

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**2023 AMENDED CRIMINAL JUSTICE ACT PLAN**

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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
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**I. AUTHORITY.**

The judges of the United States District Court for the District of Utah adopt this Plan, as approved by the Judicial Council of the Tenth Circuit, for providing legal representation in federal court for any individual who is financially unable to obtain adequate representation in accordance with the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A (CJA), and the Guide to Judiciary Policy, Volume 7A (Guide).

**II. STATEMENT OF POLICY**

**A. Plan Objectives**

1. To attain equality before the law for all individuals.
2. To provide all eligible individuals with timely and vigorous appointed counsel services that are consistent with the best practices of the legal profession.
3. To protect the independence of the defense function, and to ensure the constitutional and statutory rights of individuals accused of a criminal offense in federal court are safeguarded and enforced.
4. To set forth the requirements of the CJA, the CJA Guide, and CJA Guidelines in a way that meets the needs of this District.
5. To provide for legal representation services by the Office of the Federal Public Defender for the District of Utah (FPDO) and for the appointment and compensation of private attorneys from the Utah CJA panel (CJA panel), and other private attorneys in limited circumstances, in cases authorized under the CJA and related statutes.

**B. Compliance**

1. This Plan must be administered so those who are accused of a criminal offense, or are otherwise eligible for services under the CJA, will not be deprived of the right to counsel, or any element of representation necessary for an effective defense, due to lack of financial resources.
2. The court, the clerk, the Federal Public Defender (FPD), the FPDO, and attorneys appointed under the CJA, shall comply with this Plan.
3. The court and the CJA Resource Attorney shall ensure the current plan is on the court's and the FPDO's websites and provided to CJA attorneys when they become a member of the CJA panel or are appointed on a case.

### III. REPRESENTATION UNDER THE CJA

#### A. Subject Matter Eligibility for Appointed Representation.

1. Mandatory Subject Matter Eligibility. 18 U.S.C. § 3006A(a)(1), Guide, Vol 7A, §§ 220.30(f), 230.23.20(i)(5), 210.20.10, 18 U.S.C. § 5034 (juveniles), and 18 U.S.C. § 3599(e) identify the circumstances under which representation must be provided for any individual who is or becomes financially eligible for appointed counsel, under the Sixth Amendment of the Constitution.
2. Discretionary Subject Matter Eligibility. 18 U.S.C. § 3006A(2), § 210.20.20 of the Guide, 18 U.S.C. § 3006A(c) (ancillary matters to the criminal proceedings<sup>1</sup>), and 18 U.S.C. § 983(b)(1) (civil forfeiture), identify the circumstances under which, in the interests of justice, representation may be provided for any financially-eligible individual.
3. Ineligible Subject Matter. § 210.20.50 of the Guide describes the proceedings that are generally ineligible for appointed counsel under the CJA.

#### B. Judicial Determination of Eligibility for CJA Representation

1. Right to counsel. In every case where an individual is eligible for the appointment of counsel, the court shall advise the individual of the right to be represented by counsel throughout a case and that counsel may be appointed if they are financially eligible.
2. Appointment Timing.
  - i. The advice of counsel for individuals subject to proceedings under the Bail Reform Act, 18 U.S.C. § 3142, et seq. is critical prior to being interviewed by a pretrial services or probation officer. As a result, courts should ensure counsel is provided to all individuals prior to being interviewed by a pretrial services officer;
  - ii. A court must ensure counsel is provided to all eligible individuals as soon as feasible after they are taken into custody, or when they first appear before a court, are formally charged, or notified of charges if formal charges are sealed, or when a court otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest; but

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<sup>1</sup> In determining whether representation in an ancillary matter is appropriate to the criminal proceedings, the court must consider whether such representation is reasonably necessary to: protect a constitutional right; to contribute in some significant way to the defense of the principal criminal charge; to aid in preparation for trial or disposition of the principal criminal charge; to enforce the terms of a plea agreement in the principal criminal charge; to preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under 18 U.S.C. § 983, 19 U.S.C. § 1602, 21 U.S.C. § 881, or similar statutes, which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f) or 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).

- iii. Where the provision of counsel precedes the initial appearance, any such representation is provisional and subject to a judicial officer's financial eligibility determination for the individual.
3. Eligibility. A court shall make the eligibility determination for appointed representation by considering the subject matter of a case and whether the individual is financially unable to obtain counsel.
4. Financial Determination. A court shall determine financial eligibility for appointed representation through an appropriate inquiry concerning the individual's finances. Consideration should be given to the cost of providing the individual and their dependents with the necessities of life and the cost of retained counsel. A court's initial determination of financial eligibility must be made without regard to the ability of the individual's family to retain counsel unless their family indicates a willingness and ability to do so promptly.
  - i. Any doubts about an individual's eligibility for appointed counsel should be resolved in favor of the individual receiving appointed counsel.
  - ii. After the appointment of counsel, if a court finds an individual who was provided appointed counsel, has become financially able to obtain counsel, the court may terminate the CJA representation or order repayment of funds under 18 U.S.C. § 3006A(f).
  - i. At any stage of the proceedings, if a court finds an individual can no longer financially afford to pay retained counsel, counsel may be appointed consistent with this Plan.
5. Appointment Process. When a court determines it will appoint counsel, it shall communicate the individual's information to the FPDO and the CJA Resource Attorney to allow them to assign the case to an attorney. All individuals referred by a court to the FPDO for purposes of representation shall be assigned to the FPD who is responsible for the subsequent assignment at its discretion.
  - i. In exceptional cases, where a court determines the appointment of a specific member of the CJA panel is in the interest of justice (and would promote judicial economy or continuity of representation), such appointment may be made directly in consultation with the CJA Resource Attorney, who shall maintain a record of such cases, and the court's reasons for the exceptional appointment.
  - ii. A court may make the appointment of counsel retroactive to include representation that was provided prior to appointment.
  - iii. A court may appoint more than one attorney for any individual in cases involving extended or complex representation, or when a case is being represented by attorneys through the Second Chair Program in the District, or in federal capital cases as specified below.

#### IV. UTAH FEDERAL PUBLIC DEFENDER ORGANIZATION

##### A. Role.

The Utah FPDO is established in this District under the CJA and is responsible for representing all individuals throughout the District who are eligible for appointed counsel and for whom representation presents no conflict.

##### B. Offices.

The FPDO shall maintain a primary office in Salt Lake City, and a branch office in St. George, Utah.

##### C. Representation.

The FPDO operates under 18 U.S.C. § 3006A(g)(2)(A) and the Guide to provide high-quality representation consistent with the best practices of the legal profession and the highest standards of professional conduct.

##### D. Management.

The FPD is responsible for hiring, supervising, and managing the FPDO and the CJA Resource Attorney.

##### E. Appointments Ratio.

The FPDO should receive approximately 75% of initial appointments under the CJA in the District, subject to conflicts of interest. Where practical and cost effective, CJA panel attorneys should receive approximately 25% of the initial appointments under the CJA in the District of Utah, subject to modification, as necessary to ensure the CJA panel receives sufficient cases to stay proficient in federal law.

##### F. CJA Team.

The FPD shall employ a CJA Resource Attorney and other staff (the CJA Team) to:

1. Manage the day-to-day administration of the CJA panel.
2. Distribute CJA panel cases in coordination with the court and FPDO.
  - i. The distribution of cases should balance appointments and compensation equitably among the panel and ensure high-quality representation for every individual represented by a CJA attorney. Consideration should also be given to the CJA attorney's caseload and experience.
  - ii. The CJA Team may assign cases to attorneys who are not members of the CJA panel in circumstances where the appointment of a particular attorney is in the interests of justice, judicial economy, or to ensure the continuity of representation, or the case has sufficiently experienced counsel for representation, or in cases with many individuals facing charges, when there are insufficient conflict-free panel attorneys, or for any other compelling reason. It is not anticipated that these circumstances will arise often.
3. Process all appointments for the FPDO and CJA panel in eVoucher and review all requests for payment in eVoucher for accuracy and reasonableness.

4. Administer Continuing Legal Education (CLE) training for FPDO and CJA panel attorneys, in collaboration with the training subcommittee of the CJA Panel Committee. The CLE trainings should focus on topics relevant to federal criminal defense and incorporate information that increases the CJA attorney's understanding of the needs and backgrounds of their federal clients.
5. Work with the Committee to provide an Annual Report that describes the distribution of cases between the FPD and CJA panel, any proposed panel size changes, any recurring issues/difficulties with panel attorneys or their clients, any challenges, successes, how well the panel reflects the diversity of the federal clients, and any recommendations for changes to the Plan or CJA panel.
6. Maintain a current list of all attorneys on the CJA panel, with physical and email addresses and current phone numbers.
7. Administer the application process for the CJA panel in collaboration with the Committee, manage the Second Chair program, and collaborate with the court and the Committee on a law student mentoring program. The Second Chair and law student programs shall be used to increase the diversity of the CJA panel.

## **V. CJA PANEL COMMITTEE**

### **A. The Utah CJA Panel Committee.**

1. The FPD, with approval from the Chief Judge, shall select an attorney to serve as the Utah CJA Panel District Representative (PADR) to represent the District's CJA panel for Defender Services' CJA PADR Program and the Committee. The PADR shall serve up to two terms of three years each.
2. The Committee shall have four permanent positions: 1) the PADR 2) the CJA Resource Attorney, 3) the FPD, and 4) a judicial officer.
3. The CJA Resource Attorney or their designee shall act as the chair of all Committee meetings.
4. The CJA Resource Attorney, the PADR, and the FPD shall designate three CJA panel attorneys, one of whom shall be from the Southern Region, to serve up to two staggered terms of three years on the Committee. The selected attorneys shall have a demonstrated commitment to indigent federal defense and knowledge of federal procedures.
5. The Chief Judge, or their designee shall designate a judicial officer to serve on the Committee for up to two terms of three years.
6. In composing the Committee membership, diligent efforts shall be made by to ensure Committee members reflect the racial, ethnic, gender, and geographic diversity of the District.

### **B. CJA Committee Duties.**

1. The CJA Committee members shall meet at least four times per year, and shall:
2. Review the operation and administration of the CJA panel and recommend changes to this Plan as the Committee deems necessary or appropriate.

3. Create a training subcommittee to develop relevant CLE trainings for CJA and FPDO attorneys throughout the year.
4. Create programs to identify and help prepare licensed attorneys to qualify for consideration for appointment to the CJA panel, and law students to assist CJA panel attorneys with casework as needed by the CJA panel.
5. Assist in the recruitment, selection, appointment, retention, discipline, and removal of panel attorneys.
  - i. The Committee shall devise a recruitment strategy to identify and train a diverse set of viable panel applicants, with the goal of having a CJA panel that both provides the highest quality of federal criminal defense and reflects the racial, ethnic, gender, and geographic diversity of the District. The results of this recruitment strategy shall be included in the Committee's Annual Report.
  - ii. The panel should be large enough to provide experienced and diverse panel attorneys to handle all CJA cases and small enough to ensure panel attorneys receive adequate new appointments to remain proficient in federal criminal defense and able to provide high-quality representation to each client.
  - iii. In considering applications from prospective members to the CJA panel, the Committee shall review and investigate the qualifications of all applicants, and shall consider the size of the panel, the District's appointed caseload, the complexity of the court's criminal cases, and the diversity needs of the panel in the District, in determining whether applicants have the experience and qualifications to recommend to the Chief Judge for CJA panel appointment or admission to the Second Chair Program.
6. The Committee shall regularly update the Utah Federal Public Defender Criminal Justice Act Plan Handbook (the Handbook), to comply with the CJA and Guide, and provide detailed and accurate information to the CJA panel.
7. Annually review the operation and administration of the CJA panel and work with the CJA Resource Attorney to create an Annual Report to publish on the FPDO and Court's websites.
8. Review and investigate complaints against CJA panel attorneys.
  - i. Judicial Review. In an active case, a complaint by an individual represented by a panel attorney may be reviewed by the presiding judge. The presiding judge may direct the complaint to the Committee.
  - ii. Committee Review. A complaint about a panel attorney's performance should be addressed to the Committee, and may be initiated by any individual, or the Committee.
  - iii. Form. A complaint need not follow any form, but it must be in writing and state the alleged issue with specificity. It may be emailed to [UTX\\_CJA\\_Panelteam@fd.org](mailto:UTX_CJA_Panelteam@fd.org) or delivered in person to the FPDO Office attention to the CJA Resource Attorney. The address is here <https://ut.fdo.org/>



- iv. Investigation. The Committee will determine whether further investigation into a complaint is necessary, and how to conduct any investigation. The Committee will notify the panel member of the allegations and whether the Committee has commenced an investigation. A panel attorney subject to investigation may respond in writing and appear, if so directed, before the Committee.
  - v. Protective Action. Prior to disposition of any complaint, the CJA Panel 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 the Plan. The Committee may refer a matter to a disciplinary body while the Committee proceeds with the complaint.
  - vi. Review and Recommendation. After investigation, the Committee may vote to dismiss the complaint or take other appropriate remedial action, including removal or suspension of the attorney from the CJA panel (as set forth below), or limiting the attorney's participation to particular 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 any other appropriate remedial action.
9. Removal.
- i. Notice. CJA panel attorneys must immediately notify the Committee in writing if they are disbarred, suspended, sanctioned, or reprimanded by a court, licensing authority, grievance committee, or administrative body, or if they are removed from a state or federal indigent-defense panel in another District.
  - ii. Mandatory Removal. CJA panel attorneys who are suspended or disbarred from the practice of law by any state or federal court will be removed from the CJA immediately and ordered to withdraw from all current CJA representations.
  - iii. Automatic Disciplinary Review. The Committee will conduct a disciplinary review of any panel attorney against whom any licensing authority, grievance committee, or administrative body has acted, or when a court has held an attorney in contempt, issued a sanction, or a court has reprimanded a panel attorney.
  - iv. Discretionary Removal. The Committee may recommend to the Chief Judge, the removal of a panel attorney who the Committee determines fails to fulfill the obligations of CJA panel membership during their term of service, including failing to provide high-quality representation to CJA clients, not attending the required CLEs, or engaging in other conduct that makes continued CJA panel service inappropriate.
10. Confidentiality. Unless otherwise directed by a court, the Committee will maintain the confidentiality of any information concerning any possible

disciplinary action, including any complaint and any related removal proceeding. Except that, where appropriate, the Committee may forward relevant information to the court's Attorney Discipline Panel.

11. **Vote.** In considering Committee matters, the FPD and the active judicial officer may vote on all Committee matters where there is no conflict of interest, except they shall serve in an advisory capacity only when the Committee is voting on attorneys to recommend to the Chief Judge to serve on or be removed from the CJA panel.
12. **Conflicts.** Any member of the Committee who has a conflict of interest that a reasonable person would expect to influence the Committee member's impartiality with any matter before the Committee, must recuse themselves from voting in the matter.

## **VI. CJA PANEL OF PRIVATE ATTORNEYS**

### **A. CJA Panel.**

The existing CJA panel of private attorneys who are eligible and willing to be appointed to provide representation under the CJA in the district, where FPDO has a conflict, are recognized as members of the CJA panel for the District, subject to ongoing review by the Committee.

### **B. High-quality representation.**

CJA panel attorneys are responsible for providing high-quality representation consistent with the best practices of the legal profession on appointed cases throughout the District.

### **C. Compliance.**

CJA panel attorneys are expected to consult and comply with the Handbook, the CJA, the Guide, and all statutes and rules applicable to CJA panel attorney work.

### **D. Applications.**

CJA Panel Applications are available on [ut.fd.org](http://ut.fd.org) and maybe submitted at any time. See the Handbook on that website for more information.

## **VII. APPOINTMENT OF COUNSEL AND CASE MANAGEMENT IN CJA CAPITAL CASES.<sup>2</sup>**

### **A. Applicable Legal Authority.**

The appointment and compensation of counsel in capital cases and the authorization and payment of individuals providing investigative, expert, and other services are

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<sup>2</sup> 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](mailto:ods_lpb@ao.uscourts.gov). All statutes and guidelines cited in this section can be found in the Model Plan for Implementation and Administration of the Criminal Justice Act.

governed by 18 U.S.C. §§ 3005, 3006A, and 3599, and Vol. 7A, Ch. 6 of the Guide.

B. Applicability.

The provisions of 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). These 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 or conviction, applications for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings.

C. Right to counsel.

Under 18 U.S.C. § 3599(e), any individual who is 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 individual.

D. Appointment and Qualifications of Counsel.

1. Timing. Qualified counsel must be appointed in capital cases at the earliest possible opportunity.

- i. Appointment of qualified capital trial counsel must occur no later than when an individual is charged with a federal criminal offense where the penalty of death is possible. See 18 U.S.C. § 3005.
- ii. The accelerated timeline in 28 U.S.C. § 2255 proceedings, makes the prompt appointment of counsel essential. Wherever possible, counsel should be appointed prior to the denial of certiorari on direct appeal by the United States Supreme Court.
- iii. In 28 U.S.C. § 2254 cases, a court should appoint counsel and provide appropriate litigation resources at the earliest possible time to ensure counsel may avail themselves of the full statute of limitations period to prepare a petition.

2. Qualified Counsel.

- i. At any stage of the case where a court is considering the appointment of counsel, the court shall consult with the FPD and CJA Resource Attorney to ensure: all attorneys are appointed at the earliest possible opportunity, and that the appointed attorneys are qualified counsel.
- ii. Under 18 U.S.C. § 3006A(a)(3), a court may appoint attorneys who are out

of the District in any CJA capital case proceedings to achieve high-quality representation and cost savings, including an attorney furnished by a state or local public defender organizations or legal aid agency or other private, non-profit organization to represent a individual charged with a capital crime or seeking federal death penalty habeas corpus relief provided that the attorney is qualified counsel. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or CJA panel attorneys or an attorney appointed pro hac vice.

- iii. Qualified counsel for these cases shall be:
  - a. Members of the District's bar or attorneys eligible for pro hac vice admission;
  - b. Able to meet the minimum experience standards under 18 U.S.C. §§ 3005 and 3599;
  - c. Well qualified, through their training, commitment, and distinguished prior capital defense experience<sup>3</sup> at the relevant stage of the proceeding, to serve as counsel in this highly specialized and demanding litigation;
  - d. Willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation and to ensure sufficient time and resources to devote to the representation, considering the extraordinary demands of a capital case; and
  - e. Able to meet the American Bar Association guidelines for appointment and representation in capital cases, as amended.
  - f. *Prior to Judgment.* Under 18 U.S.C. § 3599(b), at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than 5 years and must have had not less than 3 years' experience in the actual trial of felony prosecutions in that court. Under 18 U.S.C. § 3005, at least 1 of the attorneys appointed must be knowledgeable in the law applicable to capital cases.
  - g. *After Judgment.* Under 18 U.S.C. § 3599(c), at least 1 of the attorneys appointed must have been admitted to practice in the Court of Appeals for not less than 5 years and must have had not less than 3 years' experience in the handling of appeals in felony cases in the court.

3. Number.

- i. Due to the complex, demanding, and protracted nature of death penalty proceedings, an individual charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom must be qualified counsel. 18 U.S.C. § 3005,

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<sup>3</sup> The term "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.

- ii. Under 18 U.S.C. §3599(a)(1)(B), if necessary for adequate representation, more than two attorneys may be appointed to represent an individual.
- iii. Under 18 U.S.C. § 3599(a)(2), a financially eligible individual seeking to vacate or set aside a death sentence under 28 U.S.C. §§ 2254 or 2255 is entitled to appointment of two qualified counsel.

4. Resources.

Courts should utilize the available expert services in the Administrative Office of the U.S. Courts (AO), Defender Services' Federal Death Penalty Resource Counsel Project, Capital Resource Counsel Project (for federal capital trials), Federal Capital Appellate Resource Counsel Project, Federal Capital Habeas Project/ the § 2255 Project, and any national and regional Habeas Assistance and Training Counsel Projects (§2254). These resources provide experienced capital case experts who may be relied upon by for assistance with selecting appropriate counsel, case budgeting, and legal, practical, and other matters arising in capital cases. The FPD and all appointed attorneys should promptly notify and consult with the appropriate national Resource Counsel projects about potential and actual federal capital trial, appellate, and habeas corpus cases.

E. Budgeting Principles.

- 1. Upon the appointment of attorneys outside of the FPDO on a capital case, the attorneys shall coordinate with the CJA Resource and Tenth Circuit Case Budgeting attorneys at the earliest opportunity.
- 2. There shall be no formal or informal non-statutory budgetary caps on any capital cases, whether in a capital trial, direct appeal, or habeas matter.

F. Continued Representation.

Counsel at all stages of the case must be mindful of all subsequent stages of the case (trial, appeal, post-conviction, etc.), and should discuss all stages with the client, and take all actions necessary to maximize the client's chances of relief at a subsequent stage of the case. Counsel representing the client at one stage should generally not cease acting on the client's behalf until successor counsel has been appointed or a court has terminated counsel's representation.

G. Additional Provisions

Applicable to the Appointment and Qualifications of Direct Appeal Counsel in Federal Death Penalty Cases.

- 1. When a district court appoints counsel for a direct appeal, it shall consult with the FPD and CJA Resource Attorney to ensure all attorneys are appointed at the earliest possible opportunity, and that appointed attorneys are qualified counsel.
- 2. Counsel appointed to represent a death-sentenced federal appellant should include at least one qualified counsel who did not represent the appellant at trial.

3. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the individual 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 with cost and other efficiencies.
  5. Appellate counsel should have distinguished prior experience in federal criminal appeals and capital appeals.
  6. At least one of the appointed appellate attorneys must have the requisite background, knowledge, and experience required by 18 U.S.C. § 3599(c) or (d).
  7. 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 when appointing appellate counsel.
  8. 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, when appointing appellate counsel.
- H. Additional Provisions for the Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. §§ 2255 and 2254)
1. In addition to the provisions above, an individual seeking to vacate or set aside a death sentence under 28 U.S.C. §§ 2254 or 2255 is entitled to appointment of two attorneys who are qualified counsel, due to the complex, demanding, and protracted nature of death penalty proceedings. 18 U.S.C. § 3599(a)(2).
  2. Counsel in § 2255 cases should have distinguished prior experience in federal post-conviction proceedings and in capital post-conviction proceedings, and specifically capital § 2255 representations.
  3. Counsel in capital § 2254 cases should have distinguished prior experience in federal post-conviction proceedings, capital post-conviction proceedings, and capital § 2254 representations.
  4. Unless precluded by a conflict of interest, or replaced by similarly qualified counsel upon motion by the attorney or motion by the individual, capital § 2254 counsel must represent the individual through every stage of the 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 individual in such competency proceedings and proceedings for executive or other clemency as may be available to the individual. See 18 U.S.C. § 3599(e).

## VIII. TECHNICAL PROVISIONS

- A. Supersession. This Plan supersedes all prior CJA Plans, and Orders adopted by this court.
- B. Effective Date. This Plan becomes effective upon approval by the Judicial Council of the Tenth Circuit.

SIGNED BY THE CHIEF JUDGE, UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

  
\_\_\_\_\_  
CHIEF JUDGE

December 15, 2022  
\_\_\_\_\_  
(month/day/year)

APPROVED BY THE JUDICIAL COUNCIL OF THE TENTH CIRCUIT

February 8, 2023  
\_\_\_\_\_  
(month/day/year)