IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

In Re: **CRIMINAL JUSTICE ACT PLAN** **(Superseding General Orders No. 335, 410)**	**GENERAL ORDER NO. 477**

Pursuant to the Criminal Justice Act of 1964, as amended (CJA), section 3006A of Title 18, United States Code, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judicial Policies and Procedures (CJA Guidelines), the judges of the United States District Court for the District of Idaho adopt the attached Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

NOW THEREFORE, this CJA Plan supersedes General Orders No. 335 and 410 for the United States District Court for the District of Idaho and shall be effective throughout the District until otherwise modified as provided by law.

IT IS HEREBY ORDERED that the Clerk of Court may make ministerial changes to this Plan without revision of this General Order.

DATED: February 2, 2026

Amanda K. Brailsford

Amanda K. Brailsford
Chief United States District Judge

2026

Criminal Justice Act Plan

District of Idaho

1/29/2026

CRIMINAL JUSTICE ACT PLAN
U.S. District Court for the District of Idaho
(January 29, 2026)

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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 District of Idaho adopt this CJA Plan (Plan), as approved by the Ninth 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 Community Defender Organizations ("CDO"), 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 or its Committee on Defender Services this Plan, and Criminal Justice Act Policies and Procedures adopted by the Judicial Council of the Ninth Circuit.
2. The Court will ensure that the CJA Plan and Guidelines, Policies, etc., are 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 Defender Services of Idaho and Federal Defenders of Eastern Washington and Idaho, and staff attorneys of said CDOs.

C. CJA Administrators

"CJA Administrator" is a person designated by the Court to administer the CJA Panel. A CJA Administrator may be a:

1. CJA Resource Counsel – oversees eVoucher process and payments; or
2. CJA Operations Administrator – oversees the process of assignment of cases to CJA Panel attorneys, in consultation with the CJA Resource Counsel.

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, 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 or subject 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 will 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 or potential 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);

f. to effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f); or.

g. to seek early termination of supervised release.

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 Community 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 Community Defender.

(ii) Upon issuance of a target or subject letter, and/or of a summons, 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 Community Defender , unless the United States Attorney's Office is aware of an actual or potential conflict with the target and the community defender, in which case they must promptly notify the Court. The target or subject letter and/or the summons should contain contact information for the office of the Community Defender Organization.

(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 Community Defender Organizations

(i) In cases in which the Community 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 Community 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 Office

(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.

e. Factual Determination of Financial Eligibility

(i) In every case where appointment and conditional 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

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

(vii) If, at any time after the appointment of counsel, counsel obtains information that a client is financially able to obtain counsel or make partial payment for the representation, and the source of the attorney's information is not protected as a privileged communication, counsel must advise the Court. If 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).

(i) 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 Judge or District Judge;

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

4. when a Magistrate Judge or District Judge otherwise considers appointment of counsel appropriate under the CJA and related statutes; or

5. to protect a constitutional right.

B. Court's Responsibility

The Court, in cooperation with the Community 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, even if the defendant has not had an initial appearance for formal determination of financial eligibility.

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. Community Defender and Private Counsel

This Plan provides for representational services by the CDOs 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 CJA Resource Counsel and the Court.

C. Apportionment of Cases

Where practical and cost effective, private attorneys from the CJA Panel will be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the

CJA. "Substantial" will usually be defined as a minimum of twenty-five percent (25%) of the annual CJA appointments.

D. Number of Counsel

More than one (1) 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. COMMUNITY DEFENDER ORGANIZATIONS

A. Establishment

The Federal Defender Services of Idaho, Inc. established in this District under the CJA, is responsible for rendering defense services on appointment throughout the Southern and Eastern Divisions, as well as the Capital Habeas Unit ("CHU"), in the District of Idaho. The Federal Defender of Eastern Washington and Idaho, established in the Eastern District of Washington under the CJA, is responsible for rendering defense services on appointment throughout the Northern and Central Divisions of the District of Idaho. This includes representation pursuant to subsections (g)(1) and (g)(2)(B) of the CJA, 18 U.S.C. § 3006A, and the Guidelines for the Administration of Criminal Justice Act and Related Statutes, Volume 7, Guide to Judiciary Policy.

B. Standards

The CDOs 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 CDOs will continually monitor the workloads of their staff to ensure high quality representation for all clients.

D. Professional Conduct

The CDOs must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct and the Idaho Rules of Professional Conduct.

E. Private Practice of Law

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

F. Supervision of Community Defender Organizations

The Executive Directors will be responsible for the supervision and management of their respective CDO. Accordingly, the Community Defender will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Community Defender.

G. Training

The Community Defender will assess the training needs of Community Defender staff and in coordination with the CJA Resource Counsel the training needs of the private panel attorneys, and provide training opportunities and other educational resources.

VIII. CJA Panel of Private Attorneys

A. Establishment of the CJA Panel Committee

1. A CJA Panel Committee ("CJA Committee") will be established by the Court in consultation with the Community Defender, who may also consult with the two CDOs. The CJA Committee will consist of at least one District Judge, one Magistrate Judge, the Community Defender, the CJA Panel Attorney District Representative (PADR), a criminal defense attorney who practices regularly in the district who may be a CJA Panel member, the CJA Resource Counsel, and an ex officio staff member employed by the Clerk who will act as administrative coordinator. The CJA Committee will be chaired by the Chief District Judge.

2. The Community Defender or their representative, and the District's PADR are permanent members of the CJA Committee.

    a. The PADR will be a member of the District's CJA Panel, appointed by the Community Defender with acquiescence from the Chief District Judge.

b. The PADR will be appointed to a renewable three-year term.

3. The CJA Committee will meet at least once a year 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 Panel and recommend to the Chief District Judge the approval of those attorneys who are deemed qualified and the rejection of the applications of those attorneys deemed unqualified.

2. Recruitment

a. 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.

b. If at any time during the course of a year the number of vacancies due to resignation, removal, or death, significantly decreases the size of the Panel, the Court may add qualified attorneys to the CJA Panel upon discretion of the Chief District Judge.

3. Annual Report

Review the operation and administration of the CJA Panel over the preceding year, and recommend any necessary or appropriate changes to the Chief District 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;

c. recurring issues or difficulties encountered by panel members or their CJA clients; and

d. special circumstances outlined in Section X.B.3 of this Plan.

4. Removal

Recommend to the Chief District 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.D.6.

5. Training

Assist the CDO and the CJA Resource Counsel in providing training for the CJA Panel on substantive and procedural legal matters affecting representation of CJA clients.

6. Mentoring

Newly appointed panel members will be assigned a mentor or required to participate in the mentorship program. Experienced members of the criminal defense bar who have practiced extensively in the federal courts may be selected to serve as mentors.

C. Establishment of the CJA Peer Review Committee

1. Purpose

The Court, through its CJA Committee, will establish the CJA Peer Review Committee (PRC) to assist the Court in ensuring compliance with the Court's CJA Plan and related policies and procedures, including mandated billing guidelines and accurate record keeping; to assess the reasonableness of vouchers and/or individual time entries; to provide due process and ensure fairness in voucher review; to assist the Court with providing training and mentoring of panel counsel; and to investigate and make recommendations regarding removal or discipline of panel counsel upon request of the CJA Committee or Chief District Judge.

2. Membership

The PRC will be comprised of at least three (3) and no more than five (5) people, three (3) of whom shall be current or former members of the CJA Panel, the CJA Resource Counsel, and a supervising litigator at the CDO. Panel attorneys must have handled at least ten (10) cases of varying types pursuant to appointment under the Criminal Justice Act.

3. Term

Members of the PRC will be appointed by the Chief District Judge and chaired by the PADR for two-year terms expiring at the end of a calendar year. There is no prohibition against reappointment for additional terms.

D. Duties of the Peer Review Committee

1. Voucher Review

Review and make recommendations on the processing and payment of CJA vouchers in those cases where the CJA Resource Counsel, for reasons other than mathematical errors, is considering authorizing payment for less than the amount of compensation claimed by CJA counsel. The Resource Counsel will, at the time the voucher is submitted to the CJA Committee, provide a statement describing questions or concerns they have 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 PRC will issue a written recommendation to the Resource Counsel.

See also Section XII.B.6.

2. Initiation of Voucher Review

CJA panel attorney and service provider vouchers will be reviewed by the PRC in any of the following circumstances:

a. Upon request by the CJA Resource Counsel , for review of a specific voucher or series of vouchers;

b. Upon referral by the CJA Resource Counsel for assessment of an appointed attorney's or service provider's general billing practices;

c. Upon timely written request to the CJA Resource Counsel by appointed counsel or a service provider for a voucher that has been reduced;

d. Upon timely written request to the CJA Resource Counsel by appointed counsel following the denial of a request, in full or in part, for investigator or expert witness fees; or

e. Upon referral by the Court for a random audit.

3. Investigation

The PRC will conduct a review and investigation to determine whether the appointed attorney's or service provider's voucher conforms to the Court's billing guidelines, is reasonable considering a funding authorization and/or the circumstances of the case, and is otherwise accurate and proper. The investigation may include review of vouchers submitted by other CJA panel attorney or service providers in the same, or similar cases, a review of Court files, records of detention facilities, and/or interviews of CJA panel attorney or service providers including the individual whose voucher is being reviewed.

No provision of this section should be construed as permitting

disclosure to the CJA panel attorney or service provider of information from which they may infer the source, and no information may be disclosed to the CJA panel attorney or service provider or be obtained by any process which would jeopardize the confidentiality of communications for persons whose opinions have been sought in the investigation.

4. Determination

In the event that the PRC determines that a voucher does not comply with the Court's billing guidelines, is unreasonable, or is not otherwise accurate or proper, the CJA Resource Counsel will so notify the CJA panel attorney or service provider in writing, specifying the reasons therefor. The CJA panel attorney or service provider may provide a written response within ten (10) days. After reviewing the response, the PRC will make a recommendation regarding any reduction in the voucher it deems appropriate. A copy of this recommendation will be provided to the Chief District Judge, the presiding judge, the CJA Resource Counsel , and to the CJA panel attorney or service provider.

The CJA Resource Counsel will then make a final determination regarding the voucher, but in doing so must give significant weight to the PRC's recommendation. If the CJA Resource Counsel does not make a final determination within ten (10) days after receiving the recommendation of the PRC, the PRC's recommendation will become the final determination regarding the voucher. The CJA Resource Counsel 's [or PRC] decision is final and there will be no additional right of peer review or further appeal. Any determination that a voucher should be reduced does not constitute a finding of wrongdoing.

5. Confidentiality

All information gathered pertaining to a CJA Panel member or service provider during the fee review process, or investigation in connection with discipline, will be the property of the Court and is to be treated as confidential. Votes of the PRC must be confidential and its members must not disclose to others in any manner the name of the panel member or service provider audited, the discussions, deliberations, or action of the PRC concerning any audit, information obtained during investigation or deliberation of the PRC, or any documents related to the foregoing, unless ordered to do so by a Court of competent jurisdiction.

6. Conflict of Interest

A member of the PRC must recuse himself or herself from any and

all participation in the consideration of a panel counsel or service Provider voucher or from attempting to influence others with respect to such consideration, in the following circumstances:

a. The committee member is the current or former law partner or associate of the panel attorney, or a former employer of the service provider;

b. The committee member, or the law firm or office with which the committee member is affiliated, represents the panel attorney or service provider;

c. The committee member, or the law firm or office with which the committee member is affiliated, is a party to pending litigation in which the service provider or panel attorney member, or the law firm or office with which the panel attorney member is affiliated, is a party;

d. The committee member or his or her spouse is related to the panel attorney or service provider by consanguinity or affinity within the third degree according to the rules of civil law;

e. The committee member stands in the relation of guardian and ward, conservator and conservatee, employer and employee, or principal and agent to the panel attorney or service provider;

f. The committee member has appeared as an expert witness or acted as a consultant or has been consulted with reference to an actual or threatened lawsuit against the panel attorney or service provider for malpractice;

g. The committee member has any personal bias or prejudice concerning the panel attorney or service provider which would prevent the committee member from fairly evaluating all of the evidence; or

h. The committee member represents or represented one party in the matter for which the request for compensation is being reviewed where the panel attorney to be audited represents or represented another party or where the service provider worked on behalf of another party; or

i. The committee member is the CJA Resource Counsel.

In the event that a member of the PRC does not voluntarily recuse himself or herself, the Chair of the CJA Committee, shall, upon becoming aware of factors which may indicate a potential conflict of interest as described above, initiate an inquiry and make a

determination as to whether or not such member should be recused. Any resulting determination in that regard shall be binding.

IX. ESTABLISHMENT OF A CJA PANEL

A. Approval of CJA Panel

1. The Court will establish a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the CJA Act. The Court will approve attorneys for membership on the CJA Panel after receiving recommendations from the "Panel Selection Committee", established pursuant to Section VIII of this Plan. Members of the CJA Panel will serve at the pleasure of the Court.

2. The existing, previously established panel of attorneys who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.

B. Divisions

The District of Idaho will be divided into three (3) divisions for the purpose of this Plan and there will be a separate roster of attorneys for each division within the CJA Panel. The counties included in the divisions are as follows

Southern Division:

Ada	Adams
Blaine	Boise
Camas	Canyon
Elmore	Gem
Gooding	Jerome
Lincoln	Owyhee
Payette	Twin Falls
Valley	Washington
Caribou	Cassia
Clark	Custer
Franklin	Fremont
Jefferson	

Northern/Central Divisions:

Benewah	Bonner
Boundary	Clearwater
Idaho	Kootenai
Latah	Lewis
Nez Perce	Shoshone

Eastern Division:

Bannock	Bear Lake
Bingham	Bonneville
Butte	Lemhi
Madison	Minidoka
Oneida	Power
Teton	

C. Size of CJA Panel

1. The Court will fix, periodically, the size of the CJA Panel. The size will be determined by the CJA Committee based on the caseload and activity of the panel members, subject to review by the Court.

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

D. Qualifications and Membership on the CJA Panel

1. Application

   Application for membership to the CJA Panel is submitted through the Court's website at www.id.uscourts.gov under For Attorneys>>CJA Panel Resources. Applicants will also be required to submit a current resume.

2. Equal Opportunity

   All qualified attorneys are encouraged to apply for CJA Panel membership. The CJA Panel Committee shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, national origin, gender identity, sexual orientation, age, religion, or disability

3. Eligibility

   a. Applicants for the CJA Panel must be members in good standing of the federal bar of this district and the Ninth Circuit Court of Appeals.

   b. Applicants must maintain a primary, satellite, or shared office in this district, or within 50 miles of the district.

c. 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 level of proficiency with technology relevant to their practice. This will include working to keep abreast of changes in technology as it relates to case management, discovery, investigation, and in-court advocacy. It will also include understanding the benefits and risks associated with current and emerging technology.

d. 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.

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

f. Attorneys must have been admitted to practice for at least three (3) years.

g. Attorneys who are members of the CJA Panel are required to be registered participants in the District of Idaho's Case Management and Electronic Case Filing ("ECF") program.

4. Appointment to CJA Panel

After considering the recommendations of the CJA Committee, the Chief District Judge 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.

Attorneys admitted to membership on the CJA Panel will each serve for a term of two (2) years, subject to the reappointment procedures set forth in this Plan.

5. Reappointment of CJA Panel Members

a. A member of the CJA Panel who wishes to serve an additional term must re-apply. Applications must be submitted by the posted deadline to be considered for the following years Panel.

b. The CJA Committee will solicit input concerning the quality of representation provided by lawyers seeking appointment.

c. The CJA 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.

6. 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 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 Resource Counsel, CJA Committee, PRC, a judge, another panel member, a defendant, or a member of the CDO. 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 Committee, which will determine whether further investigation is necessary and by whom.

(ii) Notice

When conducting an investigation, the CJA 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 Committee or its subcommittee.

(iv) Protective Action

Prior to disposition of any complaint, the CJA 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 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 Committee will forward its recommendation to the Chief District Judge for consideration and final disposition.

(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 CDOs will be immediately notified when any member of the CJA Panel is removed or suspended.

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. The Clerk will make available a copy of this list to each District Judge, Magistrate Judge and CDOs.

B. Appointment Procedures

1. The Court, in consultation with the CJA Resource Counsel, is responsible for overseeing the appointment of cases to panel attorneys. The Court will maintain a record of panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the CDO 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 or in other circumstances in the best interest of justice the Court, in consultation with the CJA Resource Counsel, may appoint counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel.

3. Under special circumstances the Court, in consultation with the CJA Resource Counsel, may appoint a member of the bar of the Court who is not a member of the CJA Panel. Such special circumstances may include cases in which the Court determines that the appointment of a particular attorney is in the 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 may be included in the annual report of the CJA Committee.

4. Unless otherwise impracticable, CJA panel attorney(s) must be available to represent defendant(s) at the same stage of the proceedings as the Community 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 American Bar Association's Model Rules of Professional Conduct and the Idaho Rules of Professional Conduct.

3. CJA panel members must notify within thirty (30) days the chair of the CJA 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 or 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. ESI protocol may be found at http://www.uscourts.gov/sites/default/files/finalesiprotocolbookmarked.pdf.

2. Attorneys on the CJA Panel are expected to attend trainings sponsored by the Community Defender, Idaho Association of Criminal Defense Lawyers, and this Court.

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 complete eight (8) hours of continuing legal education relevant to federal criminal practice and constitutional law areas every two (2) years.

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 as required by General Orders or Rules of the Court.

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 Ninth 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. Counsel who have represented a client in a jury trial are encouraged to withdraw from the appeal after filing the Notice of Appeal and request for permission to withdraw at the same time in the District Court. For Petitions on Supervised Release, the Court may contact counsel for reappointment whenever appropriate.

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.

An attorney is encouraged to propose a case budget in cases where the number of attorney hours worked is projected to be over 300 or total expenditures are expected to exceed 300 times the prevailing CJA panel attorney non-capital hourly rate, rounded up to the nearest thousand (e.g. if the prevailing panel rate is $177 per hour, the total cost benchmark would be $53,000 and budgeting is encouraged even if the attorney hours alone are below 300 hours.), for appointed counsel and services other than counsel for an individual CJA defendant. The Ninth Circuit Case Budgeting Attorney will be available for assistance with submission and creation of such case budgets.
Attorney hours spent preparing a budget are compensable.

All capital cases should be budgeted with the assistance of the Circuit Case Budgeting Attorney.

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 or PRC.

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 or PRC.

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 forty-five (45) days after final disposition of the case, unless good cause is shown.
3. The Administrative Assistant of the CJA Resource Counsel Office 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 CJA Resource Counsel.
4. Absent extraordinary circumstances, the CJA Resource Counsel should act on CJA compensation claims within thirty (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. The CJA Resource Counsel's Administrative Assistant ("CJA AA") will review all voucher submissions for mathematical accuracy and technical compliance with the CJA Guidelines and the Ninth Circuit CJA Policies and Procedures as adopted in this Plan. The CJA AA may reduce or increase the amount payable to reflect a correction to a mathematical or technical error.

6. The CJA Resource Counsel is delegated the authority to:

- Review, approve, reduce, or deny any voucher or request for panel member compensation and/or any service provider services submitted.
- Review, approve, reduce, or deny any requests for preauthorization required by this Plan, including but not limited to requests for interim vouchers; funding for service providers exceeding the current statutory maximum; funding for associate and contract counsel; and/or funding for non-attorney relatives.

- Coordinate and collaborate with the Circuit Case Budgeting Attorney and/or National Litigation Support Team regarding case budgeting, preliminary discovery review, and any other matters subject to voucher review in complex, multi-defendant and other potential high-cost cases.
- Coordinate and collaborate with the Court's Death Penalty Law Clerk, in addition to consulting with the Circuit Case Budgeting Attorney and/or the National Litigation Support Team regarding case budgeting, preliminary discovery and any other matters subject to voucher review in capital cases.

7. 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.

8. The CJA Resource Counsel when contemplating reduction of a CJA voucher for other than mathematical reasons, may refer the voucher to the PRC for review and recommendation before final action on the claim is taken. See Section VIII (D) of this Plan.

9. Notwithstanding the procedure described above, the CJA Resource Counsel 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 CJA Resource Counsel and CJA Panel member, the claim for compensation need not be referred to the PRC 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 (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, the District's CJA Manual and General Orders.

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 Community 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

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 (2) attorneys, at least one (1) of whom meets the qualifications for "learned counsel" as described below. If necessary for adequate representation, more than two (2) 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 Community Defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. See 18 U.S.C. § 3005.

e. To effectuate the intent of 18 U.S.C. § 3005 that the Community Defender's recommendation be provided to the Court, the judge should ensure the Community 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 Community 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 Community 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 (1) 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 (2) 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 Community 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 (2) attorneys.

3. When appointing counsel in a capital § 2254 matter, the appointing authority should consider the recommendation of the Community Defender who will consult with the National or Regional Habeas Assistance and Training Counsel projects.

The defender's recommendation may be to appoint this district's 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. 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.

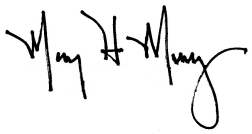
XV. EFFECTIVE DATE

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

ENTERED FOR THE COURT ON January 29, 2026.

Amanda K. Brailsford
Chief United States District Judge

APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT ON
24 DAY OF February, 2026



Mary H. Murguia
Chief Circuit Judge for the Ninth Circuit