

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

CRIMINAL JUSTICE ACT PLAN



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I. STATEMENT OF POLICY

The objective of the Criminal Justice Act Plan for the District of Oregon (CJA Plan) is to support the constitutional goal of equal justice for all by providing eligible persons with timely, high quality, and cost-effective representation in a manner that protects the independence of the defense function and safeguards and enforces the rights of individual defendants. This Plan is designed to particularize the statutory and regulatory requirements governing court-appointed representation in a way that best meets the needs of this district. This Plan shall be administered so that those accused of crime, or otherwise eligible for services under the Criminal Justice Act, 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.

II. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 (CJA), as amended, 18 U.S.C. § 3006A, and 18 U.S.C. § 3005, 18 U.S.C. § 3599, 28 U.S.C. § 2261 et seq., and the Guide to Judiciary Policy (Guide), Volume 7A, the Judges of the United States District Court for the District of Oregon adopt the following amended Plan for furnishing representation in federal courts to any person financially unable to obtain adequate representation.

III. COMPLIANCE

- A. The Court, its Clerk, the Federal Public Defender Office, and private attorneys appointed under the CJA shall comply with all CJA guidelines approved by the Judicial Conference of the United States, by the Committee on Defender Services, by the Judicial Council of the Ninth Circuit, and with this Plan.
- B. The Court will post on the Court's website a current copy of this CJA Plan and any related Orders. The Federal Public Defender will ensure that a current copy of the CJA Plan and related statutes and guidelines are available on the Federal Public Defender website.

IV. ELIGIBILITY FOR CJA REPRESENTATION

A. Subject Matter Eligibility

1. Mandatory:

Representation *shall* 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 supervised release, or faces a change of a term or condition of probation or supervised release (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 subject to a mental condition hearing under 18 U.S.C. chapter 313;
- g. is in custody as a material witness;
- h. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255 – all appointments under this section shall be made pursuant to Section XIII of this Plan or Local Rule 81;
- i. 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;
- j. is entitled to appointment of counsel under the Sixth Amendment to the Constitution;
- k. faces loss of liberty under circumstances in which federal law requires the appointment of counsel; or
- l. is challenging a non-capital judgment under 28 U.S.C. § 2254 or § 2255 and an evidentiary hearing is ordered.

2. Discretionary:

Whenever a 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, risks self-incrimination, or otherwise faces loss of liberty;
- e. has been advised by the United States attorney, a law enforcement officer, or legal counsel that they are the target of a grand jury investigation or could otherwise be subject to federal prosecution;
- f. is proposed by the United States attorney or Pretrial Services 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 consult the Guide, Vol. 7.

4. Other Matters

Representation may be furnished in other circumstances to financially eligible persons who are under federal supervision or in the custody of the Federal Bureau of Prisons, or are otherwise in contact with federal law enforcement officials, whenever the interests of justice require and the Court determines that assignment of counsel would be of assistance to the Court.

B. Financial Eligibility

1. Determination of Financial Eligibility

- a. The Court: 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.

- b. The Federal Public Defender: It is the responsibility of the Federal Public Defender to make an initial assessment of eligibility and recommendation to the Court whenever practicable.

2. Standards

- a. 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.
- b. 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.
- c. 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.
- d. Relevant information bearing on the person's financial eligibility should be reflected on a financial eligibility affidavit (Form CJA 23) when practicable.
- e. 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).
- f. 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. When Counsel Shall Be Provided

1. Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody; when they appear before a judge; when they are formally charged or notified of charges if formal charges are sealed; or in other situations prior to formal charges, court appearances or filing of post-conviction or other petitions,¹ when a judge considers appointment of counsel appropriate under the CJA and related statutes.
2. An appointment may be made retroactive to include any representation furnished prior to appointment.

B. Federal Public Defender's Responsibility

1. Advice Prior to First Court Appearance

Prior to a defendant's first scheduled court appearance, if it becomes known that the defendant desires representation of an attorney, but claims to be unable to afford such services, the Federal Public Defender Office shall be notified. If feasible, in order to conserve the time of the Court, a staff attorney of the Federal Public Defender Office or a Panel attorney shall then advise the defendant of the right to representation by counsel and to appointment thereof for persons unable financially to retain an attorney. If in the judgment of the staff attorney of the Federal Public Defender Office or Panel attorney, based upon inquiry of the defendant, a judge is likely to appoint counsel, with or without requiring payments by defendant toward the cost of such representation, said attorney shall commence representation.

2. Representation at First Appearances

In the interests of justice, the Federal Public Defender is authorized under this Plan, subject to the approval or ratification of the Court, to initially represent all persons arrested in the District before the first appearance and at bail hearings or arraignments where, in the judgment of the Federal Public Defender, the defendant is eligible or likely to be

¹ The phrase "other petitions" refers to a variety of situations, including petitions under 28 U.S.C. § 2241 challenging actions of the Parole Board, Bureau of Prisons, and Immigration and Naturalization Service; petitions for mandamus, petitions (or motions) for return of property, or *coram nobis*.

determined eligible for assigned counsel by the Court and the defendant will likely be assigned to a staff attorney of the Federal Public Defender Office or a Panel attorney for representation.

C. 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 adequately assure that, at the earliest practicable stage, persons arrested under circumstances where representation is required by federal law shall promptly have counsel furnished to them.

D. 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.

VI. PROVISION OF REPRESENTATION

A. Federal Public Defender and Private Counsel

This Plan provides for representation by the Federal Public Defender Office and for the appointment and compensation of private counsel from a CJA Panel list maintained by the Federal Public Defender in cases authorized under the CJA and related statutes.

B. Administration

In accordance with and subject to the provisions of this Plan and further orders of the Court, authority to administer the Criminal Justice Act is assigned and delegated to the Federal Public Defender.

C. Apportionment of Cases

Where practicable and cost effective, CJA Panel attorneys 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 approximately twenty-five percent (25%) of the annual CJA appointments.

D. Number of Counsel

More than one attorney may be appointed in any case determined by the Court to be extremely difficult, or for other good cause.

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 XIII of this Plan.

VII. FEDERAL PUBLIC DEFENDER ORGANIZATION

- A. The Court finds that the use of a Federal Public Defender organization in this district, as defined in 18 U.S.C. § 3006A(g)(2)(A), is appropriate and should continue. The Federal Public Defender shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed, reports of the office's activities, and the financial position and proposed budget of the office.
- B. The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender Office. Accordingly, the Federal Public Defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender. The Federal Public Defender must monitor the workload of defender staff to ensure high quality representation for all clients consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. Staff must conform to the highest standards of professional conduct.
- C. 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.

VIII. CRIMINAL JUSTICE ACT COMMITTEE

- A. A CJA Committee ("CJA Committee") will be established by the Federal Public Defender in consultation with the Court. The CJA Committee will consist of the Federal Public Defender as chair, the CJA Panel Attorney District Representative (PADR), and a federal magistrate judge. The CJA Committee may establish subcommittees with non-members to review issues pertaining to panel membership, use of CJA funds, or any issues the Court asks the CJA Committee to consider.

B. Duties of the CJA Committee

1. Membership: Establish a Panel Selection Subcommittee to examine the qualifications of applicants for membership on the CJA Panel at least every four years and recommend to the chief judge the approval of those attorneys who are deemed qualified and the rejection of the applications of those attorneys deemed unqualified. The Panel Selection Subcommittee shall consist of two experienced criminal defense practitioners, one state court judge, the Federal Public Defender, and the district's PADR. The Federal Public Defender may also invite a non-voting staff member to the meetings.
2. Recruitment: Engage in recruitment efforts to establish a diverse panel and ensure that all qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases. The CJA Committee and its subcommittees may create and administer a mentoring program designed to identify and help prepare viable candidates to qualify for consideration for appointment to the CJA Panel.
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 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. recurring issues or difficulties encountered by CJA attorneys or their clients.
4. Removal: 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.

5. Training: Assist the Federal Public Defender in providing training for the CJA Panel on substantive and procedural legal matters affecting representation of CJA clients.

IX. CRIMINAL JUSTICE ACT PANEL

A. Establishment of CJA Panel

The existing, previously established panels of attorneys (CJA panels) who are eligible and willing to be appointed to provide representation under the CJA are hereby recognized.

B. Panel Lists

The panel shall be comprised of four lists, Portland Trial Panel, Eugene Trial Panel, Medford Trial Panel, and Appellate/ Habeas Corpus Panel. Attorneys on the trial lists are also eligible for assignment on habeas corpus and appellate cases. Emeritus panels may be established for each of the four lists.

C. Panel Size

Panel membership shall be kept at a level sufficient, but not greater than necessary, to ensure the availability of qualified counsel. The Panel will be limited in number to assure that Panel members receive sufficient referrals to maintain expertise and familiarity with the law and procedures in federal court.

D. Eligibility for Panel Membership

1. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, maintain an office in the district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Bail Reform Act, and the Sentencing Guidelines.
2. Eligibility for the trial panel requires significant experience representing persons charged with serious offenses and four years of criminal trial experience. Other relevant experience such as a federal judicial clerkship or sophisticated federal civil litigation practice can substitute for the criminal trial experience.
3. Eligibility for membership on the appellate panel requires excellent research and writing skills and a demonstrated desire to handle federal criminal appeals and habeas corpus cases. All persons on the trial panel shall be eligible for membership on the appellate panel.

4. Attorneys will be eligible for inclusion on the emeritus panels when they have served with distinction on the active panels for at least seven years and wish to continue to be active in CJA matters but are no longer able to take, or are no longer needed for, a significant number of assignments.
5. Attorneys who do not possess the experience set forth above but believe they have equivalent other experience are encouraged to apply and set forth in writing the details of that experience for consideration.
6. Eligibility of assignment in capital cases is set out in Section XIII.

E. Appointment

The Court shall appoint attorneys to the Panel based on the recommendation of the Panel Selection Subcommittee.

F. Panel Review

The Panel shall be reviewed by Panel Selection Subcommittee at least every four years. This review will include the quality of representation provided, availability for assignments, administrative issues regarding assignments and vouchering, CLE attendance, and comparison with the qualifications of new applicants. The Subcommittee shall provide a report and recommendation to the Court.

G. Removal from the CJA Panel

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, shall be removed from the CJA Panel immediately. The CJA Committee may conduct a 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. A complaint against a Panel member should be addressed to the Federal Public Defender as chair of the CJA Committee, who will notify the CJA Committee and determine whether further investigation is necessary. After investigation and an opportunity for the Panel member to respond, the CJA Committee will report any interim and final recommendation to the chief judge for consideration and final disposition. Unless otherwise directed by the Court, information acquired concerning complaints and potential removal proceedings will be confidential. This procedure does not create a property interest in being on the CJA Panel.

X. CJA PANEL APPOINTMENT TO NON-CAPITAL CASES

- A. The Federal Public Defender is responsible for overseeing the appointment of cases to Panel attorneys. The Federal Public Defender will maintain a current list of all attorneys on the CJA Panel, their contact information, and a record of their appointments.
- B. Appointment of cases to CJA Panel members will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, the Federal Public Defender may select counsel outside of the normal rotation for a case that requires particular expertise, is of particular complexity or severity, or involves a client with unusual needs.
- C. Attorneys on the emeritus panels may be called for cases that require particular expertise, are of particular complexity or severity, or involve clients with unusual needs. They may also inform the Federal Public Defender from time to time of their desire to take a case and to be considered for the next available assignment.
- D. In the interests of justice, where continuity of representation is a factor or other special circumstances exist, the Court may, on the recommendation of the Federal Public Defender, assign an attorney who is not on the Panel. To preserve the integrity of the panel selection process, 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 district's CJA Panel in the ordinary course of Panel selection.

XI. DUTIES OF CJA PANEL MEMBERS

- A. Standards and Professional Conduct
 - 1. CJA Panel members must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.
 - 2. Attorneys appointed under the CJA shall conform to the highest standards of professional conduct.
 - 3. CJA Panel members must notify the Federal Public Defender within 30 days when any licensing authority, grievance committee, or administrative body has taken action against them, or when a finding of contempt, sanction, or reprimand has been issued against the Panel

member by any state or federal court.

B. Training and Continuing Legal Education

1. CJA Panel members 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. CJA Panel members are expected to attend trainings sponsored by the Federal Public Defender.
3. CJA Panel members will be guided in their practice by the Federal Adaptation of the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representations.

C. Facilities and Technology Requirements

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

D. Availability for and Continuing Representation

1. CJA Panel members must be available for and agree to accept case appointments, consistent with their professional and ethical obligations, in order to ensure representation for all eligible defendants in the district.
2. Once counsel is appointed under the CJA, counsel shall continue to represent an assigned client for all proceedings in the district court and on appeal, unless or until relieved or until the appointment is terminated by court order.
3. If requested to do so by the defendant in a criminal case, counsel shall file a timely notice of appeal, and shall continue to represent the defendant, unless or until the attorney is relieved by the district court or the Court of Appeals.
4. Appointed counsel may not move to withdraw from representation in the

district court without first informing the Federal Public Defender. If the Court grants a motion to withdraw, the attorney's representation continues until substitute counsel has been appointed or, after the appropriate hearing, the defendant proceeds pro se.

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.
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 shall advise the Court.

XII. CJA ATTORNEY COMPENSATION AND PAYMENT FOR NEEDED SERVICES

A. Policy

Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA Panel attorneys shall be compensated for time expended in court and time reasonably expended out of court, and reimbursed for expenses reasonably incurred. Experts and other service providers shall be paid for compensable services necessary to the representation.

B. Financial Eligibility for Investigative and Other Services

Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense, or a defendant proceeding pro se, may request such services under 18 U.S.C. § 3006A(e)(1), regardless of whether counsel is appointed under the CJA. Counsel should submit an application to the Federal Public Defender or designee for review. After receiving the recommendation of the Federal Public Defender and after finding that the services are necessary and that the person is financially unable to obtain them, the Court shall authorize counsel to obtain the services.

C. Payment Procedures

1. Claims for compensation and payments must be submitted through the eVoucher system and must comply with guidelines found in the district's CJA Manual.
2. Payments of fees and expenses to counsel appointed under this Plan (other than to the Federal Public Defender Office), and payment for investigative, expert, and other services incurred, shall be made in accordance with any statutory limitations and such rules, regulations, and guidelines as have been or may be prescribed from time to time by the Judicial Conference of the United States, and in accordance with the fiscal policies of the Administrative Office of the United States Courts.
3. The Federal Public Defender shall employ personnel whose primary responsibility is handling CJA applications for fees and services and shall ensure the confidentiality of panel attorney submissions. With notice to the Federal Public Defender, CJA counsel may submit applications directly to the Court if the potential for conflict is such that Defender involvement would be inappropriate.
4. The Federal Public Defender or designee shall review compensation claims for mathematical accuracy and conformity with all CJA guidelines, and preliminarily assess the reasonableness of the fee and expenses sought. The Federal Public Defender shall forward the claim for the consideration of the appropriate judge with a recommendation as to payment.
5. Except in cases involving mathematical or technical corrections, no claim for compensation submitted for services provided under the CJA shall be reduced without affording counsel the opportunity to further justify the submission. No claim for compensation will be reduced for the purpose of diminishing Defender Services program costs in response to adverse financial circumstances.
6. The Court may contact the Federal Public Defender or designee with questions or concerns about a case budget or a claim for compensation, or to request that the CJA Committee convene a subcommittee to review a budget request or claim.
7. Applications for funds must not be further disclosed except with the consent of the person represented or as required by law or Judicial Conference policy.

XIII. SPECIAL PROVISIONS RELATED TO CAPITAL CASES

A. Capital Cases

“Cases involving the death penalty” or “capital cases” include cases pending in this District wherein the government is seeking the death penalty under federal law, cases in this District wherein the penalty of death has been imposed by a federal court upon an individual who is seeking to set aside or vacate his or her conviction or sentence on direct appeal or pursuant to 28 U.S.C. § 2255, and cases in this district wherein the death penalty has been imposed by the state court upon an individual who is seeking to set aside or vacate his or her conviction or sentence pursuant to 28 U.S.C. § 2254. “Capital cases” include prosecutions pursuant to any provision of federal law which carries a potential penalty of death. All such cases shall be referred to in this Plan as “capital cases” regardless of the nature of the proceeding.

B. 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; Guide, Vol. 7A, Ch. 6; and Local Rule 81.

C. Federal Public Defender

1. **Direct Representation:** In appropriate cases, consistent with the resources available to that office, the Federal Public Defender may be appointed as counsel in capital cases. In assigning cases to assistant federal public defenders, the Federal Public Defender shall be guided by statutory requirements and other provisions of this Plan.
2. **Initial Appearance:** Before the formal appointment of counsel occurs in a capital case, an attorney with the Federal Public Defender may appear and act as counsel for the defendant, subject to subsequent approval by the Court and the appointment of additional or other counsel.
3. **Individual Assignment Responsibility:** The Federal Public Defender shall be responsible for locating counsel for individual cases consistent with 18 U.S.C. § 3005, Section V of this Plan, District of Oregon Local Rule 81-3, and any applicable rules or plans of the United States Court of Appeals for the Ninth Circuit. The Federal Public Defender will consult with the expert services available through the Administrative Office of the United States Courts (AO) and Defender Services Death Penalty Resource Counsel projects when selecting counsel.

D. Appointing Counsel

1. Appointment of Appellate Counsel: In the event the defendant is convicted and sentenced to death, after consultation with trial counsel and the condemned, the Federal Public Defender shall, where appropriate, provide the presiding judge and/or the Court of Appeals the name of at least two attorneys to handle a direct appeal. Unless a compelling reason exists to appoint either or both trial attorneys as appellate counsel, the Federal Public Defender shall recommend at least one counsel to perfect the appeal other than those who represented the defendant at trial.
2. Appointment of Post-Conviction Counsel (28 U.S.C. §§ 2254 and 2255): In the event a sentence of death is affirmed on direct appeal, on his or her own initiative or upon the request of any interested party, and after consultation with the defendant and present and former counsel of record, the Federal Public Defender shall provide the presiding judge with the names of at least two attorneys to prosecute any post-conviction action.
3. Appointment of Two or More Attorneys: Due to the complex, demanding and protracted nature of death penalty proceedings, when appointing trial or post-conviction counsel under this section, a person shall be entitled to the timely appointment of at least two qualified attorneys, at least one of whom shall be “learned in the law applicable to capital cases.” 18 U.S.C. § 3005 and LR 81.

E. Qualifications of Counsel

1. In addition to the requirements for Panel membership set out in Section IV of this Plan, counsel assigned in capital cases shall meet the statutory requirements set out in 18 U.S.C. § 3005 as expanded upon below and any applicable rules or the Plan of the United States Court of Appeals for the Ninth Circuit.
2. 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.
3. Counsel shall meet the guidelines adopted by the American Bar Association, for the appointment and performance of counsel in death penalty cases. In addition, at least one attorney so appointed must have been admitted to practice in the District of Oregon for not less than five

years and must have had not less than three years of experience in the actual trial of felony prosecutions in the District of Oregon. Second, each attorney must have recent continuing legal education credits in the defense of capital cases.

4. Learned counsel must meet the minimum experience standards set forth in 18 U.S.C. §§ 3005 and 3599. 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. “Distinguished prior experience” contemplates excellence, not simply prior experience.
5. Out-of-district counsel, including Federal Public 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.
6. Upon recommendation of the Federal Public Defender, the Court for good cause may appoint an attorney whose background, knowledge, or experience would otherwise enable him or her to provide proper representation in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

F. Timing of Appointment of Trial Counsel

1. The provisions of this section shall apply at the earliest opportunity. In order to protect the rights of a person who is the focus of an investigation in a capital case, the Court may appoint capital-qualified counsel upon request.
2. The provisions of this section shall take effect no later than whenever a defendant is charged with a federal criminal offense for which the penalty of death is possible, unless the government issues written notice at or before the initial appearance that the government will not seek the death penalty or unless the Court orders that death is not an applicable punishment upon conviction. If such written notice by the government that it will not seek death as punishment is later permitted to be withdrawn, the provisions set forth in this section shall be implemented as soon after the withdrawal of the notice as is practicable.

3. In the event that counsel for the defendant has already been appointed or retained at the time the government either withdraws its notice not to seek the death penalty or files a notice of intention to seek the death penalty, the provisions of this section shall apply to permit the appointment of additional or substitute counsel if necessary.
4. If additional or substitute counsel is appointed under this subsection, such appointment shall be made sufficiently in advance of trial to permit newly appointed counsel an adequate opportunity to prepare, provided that, if necessary to comply with the provisions of Title 18 U.S.C. § 3161, a motion to continue the trial is filed by the defendant.

G. Investigative and Other Services

In all capital cases, the Court shall set and allow compensation for investigative, paralegal, expert, and other services in an amount sufficient to allow proper representation required in complex, demanding, and protracted death penalty proceedings consistent with any statutory requirements and guidance from the Judicial Conference.

XIV. EFFECTIVE DATE

This Plan, as amended this 16th day of April, 2018, shall take effect when approved by the Judicial Council of the United States Court of Appeals for the Ninth Circuit.

DONE ON BEHALF OF THE COURT this 16th day of April, 2018.



MICHAEL W. MOSMAN
CHIEF JUDGE

cc: District Judicial Officers
United States Attorney
United States Marshal
Federal Public Defender
Clerk, US District Court
United States Probation Office
Pretrial Services Office
Federal Defenders Division, AOUSC