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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

CARMELITA REEDER SHINN, CLERK
U.S. DIST. COURT, WESTERN DIST. OKLA.
BY UB, DEPUTY

IN RE: PLAN OF THE UNITED STATES DISTRICT)
COURT FOR THE WESTERN DISTRICT OF OKLAHOMA)
FOR THE IMPLEMENTATION OF THE CRIMINAL)
JUSTICE ACT, 18 U.S.C. § 3006A)

G.O. 19-4

CRIMINAL JUSTICE ACT PLAN

I. Authority

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

II. Statement of Policy

A. Objectives

The objectives of this Plan are:

1. to attain the goal of equal justice under the law for all persons;
2. to provide all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, are cost-effective, and protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and
3. to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), and *Guide*, Vol. 7A, in a way that meets the needs of this district.

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

B. Compliance

1. The court, its clerk, the federal public defender organization, attorneys provided by a bar association or legal aid agency, and

private attorneys appointed under the CJA must comply with Guide, Vol. 7A, approved by the Judicial Conference of the United States and with this Plan.

2. The court will ensure that a current copy of the CJA Plan is made available on the court's website and provided to CJA counsel upon the attorney's designation as a member of the CJA trial panel of private attorneys ("CJA Trial Panel").

III. Definitions

A. Representation

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

B. Appointed Attorney

"Appointed attorney" is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys, the federal public defender and staff attorneys of the federal public defender organization, and attorneys provided by a bar association or legal aid agency.

C. CJA Administrator

"CJA Administrator" is a person designated by the federal public defender to administer the CJA Panels.

IV. Determination of Eligibility for CJA Representation

A. Subject Matter Eligibility

1. Mandatory

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

- a. is charged with a felony or with a Class A misdemeanor;
- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
- c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification

- sought is agreeable to the probationer and the government has not objected to the proposed change);
- d. is under arrest, when such representation is required by law;
- e. is entitled to appointment of counsel in parole proceedings;
- f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
- g. is subject to a mental condition hearing under 18 U.S.C. chapter 313;
- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255;
- j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;
- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary

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

- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
- b. is seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 other than to set aside or vacate a death sentence;
- c. is charged with civil or criminal contempt and faces loss of liberty;

- d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
- e. has been advised by the United States attorney or a law enforcement officer that they are the target of a grand jury investigation;
- f. is proposed by the United States attorney for processing under a pretrial diversion program; or
- g. is held for international extradition under 18 U.S.C. chapter 209.

3. Ancillary Matters

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

- a. to protect a constitutional right;
- b. to contribute in some significant way to the defense of the principal criminal charge;
- c. to aid in preparation for the trial or disposition of the principal criminal charge;
- d. to enforce the terms of a plea agreement in the principal criminal charge;
- e. to preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under 18 U.S.C. § 983, 19 U.S.C. § 1602, 21 U.S.C. § 881, or similar statutes, which property, if recovered by the client, may be considered for reimbursement under 18. U.S.C. § 3006A(f); or
- f. effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if

recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f).

B. Financial Eligibility

1. Presentation of Accused for Financial Eligibility Determination

a. Duties of Law Enforcement

- (i) Upon arrest, and when the defendant has not retained or waived counsel, federal law enforcement officials must promptly notify, telephonically or electronically, the appropriate court personnel, who in turn will notify the federal public defender of the arrest of an individual in connection with a federal criminal charge.
- (ii) Employees of law enforcement agencies should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

b. Duties of United States Attorney's Office

- (i) Upon the return or unsealing of an indictment or the filing of a criminal information, and when the defendant has not retained or waived counsel, the United States attorney or delegate will promptly notify, telephonically or electronically, appropriate court personnel, who in turn will notify the federal public defender.
- (ii) Upon issuance of a target letter, and when the individual has not retained or waived counsel, the United States attorney or delegate must promptly notify, telephonically or electronically, the appropriate court personnel and the CJA Administrator and staff ("CJAA").
- (iii) Employees of the United States Attorney's Office should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

c. Duties of Federal Public Defender Office

- (i) In cases in which the federal public defender may be appointed, the CJAA and the defender office will:
 - immediately investigate and determine whether an actual or potential conflict exists; and
 - in the event of an actual or potential conflict, the CJAA will facilitate the timely appointment of other counsel.
- (ii) The CJAA will discuss with the person who indicates that he or she is not financially able to secure representation the right to appointed counsel and, if appointment of counsel seems likely, assist in the completion of a financial affidavit (Form CJA 23) and arrange to have the person promptly presented before a magistrate judge or district judge of this court for determination of financial eligibility and appointment of counsel.

d. Duties of Pretrial Services Office

- (i) The pretrial services officer will not conduct the pretrial service interview of a financially eligible defendant until counsel has been appointed, unless the right to counsel is waived or the defendant otherwise consents to a pretrial services interview without counsel.
- (ii) When counsel has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release or detention hearing.

2. Factual Determination of Financial Eligibility

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

- b. The determination of eligibility for representation under the CJA is a judicial function to be performed by the court after making appropriate inquiries concerning the person's financial eligibility. The CJAA or other designee will assist the appointing judge in making the determination of financial eligibility by assisting the person's completion of the financial affidavit or form prescribed by the Administrative Office. Other employees of the court may be designated to obtain or verify the facts relevant to the financial eligibility determination.
- c. In determining whether a person is "financially unable to obtain counsel," consideration should be given to the cost of providing the person and his or her dependents with the necessities of life, the cost of securing pretrial release, asset encumbrance, and the likely cost of retained counsel.
- d. The initial determination of eligibility must be made without regard to the financial ability of the person's family to retain counsel unless the family indicates willingness and ability to do so promptly.
- e. Any doubts about a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected at a later time.
- f. Relevant information bearing on the person's financial eligibility should be reflected on a [financial eligibility affidavit \(Form CJA 23\)](#).
- g. If at any time after the appointment of counsel a judge finds that a person provided representation is financially able to obtain counsel or to make partial payment for the representation, the judge may terminate the appointment of counsel or direct that any funds available to the person be paid as provided in [18 U.S.C. § 3006A\(f\)](#).
- h. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel may be appointed in accordance with the general provisions set forth in this Plan.

V. Timely Appointment of Counsel

A. Timing of Appointment

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

1. after they are taken into custody;
2. when they appear before a magistrate or district court judge;
3. when they are formally charged or notified of charges if formal charges are sealed; or
4. when a magistrate or district court judge otherwise considers appointment of counsel appropriate under the CJA and related statutes.

B. Court's Responsibility

The court, in cooperation with the 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.

C. Retroactive Appointment of Counsel

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

VI. Provision of Representational Services

A. Federal Public Defender and Private Counsel

This Plan provides for representational services by the federal public defender organization and for the appointment and compensation of private counsel from CJA panel lists maintained by the CJAA in cases authorized under the CJA and related statutes.

B. Administration

Administration of the CJA panels, as set forth in this Plan, is delegated and assigned to the federal public defender.

C. Apportionment of Cases

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

D. Number of Counsel

More than one attorney may be appointed in any case determined by the court to be extremely difficult.

E. Capital Cases

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

VII. Federal Public Defender Organization

A. Establishment

The federal public defender organization for the Western District of Oklahoma is established in this district under the CJA and is responsible for rendering defense services on appointment throughout this district.

B. Standards

The federal public defender organization 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.

C. Workload

The federal public defender organization will continually monitor the workloads of its staff to ensure high quality representation for all clients.

D. Professional Conduct

The federal public defender organization must conform to the highest standards of professional conduct, including but not limited to the Oklahoma Rules of Professional Conduct.

E. 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 Code of Conduct for Federal Public Defender Employees.

F. Supervision of Defender Organization

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

G. Training

The federal public defender will assess the training needs of federal public defender staff and will provide training opportunities and other educational resources.

VIII. CJA Panel of Private Attorneys

A. Establishment of the CJA Panel Selection Committee

1. A CJA Panel Selection Committee ("CJA Committee") will be established by the court. It shall consist of one United States judge, the court clerk or designee, the CJA Panel representative, at least one attorney who is a member of the CJA Panel, and at least one attorney who is not a member of the CJA Panel. The federal public defender and the CJA Administrator or designee shall serve as permanent non-voting members of the committee. Membership on the CJA Committee will otherwise be for a term of three years and may be extended for an additional three years. Members' terms will be staggered to ensure continuity within the CJA Committee.
2. The CJA Committee will meet at least twice a year or as needed to fulfill its duties and at any time the court asks the Committee to consider an issue.

B. Duties of the CJA Committee

1. Membership

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

2. Recruitment

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

3. Annual Report

Review the operation and administration of the CJA Trial Panel over the preceding year and recommend any necessary or appropriate changes to the Chief Judge concerning:

- a. the size of the CJA Trial Panel;
- b. the recruitment of qualified and diverse attorneys as required and set forth in this plan; and
- c. recurring issues or difficulties encountered by panel members or their CJA clients.

4. Removal

The CJA Committee shall review one-third of the CJA Trial Panel attorneys on an annual basis to determine if the attorneys have demonstrated the dedication, knowledge, and skill required to remain on the CJA Trial Panel. The CJAA will notify the court and attorneys who are subject to review when the review period begins and will also inquire as to each attorney's availability and willingness to continue to accept appointments. The committee shall recommend to the court the removal of any CJA Trial Panel member who:

- a. fails to satisfactorily fulfill the requirements of CJA panel membership during his/her term of service, including the failure to provide high quality representation to CJA clients, or
- b. has engaged in other conduct such that his or her continued service on the CJA Trial Panel is inappropriate.

5. Training

Assist the federal public defender office in providing training for the CJA Panels on substantive and procedural legal matters affecting representation of CJA clients.

6. CJA Training Panel and Mentoring

- a. The CJA Committee shall establish a CJA Training Panel consisting of not more than ten attorneys per year.
- b. Members of the CJA Training Panel shall agree to participate in an 18-month program that will include training every month to be administered by the CJAA.
- c. Training panel members will be assigned a mentor from the CJA Trial Panel and the federal public defender office. CJA Training Panel members shall be compensated for in-court time at a rate set by the court and published on the court and defender websites.
- d. At the conclusion of the training program, the training attorney will either graduate or be informed by the CJAA that the CJA Committee has determined more training is required. There is no guarantee that completing the program will ensure placement on the CJA Trial Panel.
- e. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Trial Panel.

IX. Establishment of a CJA Trial Panel

A. Approval of CJA Trial Panel

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.
2. The court will approve attorneys for membership on the CJA Trial Panel after receiving recommendations from the CJA Committee.

B. Size of CJA Trial Panel

1. The size of the CJA Trial Panel will be determined by the CJA Committee based on the caseload and activity of the panel members, subject to review and approval by the court.
2. The CJA Trial Panel must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that CJA Trial Panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work.

C. Qualifications and Membership on the CJA Trial Panel and Training Panel

1. Application

Application forms for membership on the CJA Trial Panel and Training Panel are available on the court and federal public defender websites.

2. Equal Opportunity

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

3. Eligibility for CJA Trial Panel

- a. Applicants for the CJA Trial Panel must be members in good standing of the Oklahoma State Bar, Western District of Oklahoma, and the Tenth Circuit Court of Appeals, and have been admitted to the practice of law not less than 5 years.
- b. Applicants must possess strong litigation skills and demonstrate proficiency with the federal sentencing guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the court's Local Criminal Rules.
- c. 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.
- d. All members of the CJA Trial Panel shall participate in at least six hours of continuing legal education ("CLE") or equivalent training in federal criminal defense per year. To facilitate this

requirement, the CJAA, separately or in conjunction with the Federal Bar Association or the Oklahoma Bar Association, will present at least six hours of CLE per year.

- e. Attorneys who do not possess the experience set forth above but believe they have equivalent other experience are encouraged to apply and to provide in writing the details of that experience for the CJA Committee's consideration or to consider applying for the CJA Training Panel.

4. Eligibility for Training Panel

- a. Applicants for the CJA Training Panel must be members in good standing of the Oklahoma Bar Association, Western District of Oklahoma, and the Tenth Circuit Court of Appeals, and have been admitted to the practice of law not less than four years.
- b. Applicants must have litigation skills in either federal or state court, have a working knowledge of the federal sentencing guidelines, Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the court's Local Criminal Rules.

5. Appointment to CJA Panels

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

6. Terms of CJA Trial Members

Attorneys who are named to the CJA Trial Panel will serve for three-year terms, subject to renewal.

7. Reappointment of CJA Trial Panel Members

- a. The CJAA will notify CJA Trial Panel members that they are subject to review prior to the expiration of their current term.
- b. The CJAA will solicit input concerning the quality of representation provided by lawyers, which will be provided to the CJA Committee for consideration of reappointment.

- d. The CJA Committee will consider the number of cases the CJA Trial Panel member has accepted and declined during the review period, whether the member has participated in the mandatory 6 hours of federal CLE 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.

8. Removal from the CJA Trial or Training Panel

a. Mandatory removal

Any member of the CJA Trial Panel or Training Panel who is suspended or disbarred from the practice of law by any state or federal court will be removed from the respective CJA Panel immediately. The removed panel member must file a motion to withdraw in any pending case, and new counsel will be appointed for any client currently being represented by removed counsel.

b. Automatic disciplinary review

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

c. Complaints

(i) Initiation

A complaint against a panel member may be initiated by the CJA Committee, CJAA, a judge, another panel member, a defendant, or a member of the federal public defender office. A complaint need not follow any particular form, but it must be in writing and state the alleged deficiency with specificity. Any complaint must be directed to the CJAA, who will determine whether further investigation is necessary. If the CJAA initiates the complaint, it shall be sent to the court clerk for initial review and the CJAA will recuse.

(ii) Notice

The panel member is entitled to notice of the specific allegations in the complaint.

(iii) Response

A panel member subject to investigation may respond in writing and appear, if so directed, before the CJAA or court clerk if the CJAA has recused.

(iv) Protective action

Prior to disposition of any complaint, the CJAA or court clerk may recommend to the CJA Committee the temporary suspension or 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. Protective action will not occur unless the CJA Committee recommends such action to the Chief Judge and such action is approved by the Chief Judge.

(v) Review and recommendation

After investigation, the CJAA or court clerk may recommend dismissing the complaint, or recommend appropriate remedial action, including removing the attorney from the panel, limiting the attorney's participation to particular types or categories of cases, directing the attorney to complete specific CLE requirements before receiving further panel appointments, limiting the attorney's participation to handling cases that are directly supervised or overseen by another panel member or other experienced practitioner, or any other appropriate remedial action. This recommendation must be forwarded to the CJA Committee, which may accept, reject, or modify the recommendation.

(vi) Final disposition by the court

The CJA Committee will forward its recommendation to the Chief Judge for consideration and final disposition by the court.

(vii) Confidentiality

Unless otherwise directed by the court, any information acquired concerning any possible disciplinary action, including any complaint and any related proceeding, will be confidential.

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

d. Notification

The court clerk will immediately notify the federal public defender and the CJAA when any member of the CJA Trial or Training Panel is removed or suspended.

X. CJA Panel Attorney Appointment in Non-Capital Cases

A. Appointment List

The CJAA will maintain a current list of all attorneys included on the CJA Trial and Training Panels, with current office addresses, e-mail addresses, and telephone numbers, as well as a statement of qualifications and experience. Panel members are responsible for notifying the CJAA of any changes to their contact information. The CJAA staff shall furnish a copy of this list to the members of the court.

B. Appointment Procedures

1. The CJAA is responsible for overseeing the appointment of cases to panel attorneys. The CJAA 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.
2. Appointment of cases to CJA Trial Panel members will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, the CJAA may appoint counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel.
3. Under special circumstances the court may appoint a member of the bar of the court who is not a member of the CJA Trial or Training Panel. Such special circumstances may include cases in which the court determines that the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of

representation, or for any other compelling reason. It is not anticipated that special circumstances will arise often, and the procedures set forth in the Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed. Appointments made under this section will be reported to the CJA Committee.

4. Unless otherwise impracticable, CJA panel attorneys must be available to represent defendants at the same stage of the proceedings as is the federal public defender.

XI. Duties of CJA Panel Members

A. Standards and Professional Conduct

1. CJA panel members must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.
2. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the Oklahoma Rules of Professional Conduct.
3. CJA panel members must notify the CJAA within **10 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. Upon receipt of such notice, the CJAA will immediately inform the chair of the CJA Committee and the court clerk.

B. Training and Continuing Legal Education

1. Attorneys on CJA Panels are expected to remain current with developments in federal criminal defense law, practice, and procedure, including the Recommendation for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases.
2. Attorneys on the CJA Trial Panel are expected to attend trainings sponsored by the federal public defender and CJAA.
3. Attorneys on the CJA Trial Panel will be guided in their practice by the Federal Adaptation of the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representations.

4. CJA Trial Panel members must attend 6 CLE hours relevant to federal criminal practice annually.
5. Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Trial Panel.

C. Facilities and Technology Requirements

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

D. Continuing Representation

In the event a criminal defendant enters a plea of guilty or is convicted following trial, appointed counsel shall advise the defendant of the right of appeal and of the right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal. Counsel's duties under the appointment by the trial court include: (a) arranging for timely transmission of the record on appeal as provided by Fed. R. App. P. 10 & 11, and 10th Cir. R. 10.1, 10.2 and 10.3; and, if requested, (b) filing a docketing statement in accordance with 10th Cir. R. 3.4; and, if requested, (c) filing a memorandum opposing summary disposition (see 10th Cir. R. 27.3). Counsel's appointment remains in full force and effect until counsel is relieved of duty by order of the district court or the Court of Appeals.

E. Miscellaneous

1. Case budgeting

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

2. No receipt of other payment

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

3. Redetermination of need

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

XII. Compensation of CJA Panel Attorneys

A. Policy of the Court Regarding Compensation

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.
2. Voucher cuts should be limited to:
 - a. Mathematical errors;
 - b. Instances in which work billed was not compensable;
 - c. Instances in which work was not undertaken or completed; and
 - d. Instances in which the hours billed are in excess of what was reasonably required to complete the task.

See: JCUS-SEP 2018, p. 42.

B. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the court's eVoucher system.
2. Claims for compensation should be submitted no later than 45 days after final disposition of the case, unless good cause is shown.

3. The CJAA will review the claim for mathematical and technical accuracy, reasonableness, and for conformity with *Guide*, Vol. 7A. If the voucher is correct and deemed reasonable, the CJAA will forward the claim for consideration and action by the presiding judge.
4. Absent extraordinary circumstances, the court should act on CJA compensation claims within 30 days of submission, and vouchers should not be delayed or reduced for the purpose of diminishing Defender Services program costs in response to adverse financial circumstances.
5. 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.
6. The court, when contemplating reduction of a CJA voucher for other than mathematical reasons, may refer the voucher to the CJAA for review and recommendation before final action on the claim is taken. At the time the voucher is submitted to the CJAA, the judge will provide a written statement describing questions or concerns he or she has with the voucher. Counsel will be notified of the potential voucher reduction and given the opportunity to provide information or documentation relevant to the voucher and concerns raised by the judge. The CJAA will issue a written recommendation to the judge.
7. Notwithstanding the procedure described above, the court may, in the first instance, contact appointed counsel to inquire regarding questions or concerns with a claim for compensation. In the event the matter is resolved to the satisfaction of the court and CJA panel member, the claim for compensation need not be referred to the CJAA for review and recommendation.

C. Independent Review Process

1. A panel attorney wishing to challenge a reduction to a voucher made by the presiding judge shall file a challenge within **10 days** after notification of the reduction. The challenge shall be in writing and shall be submitted to the court clerk who will convene the standing subcommittee on voucher review.
2. The standing subcommittee on voucher review shall consist of the court clerk, the CJA Panel representative, and the CJA Committee member who is not a member of the CJA Panel.

3. The standing subcommittee shall review the voucher, the judge's statement of questions and concerns, the panel member's response thereto, the recommendation of the CJAA, if any, and the written challenge. The standing subcommittee shall promptly make a written recommendation to the Chief Judge.
4. Upon receipt of the committee's recommendation, the Chief Judge may affirm the decision of the presiding judge or may, if the voucher decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, modify the voucher determination. The decision of the Chief Judge shall be final and not reviewable. If the challenge is to a reduction made by the Chief Judge, the recommendation shall be made to the next most senior active District judge, and the decision by that judge shall be final and not reviewable.

XIII. Investigative, Expert, and Other Services

A. Financial Eligibility

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

B. Applications

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

C. Compliance

Counsel must comply with Judicial Conference policies set forth in the [Guide, Vol. 7A, Ch. 3](#).

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

A. Applicable Legal Authority

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

B. General Applicability and Appointment of Counsel Requirements

1. Unless otherwise specified, the provisions set forth in this section apply to all capital proceedings in the federal courts, whether those matters originated in a district court (federal capital trials) or in a state court (habeas proceedings under 28 U.S.C. § 2254). Such matters include those in which the death penalty may be or is being sought by the prosecution, motions for a new trial, direct appeal, applications for a writ of certiorari to the Supreme Court of the United States, all post-conviction proceedings under 28 U.S.C. §§ 2254 or 2255 seeking to vacate or set aside a death sentence, applications for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings.
2. Any person charged with a crime that may be punishable by death who is or becomes financially unable to obtain representation is entitled to the assistance of appointed counsel throughout every stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, competency proceedings, and proceedings for executive or other clemency as may be available to the defendant. See: [18 U.S.C. § 3599\(e\)](#).
3. Qualified counsel must be appointed in capital cases at the earliest possible opportunity. Unless otherwise ordered by the presiding judge, attorney appointments shall be made by a United States Magistrate Judge designated by the court for that purpose.
4. Given the complex and demanding nature of capital cases, where appropriate, the court will utilize the expert services available through the Administrative Office of the United States Courts (AO), Defender Services Death Penalty Resource Counsel projects ("Resource Counsel projects") which include: (1) Federal Death Penalty

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

5. The 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 present their recommendations for appointment of counsel to the appointing judge.
6. In appointing counsel in capital cases, judges should consider and give due weight to the recommendations made by federal defenders and resource counsel.
7. The appointing judge may appoint an attorney furnished by a state or local public defender organization or legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief provided that the attorney is fully qualified. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed pro hac vice. **See:** [18 U.S.C. § 3006A\(a\)\(3\)](#).
8. All attorneys appointed in federal capital cases must be well qualified, by virtue of their training, commitment, and distinguished prior capital defense experience at the relevant stage of the proceeding, to serve as counsel in this highly specialized and demanding litigation.
9. All attorneys appointed in federal capital cases must have sufficient time and resources to devote to the representation, taking into account their current caseloads and the extraordinary demands of federal capital cases.
10. All attorneys appointed in federal capital cases should comply with the [American Bar Association's 2003 Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases](#) (Guidelines 1.1 and 10.2 et seq.), and the [2008 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases](#).

11. All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.
12. All capital cases should be budgeted with the budget determined by the designated United States Magistrate Judge after consultation, as appropriate, with case-budgeting attorneys, and/or resource counsel. The budget shall be subject to review and final determination by the presiding judge.
13. General questions about the appointment and compensation of counsel and the authorization and payment of investigative, expert, and other service providers in federal capital cases should be directed to the AO Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030 or via email at ods_lpb@ao.uscourts.gov.

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

1. General Requirements
 - a. Appointment of qualified capital trial counsel must occur no later than when a defendant is charged with a federal criminal offense where the penalty of death is possible. **See:** [18 U.S.C. § 3005](#).
 - b. To protect the rights of an individual who, although uncharged, is the subject of an investigation in a federal death-eligible case, the court may appoint capital-qualified counsel upon request, consistent with Sections C.1, 2, and 3 of these provisions.
 - c. At the outset of every capital case, the court must appoint two attorneys, at least one of whom meets the qualifications for "learned counsel" as described below. If necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in a capital case. **See:** [18 U.S.C. § 3005](#).
 - d. When appointing counsel, the judge must consider the recommendation of the federal public defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. **See:** [18 U.S.C. § 3005](#).
 - e. In appointing counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel.

- f. To effectuate the intent of 18 U.S.C. § 3005 that the federal public defender's recommendation be provided to the court, the judge should ensure the federal public defender has been notified of the need to appoint capital-qualified counsel.
- g. Reliance on a list for appointment of capital counsel is not recommended because selection of trial counsel should account for the particular needs of the case and the defendant, and be based on individualized recommendations from the federal public defender in conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel projects.
- h. 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.
- i. In evaluating the qualifications of proposed trial counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

2. Qualifications of Learned Counsel

- a. Learned counsel must either be a member of this district's bar or be eligible for admission pro hac vice based on his or her qualifications. Appointment of counsel from outside the jurisdiction is common in federal capital cases to achieve cost and other efficiencies together with high quality representation.
- b. Learned counsel must meet the minimum experience standards set forth in 18 U.S.C. §§ 3005 and 3599.
- c. Learned counsel should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high quality representation.
- d. "Distinguished prior experience" contemplates excellence, not simply prior experience. Counsel with distinguished prior

experience should be appointed even if meeting this standard requires appointing counsel from outside the district where the matter arises.

- e. The suitability of learned counsel should be assessed with respect to the particular demands of the case, the stage of the litigation, and the defendant.
- f. Learned counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
- g. Learned counsel should satisfy the qualification standards endorsed by bar associations and other legal organizations regarding the quality of representation in capital cases.

3. Qualifications of Second and Additional Counsel

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

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

- 1. When appointing appellate counsel, the judge must consider the recommendation of the federal public defender, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.
- 2. In appointing appellate counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel.

3. Counsel appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial.
 4. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.
 5. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital appeals to achieve high quality representation together with cost and other efficiencies.
 6. Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals and capital appeals.
 7. At least one of the attorneys appointed as appellate counsel must have the requisite background, knowledge, and experience required by 18 U.S.C. § 3599(c) or (d).
 8. In evaluating the qualifications of proposed appellate counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
 9. In evaluating the qualifications of proposed appellate counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.
- E. Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. § 2255)
1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2255 is entitled to appointment of fully qualified counsel. See: 18 U.S.C. § 3599(a)(2).
 2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.
 3. In light of the accelerated timeline applicable to capital § 2255 proceedings, prompt appointment of counsel is essential. Wherever possible, appointment should take place prior to the denial of certiorari on direct appeal by the United States Supreme Court. Counsel representing the defendant on direct appeal should submit

the necessary application for appointment of counsel to the appropriate district court for consideration.

4. When appointing counsel in a capital § 2255 matter, the court shall consider the recommendation of the federal public defender, who will consult with the Federal Capital Habeas § 2255 Project.
5. In appointing post-conviction counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel.
6. 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.
7. Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
8. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.
9. In evaluating the qualifications of proposed post-conviction counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
10. In evaluating the qualifications of proposed post-conviction § 2255 counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

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

1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 is entitled to the appointment of qualified counsel. **See:** 18 U.S.C. § 3599(a)(2).
2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.

3. When appointing counsel in a capital § 2254 matter, the appointing authority should consider the recommendation of the federal public defender who will consult with the National or Regional Habeas Assistance and Training Counsel projects. The federal public defender's recommendation may be to appoint this district's Capital Habeas Unit ("CHU"), a CHU from another district, or other counsel who qualify for appointment under 18 U.S.C. § 3599 and this Plan, or any combination of the foregoing appropriate under the circumstances.
4. In appointing counsel in a capital § 2254 matter, judges should give due weight to the recommendations made by federal defenders and resource counsel.
5. 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.
6. In order for federal counsel to avail themselves of the full statute-of-limitations period to prepare a petition, the court should appoint counsel and provide appropriate litigation resources at the earliest possible time permissible by law.
7. Unless precluded by a conflict of interest, or replaced by similarly qualified counsel upon motion by the attorney or motion by the defendant, capital § 2254 counsel must represent the defendant throughout every subsequent stage of available judicial proceedings and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, and must also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant. **See: 18 U.S.C. § 3599(e).**
8. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
9. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.
10. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.

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

XV. Effective Date

This Plan will become effective when approved by the Judicial Council of the Court of Appeals for the Tenth Circuit.

ENTERED FOR THE COURT ON this 22nd day of November, 2019.



TIMOTHY D. DeGIUSTI
Chief United States District Judge
Western District of Oklahoma

APPROVED BY THE JUDICIAL COUNCIL OF THE TENTH CIRCUIT ON this ____ day
of _____, 2019.

TIMOTHY M. TYMKOVICH
Chief United States Circuit Judge
Court of Appeals for the Tenth Circuit

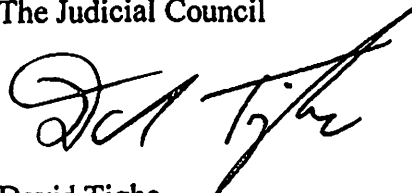
**MINUTES OF THE JUDICIAL COUNCIL
OF THE TENTH CIRCUIT**

December 18, 2019

The Judicial Council has approved the proposed amendments to the CJA Plan of the United States District Court for the Western District of Oklahoma. The court may choose the effective date of the new plan and shall notify the Administrative Office of the United States Courts of the modifications to the plan pursuant to 18 U.S.C. § 3006A.

The Judicial Council

By:

A handwritten signature in black ink, appearing to read "David Tighe", written over a horizontal line.

David Tighe
Circuit Executive and Secretary to the
Judicial Council of the Tenth Circuit