UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JUDICIAL COUNCIL

FILED

JUL 03 2018

U.S. COURTS OF APPEALS
FOURTH CIRCUIT

In the Matter of the Review of the	*	
Amendments to the Plan of the United	*	
States District Court for the	*	
Western District of Virginia	*	No. 379
in Implementation of the Criminal Justice Act	*	
	*	

ORDER

The Plan of the United States District Court for the Western District of Virginia, as amended, which is attached to and made a part of this Order is hereby approved by the Judicial Council of the Fourth Circuit, and it is so ORDERED.

FOR THE COUNCIL:

James N. Ishida, Secretary

Date: July 3, 2018

CRIMINAL JUSTICE ACT PLAN FOR THE U.S. DISTRICT COURT WESTERN DISTRICT OF VIRGINIA

Revised June 2018

United States District Court
For the Western District of Virginia
Criminal Justice Act Plan

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United States District Court
For the Western District of Virginia
Criminal Justice Act Plan

I. Authority

Under the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and *Guide to Judiciary Policy (Guide)*, Volume 7A, the judges of the United States District Court for the Western District of Virginia 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's office, private attorneys appointed under the CJA, and an attorney provided by a bar association or legal aid agency must comply with Guide, Vol. 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, 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 panel of private attorneys (CJA 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, 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 chief judge of this court to administer the CJA Panel. The Clerk of Court is designated to serve as the CJA Administrator in this district.

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 favorable to the probationer and the government has not objected to the proposed change);

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

e. is entitled to appointment of counsel in parole proceedings;

f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;

g. is subject to a mental condition hearing under 18 U.S.C. chapter 313;

h. is in custody as a material witness;

i. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255;

j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;

k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or

l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary

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

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

b. is seeking relief under 28 U.S.C. §§ 2241, 2254, and 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 where the defendant has not retained or waived counsel, federal law enforcement officials must promptly notify, telephonically or electronically, the appropriate court personnel, who in turn will notify the federal public defender of the arrest of an individual in connection with a federal criminal charge.

(ii) Employees of law enforcement agencies should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

b. Duties of United States Attorney's Office

(i) Upon the return or unsealing of an indictment or the filing of a criminal information, and where the defendant has not retained or waived counsel, the United States Attorney or their 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 where the individual has not retained or waived counsel, the United States Attorney or their delegate must promptly notify, telephonically or electronically, the appropriate court personnel, who in turn will notify the federal public defender, unless the United States Attorney's Office is aware of an actual or potential conflict with the target and the federal public defender, in which case they must promptly notify the court.

(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's Office

(i) In cases in which the Federal Public Defender may be appointed, the office will:

- immediately investigate and determine whether an actual or potential conflict exists; and
- in the event of an actual or potential conflict, promptly notify the court to facilitate the timely appointment of other counsel.

(ii) When practicable, the Federal Public Defender 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 Officers

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

b. The determination of eligibility for representation under the CJA is a judicial function to be performed by the court after making appropriate inquiries concerning the person's financial eligibility. Other employees of the court may be designated to obtain or verify the facts relevant to the financial eligibility determination.

c. In determining whether a person is "financially unable to obtain counsel," consideration should be given to the cost of providing the person and his or her dependents with the necessities of life, the cost of securing pretrial release, asset encumbrance, and the likely cost of retained counsel.

d. The initial determination of eligibility must be made without regard to the financial ability of the person's family to retain counsel unless their family indicates willingness and ability to do so promptly.

e. Any doubts about a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected at a later time.

f. Relevant information bearing on the person's financial eligibility should be reflected on a financial eligibility affidavit (Form CJA 23).

g. If at any time after the appointment of counsel a judge finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the judge may terminate the appointment of counsel or direct that any funds available to the defendant be paid as provided in 18 U.S.C. § 3006A(f).

h. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel may be appointed in accordance with the general provisions set forth in this Plan.

V. Timely Appointment of Counsel

A. Timing of Appointment

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

1. after they are taken into custody;

2. when they appear before a magistrate or district court judge;

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

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

B. 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. Pretrial Service Interview

When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial service interview without counsel, financially eligible defendants will be provided appointed counsel prior to being interviewed by a pretrial services officer.

D. 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's Office and for the appointment and compensation of private counsel from a CJA Panel list maintained by the court in cases authorized under the CJA and related statutes.

B. Administration

Administration of the CJA Panel, as set forth in this Plan, is hereby delegated and assigned to the Clerk of Court with oversight by the Executive Committee.

C. Apportionment of Cases

In cases of conflict of interest with the Federal Public Defender, and where practical and cost effective, private attorneys from the CJA Panel will be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" will usually be defined as a minimum of twenty-five percent (25%) of the annual CJA appointments. Wherever possible, the Federal Public Defender will be appointed to represent qualifying defendants.

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 Virginia, previously established in this district pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender's Office for this district, and is responsible for rendering defense services on appointment throughout this district.

B. Standards

The Federal Public Defender and staff attorneys 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))).

C. Workload

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

D. Professional Conduct

The Federal Public Defender and staff attorneys must conform to the highest standards of professional conduct, including but not limited to the

Code of Conduct for Federal Public Defender Employees, and the Rules of Professional Conduct adopted by the Virginia Supreme Court, as amended from time to time by that Court.

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 federal public defender Code of Conduct.

F. Supervision of Defender Organization

The Federal Public Defender will be responsible for the supervision and management of the Federal Public Defender's Office. 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 staff attorneys and, in coordination with the CJA Panel Attorney District Representative,[1] the training needs of the local panel attorneys, and provide training opportunities and other educational resources.

VIII. CJA Panel of Private Attorneys

A. Establishment of the CJA Panel Advisory Committee

A CJA Panel Advisory Committee ("Advisory Committee"), by previous Standing Orders and appointments by the chief judge, has been established for this district. Under this revised Criminal Justice Act Plan, the Advisory Committee members are a Magistrate Judge, the Federal Public Defender, or designee, the Clerk of Court, or designee, the CJA PADR, the CJA Advisory Committee Chairperson, and one CJA Panel

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[1] The CJA Panel Attorney District Representative (PADR) is a member of the district's CJA Panel who is selected by the chief judge, upon recommendation of the Federal Public Defender, to serve as the representative of the district's CJA Panel for the national Defender Services CJA PADR program.

member from each division of the Court. The Federal Public Defender, or designee, the PADR, and the Clerk, or designee, are permanent members of the Advisory Committee. The Clerk, or designee, shall serve as the Secretary of the Advisory Committee.

The chief judge shall designate a chairperson for the Advisory Committee from the members of the Advisory Committee. The same person may serve as both the Advisory Committee Chair and the PADR. The chairperson may serve no more than three consecutive, three year terms as chair of the Advisory Committee unless otherwise directed by the chief judge. Membership on the Advisory Committee for the division representatives will be for a term of three years and may be extended for an additional three years. Members' terms will be staggered to ensure continuity on the Advisory Committee. Any CJA Panel member of the Advisory Committee may be removed by the chief judge, or by the Court, with or without cause.

1. Executive Committee

   There shall be an Executive Committee which shall consist of the Advisory Committee Magistrate Judge, the Federal Public Defender or designee, the PADR, the Advisory Committee Chair, and the Clerk of Court or designee.

2. Division Review Panels

   A Review Panel for each division of the Court shall also be established. Members of each Division Review Panel are the Executive Committee and the member of the CJA Advisory Committee from that division.

B. Duties of the CJA Advisory Committee

1. Meetings

   The Advisory Committee will meet at least once a year to address administration of the CJA Plan and other matters requiring the attention of the court. The Executive Committee will meet at least twice a year and at any time the court asks the Committee to consider an issue. The Review Panels shall meet in accordance with the Internal Operational Guidelines for the CJA Advisory Committee to advise the Executive Committee as to appointments to the CJA Panel

from that division, and to alert the Committee to any recurring issues or any matters requiring the court's attention. See Appendix A, Internal Operational Guidelines for the CJA Advisory Committee.

2. CJA Panel Membership

   The Executive Committee, in consultation with each Division Review Panel, examines the qualifications of the applicants for membership on the CJA Panel, and recommends to the chief judge the approval of those attorneys who are deemed qualified and the rejection of the applications of those attorneys deemed unqualified.

3. Recruitment

   Members of the Executive and Advisory Committees will 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.

4. Annual Report

   The Executive Committee will review the operation and administration of the CJA Panel over the preceding year, and recommend any necessary or appropriate changes to the chief judge concerning:

   a. the size of the CJA Panel;

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

   c. any issues or difficulties encountered by panel members or their CJA clients.

5. Removal

   The Executive Committee will recommend to the chief judge the removal of any CJA panel member who:

   a. fails to satisfactorily fulfill the requirements of CJA panel membership during their term of service, including the failure to provide high quality representation to CJA clients, or

   b. has engaged in other conduct such that his or her continued service on the CJA Panel is inappropriate.

See also Section IX.C.7

6. Training

   The Advisory Committee will assist the Federal Public Defender's Office in providing training for the CJA Panel on substantive and procedural legal matters affecting representation of CJA clients.

7. Voucher Review

   Counsel will be notified of the potential voucher reduction with a brief statement of the reason(s) for it, and will be given an opportunity to provide information or documentation relevant to the voucher and concerns raised by the court. When requested by the court in a given case, the Executive Committee will review and give comments regarding the payment of CJA vouchers in those cases where the court, for reasons other than mathematical errors, is considering authorizing payment for less than the amount of compensation claimed by CJA counsel.

   See also Section XII.B.5.

8. Mentoring

   The court has implemented a CJA Mentoring program. See Appendix B, CJA Training Panel program Guidelines.

IX. Establishment of a CJA Panel

A. Approval of CJA Panel

1. The existing, previously established, CJA Panel is hereby recognized.

2. The Executive Committee will submit to the chief judge a list of attorneys recommended for admission to the CJA Panel after receiving recommendations from the CJA Advisory Committee following its annual meeting.

3. The Court may approve attorneys for membership after receiving recommendations from the Executive Committee.

B. Size of CJA Panel

1. The size of the CJA Panel will be determined by the court based recommendations of the CJA Executive Committee. The recommendation will be based on an analysis of the caseload in each division of court and activity of the panel members.

2. The court may fix, periodically, the size of the CJA Panel. The CJA Panel must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that CJA panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work enabling them to provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.

C. Qualifications and Membership on the CJA Panel

1. Application

Application forms for membership on the CJA Panel are available from the court's public website. Applications must be submitted between the dates of January 1 and April 1 of each year.

2. Equal Opportunity

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

3. Eligibility

a. An applicant for the CJA Panel must be a member in good standing of the federal bar of this district and the Fourth Circuit Court of Appeals.

b. An applicant must be a member of the Virginia State Bar and maintain a primary, satellite, or shared office in this district,

or otherwise devote a substantial portion of practice in this district.

c. An applicant must possess strong litigation skills and demonstrate proficiency with the federal sentencing guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence.

d. An applicant must have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.

e. Attorneys who do not possess the experience set forth above but believe they have equivalent other experience are encouraged to apply to the CJA Training Panel Program.

4. Appointment to CJA Panel

After considering the recommendations of the Executive Committee, the chief judge, after consultation with the other judges of this court, will appoint or reappoint attorneys to the CJA 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.

5. Terms of CJA Panel Members

By prior order of this court, the terms of the CJA Panel attorneys are staggered. Approximately one third of the members' terms expire each year. Attorneys admitted to membership on the CJA Panel will each serve for a term of three years, subject to the reappointment procedures set forth in this plan. Members of the CJA Panel serve at the pleasure of the court and may be removed from the CJA Panel at any time with or without cause. No attorney has a property interest in continued membership on the CJA Panel.

6. Reappointment of CJA Panel Members

   a. The Clerk of Court will notify CJA panel members, prior to the expiration of their current term, of the need to apply for reappointment to the CJA Panel.

   b. A member of the CJA Panel who wishes to be considered for reappointment must apply for appointment to an additional term. A member seeking reappointment to the CJA Panel following expiration of his or her term must make application at least 90 days prior to the expiration date of the current term.

   c. The CJA Advisory Committee will solicit input concerning the quality of representation provided by lawyers seeking reappointment.

   d. The CJA Advisory Committee also will consider how many cases the CJA panel member has accepted and declined during the review period, whether the member has participated in training opportunities, whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of CJA panel members as set forth in this Plan.

7. Removal from the CJA Panel

   a. Mandatory removal

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

   b. Automatic disciplinary review

      The CJA Executive Committee will conduct an automatic disciplinary review of any CJA panel member against whom any licensing authority, grievance committee, or administrative body has taken action, or when a finding of probable cause, contempt, sanction, or reprimand has been

issued against the panel member by any state or federal court.

c. Complaints

(i) Initiation

A complaint against a panel member may be initiated by the CJA Committees, a judge, another panel member, a defendant, or a member of the Federal Public 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 CJA Executive Committee, which will determine whether further investigation is necessary.

(ii) Notice

When conducting an investigation, the CJA Executive Committee will notify the panel member of the specific allegations.

(iii) Response

A panel member subject to investigation may respond in writing and appear, if so directed, before the CJA Executive Committee or its subcommittee.

(iv) Protective action

Prior to disposition of any complaint, the CJA Executive Committee may recommend 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.

(v) Review and recommendation

After investigation, the CJA Executive Committee 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.

(vi) Final disposition by the court

The CJA Executive Committee will forward its recommendation to the chief judge. Any decision to impose remedial action will be approved by the majority of the active and senior district judges.

(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 Panel.

d. Notification

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

8. Appointment of Non-Panel Attorney

Subsection (b) of the CJA provides, in part, that "[c]ounsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the Court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan." However, when the presiding judge, or the chief judge if a judge has not yet been

assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA Panel, is in the interest of justice, judicial economy, or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA Panel pro hac vice and appointed. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify him or her for admission to the CJA Panel in the ordinary course of panel selection.

X. CJA Panel Attorney Appointment in Non-Capital Cases

A. Appointment List

The court will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience.

B. Appointment Procedures

1. The court is responsible for overseeing the appointment of cases to panel attorneys. The Clerk of Court 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 panel members will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, the court may appoint counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel.

3. Under special circumstances the court may appoint a member of the bar of the court who is not a member of the CJA Panel. Appointments made under this section will be reported to the CJA Administrator and Executive Committee.

4. Unless otherwise impracticable, CJA panel attorney(s) must be available to represent defendant(s) 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. 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))).

2. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the Rules of Professional Conduct adopted by the Virginia Supreme Court, as amended from time to time by that Court.

3. CJA panel members must notify within 30 days the chair of the CJA Executive Committee when any licensing authority, grievance committee, or administrative body has taken action against them, or when a finding of contempt, sanction, or reprimand has been issued against the panel member by any state of federal court.

B. Training and Continuing Legal Education

1. Attorneys on the CJA Panel are expected to remain current with developments in federal criminal defense law, practice, and procedure, including the Recommendation for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases.

2. Attorneys on the CJA Panel are expected to attend trainings sponsored by the Federal Public Defender.

3. Attorneys on the CJA 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 panel members must attend eight hours of continuing legal education 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 Panel.

C. Facilities and Technology Requirements

1. CJA panel attorneys must have facilities, resources, and technological capability to effectively and efficiently manage assigned cases.

2. CJA panel attorneys must comply with the requirements of electronic filing and eVoucher.

3. CJA panel attorneys must know and abide by procedures related to requests for investigative, expert, and other services.

D. Continuing Representation

Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals (unless provided otherwise by the Fourth Circuit's CJA plan) or review by certiorari, is closed; or until substitute counsel has filed a notice of appearance; or until an order is entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

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 *Guide*, Vol. 7A, Ch. 2, §§ 230.26.10–20.

2. No receipt of other payment

Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration

for representation 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.

XII. Compensation of CJA Panel Attorneys

A. Policy of the Court Regarding Compensation

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

B. Payment Procedures

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

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

3. The Clerk of Court's designee will review the claim for mathematical and technical accuracy and for conformity with *Guide*, Vol. 7A and, if correct, 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. In cases where a defendant is represented by more than one CJA counsel, the court may withhold consideration of the CJA vouchers until all of the vouchers have been submitted.

5. The court, when contemplating reduction of a CJA voucher for other than mathematical reasons, should provide counsel with prior notice of the proposed reduction with a brief statement of the reason(s) for it, and give counsel the opportunity to provide information or documentation relevant to the voucher and concerns raised by the court. The court may refer the voucher to the CJA Executive Committee for review and recommendation before final action on the claim is taken. See Section VIII of this Plan

6. The court may, in the first instance, contact appointed counsel to inquire regarding questions or concerns with a claim for compensation. In the event that the matter is resolved to the satisfaction of the court and CJA panel member, the claim for compensation need not be referred to the CJA Executive Committee for review and recommendation.

XIII. Investigative, Expert, and Other Services

A. Financial Eligibility

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

B. Applications

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

C. Compliance.

Counsel must comply with Judicial Conference policies set forth in *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.

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 consider their recommendations for appointment of counsel.

6. The presiding judge may appoint an attorney furnished by a state or local public defender organization or legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief provided that the attorney is fully qualified. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed pro hac vice. See 18 U.S.C. § 3006A(a)(3).

7. All attorneys appointed in federal capital cases 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.

8. All attorneys appointed in federal capital cases must have sufficient time and resources to devote to the representation, taking into account their current caseloads and the extraordinary demands of federal capital cases.

9. All attorneys appointed in federal capital cases should comply with the American Bar Association's 2003 Guidelines for the Appointment and Performance of Defense Counsel in Death

Penalty Cases (Guidelines 1.1 and 10.2 et seq.), and the 2008 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases.

10. All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.

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

C. Appointment of Trial Counsel in Federal Death-Eligible Cases[2]

1. General Requirements

a. Appointment of qualified capital trial counsel must occur no later than when a defendant is charged with a federal criminal offense where the penalty of death is possible. See 18 U.S.C. § 3005.

b. To protect the rights of an individual who, although uncharged, is the subject of an investigation in a federal death-eligible case, the court may appoint capitally-qualified counsel upon request, consistent with Sections C.1, 2, and 3 of these provisions.

c. At the outset of every capital case, the court must appoint two attorneys, at least one of whom meets the qualifications for "learned counsel" as described below. If necessary for adequate representation, more than two attorneys may be

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[2] The Judicial Conference adopted detailed recommendations on the appointment and compensation of counsel in federal death penalty cases in 1998 (JCUS-SEP 98, pp. 67-74). In September 2010, the Defender Services Committee endorsed revised commentary to the Judicial Conference's 1998 recommendations. *CJA Guidelines*, Vol. 7A, Appx. 6A (Recommendations and Commentary Concerning the Cost and Quality of Defense Representation (Updated Spencer Report, September 2010)) ("Appx. 6A") is available on the judiciary's website.

appointed to represent a defendant in a capital case. See 18 U.S.C. § 3005.

d. When appointing counsel, the judge shall consider the recommendation of the federal public defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel.

e. To effectuate the intent of 18 U.S.C. § 3005 that the Federal Public Defender's recommendation be provided to the court, the judge should ensure the Federal Public Defender has been notified of the need to appoint capitally-qualified counsel.

f. Reliance on a list for appointment of capital counsel is not recommended because selection of trial counsel should account for the particular needs of the case and the defendant, and be based on individualized recommendations from the Federal Public Defender in conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel projects.

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

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

2. Qualifications of Learned Counsel

a. Learned counsel must either be a member of this district's bar or be eligible for admission pro hac vice based on his or her qualifications. 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 set forth above.

b. Second and additional counsel must be well qualified, by virtue of their distinguished prior criminal defense experience, training and commitment, to serve as counsel in this highly specialized and demanding litigation.

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

d. The suitability of second and additional counsel should be assessed with respect to the demands of the individual case, the stage of the litigation, and the defendant.

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

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

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

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

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

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

6. At least one of the attorneys appointed as appellate counsel must have the requisite background, knowledge, and experience required by 18 U.S.C.§ 3599(c) or (d).

7. In evaluating the qualifications of proposed appellate counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.

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

E. Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. § 2255)

1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2255 is entitled to appointment of fully qualified counsel. See 18 U.S.C. § 3599(a)(2).

2. 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.

4. When appointing counsel in a capital § 2255 matter, the court should consider the recommendation of the federal public defender, who will consult with the Federal Capital Habeas § 2255 Project.

5. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2255 cases to achieve high quality representation together with cost and other efficiencies.

6. Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.

7. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.

8. In evaluating the qualifications of proposed post-conviction counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.

9. In evaluating the qualifications of proposed post-conviction § 2255 counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other

capital cases, and their willingness to effectively represent the interests of the client.

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.

4. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2254 cases to achieve cost and other efficiencies together with high quality representation.

5. In order for federal counsel to avail themselves of the full statute of limitations period to prepare a petition, the court should appoint counsel and provide appropriate litigation resources at the earliest possible time permissible by law.

6. Unless precluded by a conflict of interest, or replaced by similarly qualified counsel upon motion by the attorney or motion by the defendant, capital § 2254 counsel must represent the defendant throughout every subsequent stage of available judicial proceedings and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, and must also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant. See 18 U.S.C. § 3599(e).

7. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.

8. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.

9. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.

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

XV. Supersession

This Plan supersedes all prior Criminal Justice Act Plans and the "Plan for the Composition, Administration, And Management of the Panel of Private Attorneys Under the Criminal Justice Act" appended to the prior CJA Plans for this Court.

XVI. Effective Date

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

ENTER FOR THE COURT ON THE 4TH DAY OF JUNE 2018.

CHIEF JUDGE,
UNITED STATES DISTRICT COURT

APPENDIX A

INTERNAL OPERATIONAL GUIDELINES FOR THE CJA ADVISORY COMMITTEE WESTERN DISTRICT OF VIRGINIA

Revised June 2018

INTERNAL OPERATIONAL GUIDELINES
FOR THE CJA ADVISORY COMMITTEE
WESTERN DISTRICT OF VIRGINIA

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I. INTRODUCTION

These guidelines provide general and specific procedures for the internal operations of the CJA Advisory Committee. They serve to supplement the 2018 revised CJA Plan approved by the Judicial Council of the Fourth Circuit.

These guidelines have been approved by the court. Upon recommendation by the CJA Advisory Committee and with the approval of the court, these guidelines may be revised and amended as necessary.

II. ADVISORY COMMITTEE

A. Members

Pursuant to Standing Order 2013-1 and the revised 2018 CJA Plan, the Honorable Robert S. Ballou, Magistrate Judge, shall serve as the judicial representative to the CJA Advisory Committee. The members of the Advisory Committee are the Magistrate Judge, the Federal Public Defender, or designee, the Clerk of Court, or designee, the CJA Panel Attorney District Representative (PADR),[1] the CJA Advisory Committee Chairperson, and one CJA Panel member from each division of the Court. The Clerk of Court shall serve as Secretary to the Advisory Committee. The Chair of the Criminal Justice Act Committee shall be appointed by the Chief Judge upon the recommendation of the Federal Public Defender. The same person may serve as both the PADR and the Advisory Committee Chair.

1. Executive Committee. The members of the CJA Executive Committee are the Magistrate Judge, the Federal Public Defender, or designee, the Clerk of Court, or designee, and the PADR, and the Advisory Committee Chair.

2. Division Review Panels. A Review Panel for each division of the Court is established to assist the Advisory Committee. Members of each Division Review Panel are the Executive Committee members and the member of the CJA Advisory Committee from that division. Pursuant to Standing Order No. 2014-6, CJA Panels for the Abingdon and Big Stone Gap divisions of the court were consolidated, and Panels for the Danville and Lynchburg divisions

[1] The CJA Panel Attorney District Representative (PADR) is a member of the district's CJA Panel who is selected by the Chief Judge upon recommendation by the Federal Public Defender to serve as the representative of the district's CJA Panel for the national Defender Services CJA PADR program and local CJA committee.

of the court were consolidated. This consolidation, however, did not decrease membership on the CJA Advisory Committee. Each division maintains its own individual representative on the CJA Advisory Committee.

B. Appointments and Resignations

1. Selection of a New CJA Advisory Committee Chair

- Term limit.

  The Chair may serve no more than three consecutive, three-year terms unless otherwise directed by the Chief Judge. According to the CJA Plan for this Court, the Chief Judge will appoint the Chair of the Advisory Committee upon the recommendation of the Federal Public Defender. It is expected that the Chair will be a current member of the Advisory Committee, and only practicing attorneys may be considered to serve as the Chair.

- The Chair may also serve as the PADR.

- Resignation of the Chairperson. Should the Chair of the CJA Advisory Committee wish to resign before expiration of the term of service:

  - The Chair shall notify the Chief Judge of this decision before the annual meeting of the Committee and in a reasonable amount of time to allow the Chief Judge to appoint another committee member to assume the duties;

  - The Chair shall also send notice to the committee members of the intent to resign; and

  - The Advisory Committee may direct the Secretary to submit nominations or recommendations for designation of a new Chair to the Chief Judge.

- Removal of the Chair.

  If the members of the Committee determine that the best interests of the Committee would be served by selection and appointment of a new Chair:

- The Committee shall direct the Secretary to convey notice to the Chief Judge; and

- The Committee by majority vote shall recommend to the Chief Judge the appointment of a particular committee member to this position.

2. Selection of a New Division Panel Representative to the Advisory Committee.

➢ Annual Appointment.

Pursuant to the CJA Plan, the Chief Judge will appoint, by order entered in January of each year, the Division Review Panel Representative for each division of court.[2]

➢ Resignation of a Division Review Panel Member.

Should the Representative wish to resign from the CJA Advisory Committee before expiration of his or her term:

- The Attorney shall notify the Chair of the CJA Advisory Committee of the decision in a reasonable amount of time before the annual meeting of the Advisory Committee to allow the Committee to make a recommendation to the Chief Judge as to the appointment of another committee member to the Advisory Committee;

- Provided the Chief Judge agrees, the Chair shall send notice to the other members of the of the division's CJA Panel and solicit recommendations from those attorneys as to the appointment of another panel representative to serve on the Advisory Committee;

- The Chair shall convene a meeting of the Advisory Committee, gather input from the members as to appointment of another panel member to the Advisory Committee, and prepare a recommendation for the court; and

- The Chair shall communicate that recommendation to the Chief Judge.

[2] For the purpose of attorney appointments, effective July 1, 2014, the court has determined that consolidation of the panels for the Abingdon and Big Stone Gap divisions and consolidation of the panels for the Danville and Lynchburg divisions are necessary in order to ensure an equitable distribution of case assignments. The court will continue to appoint a panel attorney from each division to represent the division on the CJA Advisory Committee.

3. Removal/Death of Division Review Panel Representative.

If the members of the Advisory Committee or the Division Review Panel determine that the best interests of the Committee would be served by the selection and appointment of a new Division Panel Representative to serve on the Advisory Committee, or in the event of the death of the Representative:

- The Chair shall direct the Secretary to send notice to the Chief Judge; and

- The Chair and Committee will follow the procedures in section 1, above, in order to make a recommendation to the Chief Judge for the appointment of a new Division Review Panel member to the Advisory Committee.

C. Administrative Matters

1. Meeting Schedule.

- The Advisory Committee will meet at least once a year to address administration of the CJA Plan and other matters requiring the attention of the court. This meeting will coincide with or follow the Federal Public Defender's annual Frank Dunham Conference. The Advisory Committee, through the Executive Committee, will submit an after-action report of this annual meeting to the Chief Judge prior to June 1 of each year.

- The Executive Committee will meet at least twice a year and at any time the court asks the Committee to consider an issue. The Committee will submit its Panel appointment recommendations to the Chief Judge prior to the Spring/Summer meeting of the judges of the Western District of Virginia. All action on the applications will be concluded before July 1 of each year.

- The Division Review Panels will meet in between April 1 and May 15 of each year to advise the Executive Committee as to appointments to the divisional CJA Panels. The Review Panels may also meet when necessary to alert the Advisory Committee to any new or recurring issues or matters requiring the court's attention.

- The meetings may be conducted via conference call or in person.

2. Secretary's Responsibilities.

- The Secretary will assist the Chair in scheduling meetings and conference calls;

- The Secretary will assist the Chair with correspondence to the Court, the Committee members and the applicants;

- The Secretary will prepare and distribute the applications to the Committee members; and

- The Secretary will compile and distribute to the Committee members statistics that show:

    - The total number of CJA appointments made during the preceding year in each division;

    - The number of cases each applicant accepted for appointment; and

    - The number of cases declined by the applicant and, when available, the reason for the declination.

3. Applications.

- CJA Panel.

  Applications are accepted from January 1 until March 31 each year. Late applications by first-time applicants will be brought to the attention of the Executive Committee and, in the discretion of the Committee, may be included in the review process. Attorneys applying for admission to the regular CJA Panel may also be considered by the Advisory Committee for admission to the Court's CJA Training Panel Program if they do not possess the requisite experience for admission to the CJA Panel.

- CJA Training Panel

  Applications for admission to the Court's CJA Training Panel Program are accepted from January 1 until March 31 of each year. These applications will be considered by the Advisory Committee at the same time as the applications for admission to the CJA Panel. Guidelines for the Training

Program are attached as Appendix B to the Court's revised 2018 CJA Plan.

III. PROTOCOL FOR REVIEW OF CJA APPLICATIONS

A. Technical Analysis of the Applications

Upon receipt of an application, the Clerk of Court will review the application to determine if the application is timely and contains all required information.

B. Courtesy Contact with Expiring Panel Members

- In the event an attorney whose term is expiring has failed to submit a timely application for reappointment, the Clerk upon direction by the Chair, the Federal Public Defender, or the Division Review Panel Representative shall contact the attorney in order to find out if the attorney desires to submit an application for reappointment.

- If the attorney desires to submit an application outside the time set forth in the CJA Plan, the Advisory Committee shall accept that application for reappointment.

C. Solicitation of Opinions and Information

1. The Legal Community

- Prior to the annual meeting, the Committee members will contact attorneys who practice in federal court to solicit feedback regarding the performance and character of the attorneys who have applied for appointment to the CJA panel and the CJA Training Panel. Additionally, committee members may seek the advice and opinions of others in the community who may be familiar with the applicant and who may have relevant information about the applicant's fitness to serve on the Panel.

- Specific feedback from the United States Attorney's Office and Federal Public Defender's Office will be sought.

- This information will be shared during the annual meeting and the meetings of the Division Review Panels.

2. **Federal Judges**

- The Clerk of Court will contact the judges in the Western District to solicit feedback.

- The Clerk will relay that information to the Committee prior to the annual and division review panel meetings.

D. **Discussion and Review of Applications**

1. **Meeting of the Advisory Committee**

- The Chair will prepare the agenda and the Secretary will distribute it to the members.

- The annual meeting will coincide with or follow the annual Frank Dunham Conference.

- The Chair will determine whether the meeting will take place in person or via a conference call. The Chair will prepare a report of the annual meeting and deliver the report to the Chief Judge in time for any issues or matters to be placed on the agenda for the Spring/Summer meeting of the District Judges and Magistrate Judges.

- The Chair will determine whether the meeting of the Division Review Panels will take place prior to the full committee meeting. If the review panel meetings precede the full committee meeting, the Chair will communicate the results of those meetings to the full committee.

- The Secretary will ensure that all Committee members have copies of the applications and all statistical materials prior to the meetings of each Division Review Panel.

- The committee members will review each of the applications and all relevant information before meeting.

- The Chairperson will prepare a letter setting forth the Advisory Committee's recommendation regarding each applicant and will send the letter to the Chief Judge.

2. **Meeting of the Division Review Panels**

- The committee members will review each of the applications for the division panel and all relevant information regarding the applicants before reaching a decision on each of the applications.

- The Chair will report back to the Advisory Committee the results of the analysis and discussion held by the review panels, and will distribute to the members the recommendation regarding appointments to the division panels.

3. **Analysis of Statistics**

- The Secretary shall compile statistics and prepare a report for the Advisory Committee that shows the following:

  - Total CJA appointments for each division during the preceding year;

  - The total number of CJA appointments for each panel member;

  - The number of CJA appointments offered but declined by an attorney;

  - The reasons, if available, for declination of a case; and

  - The current panel list for each division.

- The Division Review Panels will review the number of CJA appointments made in each division and consider whether the total number of panel members in each division is too large or too small. Recommendations regarding panel size will be made to the Advisory Committee by the Executive Committee.

- Based on consideration of the statistical evidence compared to the number of attorneys on a division's panel, the Committee shall establish an appropriate number of attorneys (i.e., a quota) to serve each division of court for the coming year. The quota for each division panel shall be determined on an annual basis.

  - Should the Committee determine that the panel members are not being appointed an adequate number of cases to maintain their proficiency in

federal criminal-defense work, the Committee will recommend to the court that the number of members on the panel be reduced.

- Should the Committee determine that a division panel contains an insufficient number of attorneys to provide adequate CJA representation, the Committee will recommend to the court that steps be taken to add attorneys to the panel.

- The Committee will also review the appointments to ascertain the reasons why non-division panel attorneys are being appointed to CJA cases in a division. Where it appears the non-panel appointments are numerous and an adequate explanation is not found, the Chair will contact the Chief Judge.

- Generally, the Committee will not recommend appointment of an attorney to multiple panels. In filling the quota that has been determined for each division panel, the Advisory Committee shall first select attorneys from the division. If there is not a sufficient number of applicants for that division to fill the quota for the division, the Committee may choose applicants from other divisions of the court who have also requested assignment to multiple panels.

- In those situations where the number of applications received is fewer than the number of expiring terms, the Chair and Committee members may reach out to well-qualified attorneys in the division, i.e., those who are experienced in representing federal criminal defendants, to ascertain interest in applying for appointment to the CJA Panel. The Chief Judge shall be notified of this situation by the Chair.

E. Confidentiality of the Process

In order to promote full, fair and open discussion of an applicant's suitability to serve on the CJA Panel and to ensure the Committee recommends the most qualified attorneys for appointment to the CJA Panel, the discussions held during the review and recommendation process are confidential in nature. The information received by the members of the Advisory Committee and Division Review Panels is non-public information.

- Each member of the Advisory Committee shall hold in confidence any and all discussions relating to the review and recommendation of attorneys for appointment to the district's CJA Panel.

- Disclosure of this confidential information will be brought to the attention of the Chair and the Chief Judge.

- The Chief Judge will determine whether it is necessary and advisable to take action to address this breach of confidentiality.

F. Submission of the Committee's Recommendations

- The Advisory Committee will recommend appointment of the most qualified attorneys for each division's panel. The Advisory Committee will also prepare a recommendation for appointment of attorneys to the Court's CJA Training Panel.

- The Chair with the assistance of the Secretary, if needed, will prepare a letter for the Chief Judge setting forth the recommendations of the Advisory Committee regarding each application.

    - This letter may also include any other issues identified by the Committee that need action or attention by the court.

    - The letter to the Chief Judge will be sent prior to the Spring/Summer meeting of the judges of the Western District of Virginia and prior to July 1 of each year.

G. Review of the Advisory Committee's Actions and Recommendations

- Having had the opportunity to make comments about the attorneys making application for appointment to the CJA Panel during the beginning of the evaluation process, it is expected that the judges will adopt the Advisory Committee's recommendations regarding appointment of attorneys to the CJA Panel and Training Panel, except in extraordinary circumstances. Ultimately, the judges of the court are responsible for the composition of the CJA Panel.

- The Chair will respond directly to any requests for reconsideration made by attorneys regarding the Committee's recommendations. Attorneys who are aggrieved by a response from the Chair may request review of the decision by the Chief Judge. The Chair shall direct the attorney to contact the Chief Judge.

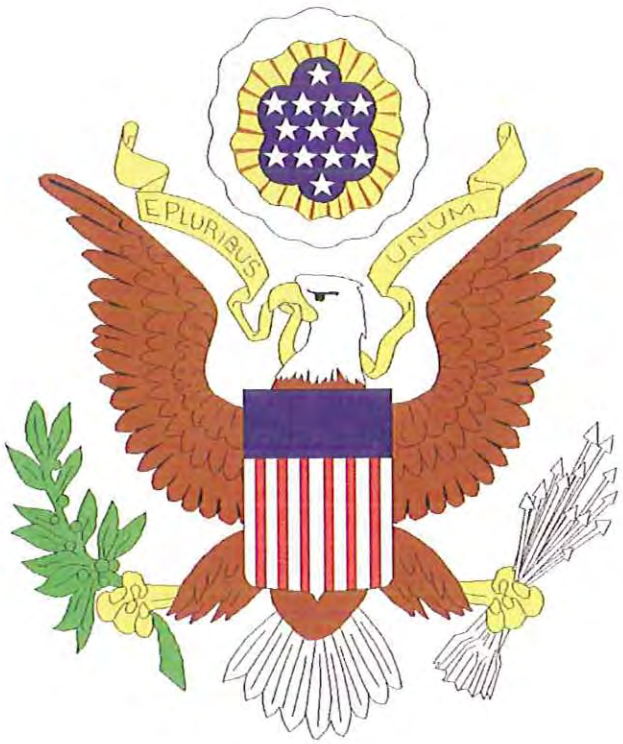
- Committee members who receive questions from CJA applicants will forward the questions to the Chair.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA

CRIMINAL JUSTICE ACT
TRAINING PANEL PROGRAM

GUIDELINES



I. INTRODUCTION

The United States District Court ("the Court"), in conjunction with the CJA Advisory Committee Chairman and the Federal Public Defender, conducted a pilot program in which attorneys who do not have the requisite experience for membership on the regular CJA Panel assisted members of the Federal Public Defender's Office in a "second-chair" capacity to gain the necessary experience required to provide high-quality representation in federal criminal cases to individuals who cannot afford to pay for those services.

For the purposes of this pilot program, the Federal Defender attorney assigned to a case was the "lead attorney"and the Mentee training panel attorney was the "second-chair" attorney. The second-chair attorney assisted the Federal Defender attorney as requested and was assigned to the case in a learning capacity, not as a full co-counsel. Training Panel attorneys had the same professional responsibilities to the client and the Court as they would in a case in which they were the appointed attorney.

The program was successful and will now be a permanent program incorporated into the Court's CJA Plan for this district. The program will also be expanded to include CJA appointed counsel as mentors to the training panel attorneys.

II. OBJECTIVES

In order to increase the diversity of the members of the CJA Panel and ensure quality representation for all defendants, particularly the indigent, the Court and CJA Advisory Committee have designed a training program to identify and help prepare viable candidates to qualify for consideration for appointment to the CJA Panel. Although an important objective of the program is to encourage increased participation of women and minorities on the CJA Panel, its primary goal is to obtain the best qualified CJA Panel candidates. As such, the training program is open to all qualified candidates.

III. ADMINISTRATION OF THE CJA TRAINING PANEL PILOT PROGRAM

A. Overview

The program will be administered by the Federal Public Defender and CJA Advisory Committee Chairman with assistance from the Clerk's Office. Mentor attorneys from the CJA Panel will be contacted for participation in the Mentee Training Program in July of each year. Each Mentee participating in the Training Program will be expected to serve up to two years on the Training Panel. Upon successful completion of training objectives, the Mentee may, thereafter, apply for admission to the CJA Panel. Mentees may also be offered the option to serve another term on the training panel.

B. Assignment of Mentee

Upon receipt of a new case and after an attorney from the office of the Federal Public Defender or the CJA Mentor Attorney has been appointed, the appointed counsel will review the case and determine if a Mentee Attorney member should be appointed in a second-chair capacity.

The CJA Mentor Attorney appointed counsel or Federal Public Defender will contact the clerk's office for the divisional location of the particular case and request that an attorney from the appropriate divisional Training Panel list be assigned to work with the lead attorney who was appointed to represent the criminal defendant. Appointments from the list of Training Panel attorneys shall be made on a rotational basis.

Once an assignment has been accepted by the Training Panel attorney, the clerk's office will provide the attorney with the pertinent information about the case, as well as contact information for the "lead" attorney. An order will be entered by the Court pursuant to Federal Rules of Criminal Procedure 6(e), 12.1, 12.2, 12.3, 16 and 26.2, pursuant to 26 U.S.C. §§ 6103(h)(4)(D) and 6103(i)(4)(A), and pursuant to the authority of the Court to regulate proceedings before it upon the acceptance of the case assignment by the Training Panel attorney. This order will permit the CJA Mentor Attorney and Federal Public Defender to disclose to the Mentee Attorney grand jury materials, sealed documents and other sensitive information which has been furnished to the CJA Attorney or Federal Public Defender attorney by the United States Attorney as part of the discovery in the case.

C. Supervision and Evaluation of the Mentee's Work

The assigned CJA Mentor Attorney or Federal Public Defender (hereinafter "Mentor Attorney") will supervise as lead attorney the Mentee who will act in the capacity of a second-chair attorney.

Before completing the two-year term, if the Mentor Attorney deems the Mentee Attorney has gained the requisite skills and exhibits the high degree of professionalism required to represent federal criminal defendants, the Mentor Attorney may submit a recommendation to the CJA Advisory Committee Chairman that the Mentee Attorney be considered for admission to the CJA Panel. The Chairman will confer with the lead attorney, obtain other recommendations regarding the Mentee Attorney, if necessary, and will communicate this information to the CJA Advisory Committee in a timely manner

The Federal Public Defender will invite Training Panel members to attend the CJA training seminars sponsored by the Federal Defender's Office and/or the Court. Such seminars are designed to assist CJA Panel members in keeping

current with new developments in the law and, thus, will be of value to the Training Panel members.

IV. TRAINING PANEL MEMBERSHIP

A. Application for Appointment to the Training Panel

Posted on the Court's public website at http://www.vawd.uscourts.gov, under the CJA Members tab, will be a Program description as well as an application form in a downloadable format (PDF/Word). Attorneys who meet the eligibility requirements and would like to be considered for appointment must submit an application between the dates of January 1 and March 31 to the attention of the Clerk of Court, U.S. District Court in Roanoke.

B. Eligibility for Training Panel Membership

To be admitted to the CJA Training Panel, attorneys must:

- Have three years of practice in state and/or federal courts.
- Demonstrate his or her status as a member in good standing with the Virginia State Bar.
- Demonstrate a commitment to providing criminal defense services to indigent clients.
- Complete at least one training seminar on the United States Sentencing Guidelines.
- Demonstrate knowledge of the Federal Rules of Criminal Procedure and the Federal Rules of Evidence.
- Have observed in-court proceedings in portions of at least three federal criminal cases.

C. Selection of Training Panel Members

The CJA Advisory Committee will select and forward to the Court for its approval a list of the attorneys recommended to participate in the Training Panel. The list will be divided by division of court and each division of court will have attorneys appointed to the Training Panel. The CJA Advisory Committee Chairman will cause each of the attorneys selected to be notified of this action.

Attorneys may apply to the Training Panel independently. However, some attorneys who apply for the CJA Panel may be offered admission to the Training Panel only. If the applicant agrees to be considered for potential membership on the Training Panel, the attorney's name will be forwarded to the Court for consideration as a Training Panel member.

D. Length of Training Period

A Mentee attorney will be expected to serve on the training panel for two years. During that period of service, it is anticipated that each Mentee attorney will be assigned at least two cases. Although it is anticipated that the training program

will provide the Mentee Attorney the opportunity to gain the experience necessary to become a successful member of the CJA Panel, participation in the program does not guarantee admission to the CJA Panel (nor is Training Panel membership required for admission to the CJA Panel). Mentee Attorneys are not limited in the number of terms they may serve on the Training Panel.

Successful completion of one or more case assignments and upon recommendation by the Mentor attorney that the Mentee has the requisite level of knowledge and skills to represent federal criminal defendants, may make the Mentee eligible to apply for service on the CJA Panel prior to the expiration of the two-year term.

E. Removal or Resignation from the Program

A Mentee Attorney may be removed if unable to meet the expectations for membership. The decision as to removal from the Training Panel will be guided by the recommendation of the CJA Advisory Committee. Recommendations for removal will be submitted to the Court for consideration. Additionally, the Court may exercise its own discretion to cause the removal of an attorney from the Training Panel.

F. No Compensation

Mentee Attorneys will not be compensated independently for their service on the Training Panel. Nor will the Mentee Attorneys be reimbursed for any expenses incurred as a result of their participation in an assigned criminal case.

G. PACER Service

CJA Training Panel members will be eligible to receive, free of charge, PACER services in CJA related matters. In order to take advantage of this service, the Training Panel attorney will need to access the PACER website at: http://pacer.psc.uscourts.gov and complete the online registration form. Training Panel attorneys should, under "Firm Name," type in his or her name followed by "CJA Training Panel Attorney." Once the registration has been submitted, the Training Panel attorney will receive his or her own ID number and password directly from PACER. Training Panel attorneys should be aware, however, that PACER services are monitored and that the use of the free service is for CJA related matters only. Unauthorized use of the PACER service will result in removal from the Training Panel. Any Training Panel member who wishes to use PACER for non-related CJA matters must register under his or her own name and obtain a different account number.

H. EXPECTATIONS FOR PARTICIPANTS IN THE PROGRAM[1]

A. Mentors As Lead Attorneys

Cases that will serve as teaching vehicles will be newly presented cases that will expose the Mentee attorney to myriad issues across the spectrum of representation (e.g., fast track program procedures, bail and release, discovery review, proffer sessions, plea negotiations, sentencing guideline calculations and negotiations, client interviews and conferences regarding various issues and themes, legal research and writing, and possible evidentiary hearing or trial).

Mentor Attorneys participating in the program shall supervise the Mentee attorneys. Mentor Attorneys shall have discretion regarding the extent of the Mentee Attorney's involvement, depending on the unique needs of the case and the experience of the attorney.

The Mentor Attorney will have the ultimate responsibility for any case in which a Mentee is assisting, including the final decision-making authority about legal strategy. The Mentor Attorney will also have the primary responsibility for communication with the client, although it is anticipated that the Mentee attorney will attend client meetings if the defendant consents.

The Mentor Attorneys are expected to give feedback to their Mentee attorneys as to their performance on an ongoing basis.

The Mentor Attorneys will also report annually to the CJA Advisory Committee Chairman regarding the training needs and progress of the Mentee attorneys with whom they have been working.

B. Mentee Attorneys

Each Mentee attorney will make his or her best effort to be available to serve through various stages of a federal criminal case and should strive to assist with and/or attend the following, if possible:

- Initial appearance
- Arraignment/detention hearing
- Jail visit/client meeting
- Plea negotiation
- Discovery review
- Sentencing guidelines calculations and analyses
- Sentencing hearing
- Motion drafting
- Composing sentencing memoranda
- Pre-trial hearings and conferences
- Trial

[1] See Appendix A, Mentee Duties and Responsibilities and Appendix B, Mentee Evaluation Form.

Mentee attorneys will assist the lead attorney as requested. Mentee attorneys will have the same professional responsibilities to the client and the court as in a case in which they were the appointed attorney. The Mentee attorneys will not act as co-counsel during the course of the lead attorney's representation of the client.

Mentee attorneys will be expected to keep current with developments in federal criminal defense law, practice and procedure. The attorneys will be invited to attend the CJA orientation and training seminars sponsored by the Federal Defender's Office. Attendance by the Mentee Attorneys at these and other similar training sessions is strongly encouraged.

V. OBLIGATIONS OF THE MENTORS

A. Post-Case Written Evaluation of Mentee Attorney

Upon the conclusion of a case (*e.g*, jury verdict, guilty plea, sentencing), the Mentor Attorney must complete a confidential written evaluation of the second-chair attorney's performance. *See* Appendix B of the Training Panel Program. The evaluation should be sent via email or regular mail to the attention of the Clerk, U.S. District Court.

The Clerk will provide copies of the evaluation to the CJA Advisory Committee Chairman, the Federal Public Defender, and the CJA Panel Division Representative. In the discretion of the Chairman, a copy of the evaluation will be provided to the Chief Judge.

B. December 1 Deadline For Evaluations and Recommendations

Mentors must submit the evaluations no later than December 1 of the year for which the Mentee worked with the Mentor.

C. Early-Termination Recommendations by the Mentor Attorney

Deficient Performance.

If the Mentor recommends early termination from the program for deficient performance, the Mentor must submit that recommendation in writing to the CJA Advisory Committee as soon as the Mentor deems prudent. The recommendation must be sent to the Clerk, U.S. District Court, via regular mail or email.

- The matter will be scheduled for discussion among the CJA Advisory Subcommittee for the division of court in which the Mentee Attorney performed the duties as soon as practicable. Input from other attorneys with whom the Mentee worked will be sought as well as input from the district judges before whom the Mentee appeared.

Superior Performance.
If the Mentor recommends that the Mentee be considered ready for early termination and consideration for appointment to the CJA Panel in light of superior performance, knowledge and skills, the Mentor must submit that recommendation in writing to the CJA Advisory Committee as soon as he deems prudent. Mentor attorneys are encouraged to complete and submit these evaluations prior to December 1 so that the Mentee attorney will have the opportunity to submit an application for consideration for appointment to the CJA Panel.

- The matter will be scheduled for discussion among the CJA Advisory Subcommittee for the division of court in which the Mentee's practice is located. The Committee will seek input from other Mentor attorneys as well as from the district judges before whom the Mentee has appeared.

VI. CONCLUSION OF SERVICE ON THE TRAINING PANEL

A. Notification of Completion of the Training Program

When the Mentee attorney successfully has completed the program, the CJA Advisory Committee Chairman will notify the Mentee and invite the Mentee to consider applying for admission to the CJA Panel.

If the CJA Advisory Committee has determined that continued service on the Training Panel would benefit the Mentee, the Chairman will notify the Mentee that he or she may either leave the Training Panel or continue on the Training Panel for another term.

B. Notification of Termination from the Program

If the CJA Advisory Committee recommends that a Mentee be removed from the Training Program for deficient performance or other conduct deemed unsuitable for practice before the Court, the Chairman will notify the Mentee that he or she is being removed from the Training Program.

C. Consideration for Admission to CJA Panel

Successful completion of the Training Program does not guarantee automatic admission to the CJA Panel, but it is an important factor and one that the Advisory Committee will consider.