding judge shall promptly conduct an initial status conference to ensure the effective management of the case, including the appointment of counsel pursuant to this section. A representative of the Federal Defender's Office shall be present at this conference, unless a conflict of interest exists, in which case the Chairperson of the CJA Selection Committee shall be present.

2. Upon the return or unsealing of an indictment in a capital case, the Court shall schedule a status conference to discuss issues and concerns related to the death penalty authorization process conducted by the Department of Justice. Among other matters, the conference should address the scheduling of the defendant's submissions to the United States Attorney, the meeting between the defense and the United States Attorney, and discovery that may be necessary before the defense can make any submission to the Court.

3. If the Attorney General's authorization decision delays the deadlines set in the Court's schedule, the Court may find that the Attorney General's death penalty notice issue did not provide the defense with reasonable time to prepare for trial, as required by 18 U.S.C. § 3593(a).

4. In order to expedite compliance with this section, counsel shall become familiar with the United States Department of Justice protocol, practices, and procedures in capital cases.

E. Assessment of Costs and Fees

1. Counsel

At the time counsel are appointed, the Court shall set an hourly rate of compensation pursuant to then-current standards in capital cases.

2. Investigative, Mitigation, Expert and Other Services

Upon finding that investigative, mitigation, expert or other services are necessary for the adequate representation of a defendant in a capital case, the presiding judge shall authorize counsel to obtain such services on behalf of the defendant and shall set the rate of compensation in consideration of the statutory limits. Pursuant to the provisions of this section and the Criminal Justice Act, an interpreter shall be appointed to assist counsel if counsel is not fluent in the capital defendant's native language. The presiding judge may authorize investigative, mitigation, expert or other services, even if the services have already been obtained.

3. Confidentiality

Motions for the payment of costs and fees, including the time and expense records of counsel, shall be heard *ex parte* and *in camera*. The petitions shall be placed under seal and shall be inaccessible to the prosecution and the public, absent court order or written waiver by the defendant, until disposition of the motion.

F. Procedures for Compensation

1. Compensation for Investigative, Mitigation, Expert and Other Services

Fees and expenses for investigative, expert, and other services in excess of the then-current statutory cap must be certified by the presiding judge in order to provide fair compensation for services of an unusual character or duration. The amount of any excess payment must be approved by the Chief Judge of the Second Circuit Court of Appeals (or an active circuit judge to whom the Chief Judge has delegated this authority). The statutory cap relating to the services described in this section applies to the total payments for investigative, expert, and other services in a case, not to each service individually.

2. Forms

Claims for compensation and reimbursement of expenses for services in death penalty proceedings should be submitted on CJA Form 30, "Death Penalty Proceedings: Appointment and Authority to Pay Court Appointed Counsel," and CJA Form 31, "Death Penalty Proceedings: *Ex Parte* Request for Authorization and Voucher for Expert and Other Services."

3. Review of Vouchers

Absent extraordinary circumstances, judges should act upon Panel attorney and other compensation claims within 30 days of submission.

4. Interim Billing and Payment

In the interest of justice and judicial economy, interim billing and payment shall be allowed and encouraged for counsel, experts and other services.

5. Case Budgeting

The presiding judge and Panel members shall follow the budgeting procedure outlined in Section 6.02(F) of the *Guide to Judiciary Policies and Procedures: Appointment of Counsel in Criminal Cases*.

G. Other Considerations

1. Emergency Court Contacts

In all capital cases where a sentence of death has been imposed, the Clerk of the Court shall devise and implement a system for contacting the presiding judge, counsel for the parties, the United States Marshal for the District of Connecticut or his representative, and the warden of the penal institution where the defendant is awaiting execution.

2. Stays

Upon the filing of a notice of appeal, motion for reconsideration, habeas corpus petition, or other such action which has the practical effect of challenging a sentence of death, the presiding judge shall issue a stay of execution pending final disposition of the matter, accompanied by any necessary findings. The Clerk shall immediately notify all parties, and the state or federal authorities responsible for implementing the defendant's sentence of death, of the stay. If notification is oral, it shall be followed by written notice. Unless vacated or modified, the stay will continue in effect until the expiration of all proceedings available to and elected by the defendant, including review by United States Supreme Court, unless otherwise ordered by the Court. The District Court shall grant a prompt hearing as required by 28 U.S.C. §§ 2254 & 2255 and, as required by 18 U.S.C. § 3595(a), the review in capital cases shall have priority over all other cases. The Clerk shall send notice to the parties and the state or federal authorities responsible for implementing the defendant's sentence of death when the stay imposed by this provision is no longer in effect.

3. Pre-Bail Interviews

CJA Counsel, or interim counsel appointed pursuant to this section, shall be present at each pre-bail interview with the defendant, and any other interview conducted by the United States Probation Office or any other office.

4. Access to Defendant

In light of the heightened necessity for attorney-client consultation in a capital case, the United States Marshals Service shall cooperate in providing counsel adequate access to the defendant.

XVIII. FORMS

Where standard forms have been approved by the Judicial Conference of the United States, or an appropriate committee thereof, and have been distributed by the Administrative Office of the United States Courts, such forms shall be used by the Court, the Clerk, the Federal Defender's Office and appointed counsel.

XIX. EFFECTIVE DATE

This Plan supersedes all prior CJA Plans of this Court and shall become effective upon approval by the Judicial Council of the Second Circuit.

ENTERED FOR THE COURT ON June 22, 2018.

/s/ Janet C. Hall

JANET C. HALL
CHIEF JUDGE, UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT