

ADOPTED June 15, 2023

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

**PROPOSED AMENDMENT TO THE PLAN OF THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT IN IMPLEMENTATION OF THE CRIMINAL JUSTICE ACT**

PLEASE TAKE NOTICE that the Fourth Circuit Court of Appeals intends to amend the Plan of the United States Court of Appeals for the Fourth Circuit in Implementation of the Criminal Justice Act (CJA Plan).

The proposed amendment adds “their primary” in the following sentence on page 9 of the CJA Plan: “CJA Appellate Panel members should maintain [at their primary](#) physical office within the Circuit.”

The amendment is scheduled to take effect June 15, 2023, subject to revision in light of comments received. Interested parties may submit comments on or before June 8, 2023, to:

Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 E. Main Street, Suite 501
Richmond, Virginia 23219

or via email to:
rulecomments@ca4.uscourts.gov

[The CJA Plan is available here.](#)

May 8, 2023
Date

s/Patricia S. Connor
Clerk

PLAN OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
IN IMPLEMENTATION OF THE CRIMINAL JUSTICE ACT

The Judicial Council of the Fourth Circuit adopts the following plan, in implementation of the Criminal Justice Act.

I. RIGHT TO COUNSEL

1. DIRECT APPEALS: In every direct appeal involving a person
 - a. who is charged with a felony or a Class A misdemeanor, or with juvenile delinquency as defined in 18 U.S.C. § 5031, or with a violation of probation or supervised release; or who faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release; or who is under arrest and representation is required by law; or who is subject to a mental condition hearing under Chapter 313 of Title 18; or who is held in custody as a material witness; or who is entitled to the appointment of counsel under 18 U.S.C. § 4109; or,
 - b. for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces the loss of liberty, any federal law requires the appointment of counsel,

whether the appeal be by a defendant from a judgment of conviction or other order, or by the United States from a judgment of acquittal or dismissal, a defendant shall be entitled to be represented by counsel as a matter of right.

If the appeal involves a Class B or C misdemeanor, or an infraction for which confinement is authorized, the Court may appoint counsel for a financially eligible person upon a determination that the interests of justice so require.

In these cases, unless an application for the appointment of counsel has already been received, or notice of appearance has been filed by retained counsel, the clerk of this Court shall promptly notify the defendant of his right to counsel and shall inform him that counsel will be appointed if he is financially unable to obtain adequate representation. Where an attorney had previously been appointed to represent the defendant in district court, that attorney shall be reappointed, without prior notice, upon the docketing of the appeal in this Court. If there is no such reappointment, either because defendant appeared pro se or was represented by retained counsel in the district court, the clerk shall appoint the attorney of record in the district court, where appropriate, or select an appointee from a panel of approved attorneys.

In pro se cases in which the appellant exercises his right to represent himself as suggested by Faretta v. California, 422 U.S. 806 (1975); 28 U.S.C. § 1654, the Court may find it appropriate to appoint standby counsel for the appellant to assist in the appeal to protect the integrity and ensure the continuity of the judicial proceedings. (McKaskle v. Wiggins, 465

U.S. 168 (1984); *Faretta, supra*). Accordingly, if a pro se appellant is represented, at least in part, by standby counsel, compensation may be provided under the CJA.

2. COLLATERAL PROCEEDINGS: In an appeal in a post-conviction proceeding under 28 U.S.C. § 2254 or 2255, seeking to vacate or set aside a death sentence, a petitioner who is financially unable to obtain adequate representation shall be entitled to appointment of one or more attorneys. 18 U.S.C. § 3599(a)(2). In an appeal in a collateral proceeding brought by the petitioner from any other order denying the relief requested pursuant to 28 U.S.C. § 2241, 2254, or 2255, a petitioner shall not be entitled to be represented by counsel as a matter of right. In these cases, counsel will be appointed if the Court determines that the interests of justice require legal representation. However, in an appeal brought by the United States or a state from an order granting the relief requested, a petitioner shall be entitled to representation as a matter of right.

On appeal by petitioner in any non-capital case brought pursuant to 28 U.S.C. § 2241, 2254, or 2255, the Court may, on motion of the petitioner or on its own motion, appoint counsel where the Court determines that (a) petitioner is financially unable to obtain adequate representation and (b) the interests of justice require legal representation, as when petitioner needs the assistance of counsel to go forward with an apparently meritorious petition. The clerk shall thereupon appoint the attorney of record in the district court, where appropriate, or select an appointee from a panel of approved attorneys.

Where a petitioner is under sentence of death, the clerk shall appoint counsel upon receipt of the notice of appeal.

II. APPOINTMENT OF COUNSEL

1. COURT ORDER: Every appointment of counsel pursuant to the Criminal Justice Act and this Plan shall be made by an order of this Court. A prerequisite to appointment shall be an affirmative finding by the Court that a defendant is financially unable to employ counsel. However, where counsel was appointed in the lower court, this Court will presume, until reason to the contrary appears, that the defendant remains financially unable to retain counsel, and no such finding shall be required.

The selection of counsel under the Criminal Justice Act shall be the exclusive responsibility of the Court, and no person entitled to court-appointed counsel shall be permitted to select counsel to represent him.

2. RETROACTIVITY: An appointment may be made retroactive to include any representation furnished to an indigent by an attorney prior to appointment pursuant to this Plan.
3. SCOPE: A person for whom counsel is appointed shall be represented at every stage of the proceedings, through appeal, including ancillary matters appropriate to the proceedings and including a petition for writ of certiorari to the Supreme Court if non-frivolous grounds exist for filing such a petition.

4. SUBSTITUTION OF COUNSEL: The Court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings. The total compensation to be paid both attorneys shall not exceed the statutory maximum for one appointment, unless the case involves extended or complex representation.
5. ONE ATTORNEY FOR MULTIPLE DEFENDANTS: In appeals involving multiple defendants, separate counsel will normally be appointed for each defendant, unless there has been a waiver on the record by the defendants or good cause is shown. If one attorney is appointed to represent more than one defendant, a separate order of appointment shall be entered for each defendant. The attorney may be compensated for his services up to the maximum for each defendant represented; however, time spent in common on one or more defendants must be prorated.
6. MULTIPLE APPOINTMENTS FOR ONE DEFENDANT: In capital cases, and in other cases of extreme difficulty where the interests of justice so require, the Court may appoint an additional attorney to represent a defendant. Each attorney so appointed shall be eligible to receive the maximum compensation allowed under the Criminal Justice Act. Any defendant indicted for a federal capital offense is entitled, upon request, to have two attorneys appointed, at least one of whom shall be learned in the law applicable to capital cases. 18 U.S.C. § 3005.
7. DEFENDANT'S OBJECTION TO APPOINTED ATTORNEY: The Court shall give consideration to a defendant's expression of dissatisfaction with his counsel only if specific grounds for dissatisfaction are stated. Appointed counsel shall be relieved only when the Court, in its discretion, determines that the interests of justice so require.
8. WITHDRAWAL OF COUNSEL: An attorney appointed to represent a defendant in the lower court is generally obliged to continue that representation upon appeal unless relieved by this Court. *See infra* Part V.1. An attorney who does not desire to continue the representation must file a motion to withdraw with the clerk of this Court promptly after filing the notice of appeal.

Counsel's request to be relieved from representation on appeal shall be given due consideration. While the Court recognizes there may be benefits to maintaining continuity of counsel, it also recognizes that the skills necessary to proceed as appellate counsel may differ from those required for trial counsel. Substitution of counsel shall not reflect negatively in any way on the conduct of the lawyer involved.

III. DEFENDANT'S FINANCIAL STATUS

1. FILING APPLICATION: A defendant who, in the district court, was represented by employed counsel, or was unrepresented, or was represented by appointed counsel but has nonetheless been requested to file a new application in this Court, may apply to this Court for the appointment of counsel. Such application shall be accompanied by an affidavit disclosing the applicant's financial status and any resources available to him to compensate counsel.

2. RE-EXAMINATION BY COURT: The Court, at any time, may re-examine a defendant's financial status as it bears upon the appointment of counsel and, thereupon, (a) appoint counsel to represent the defendant, if the defendant is not already represented or is unable to pay previously retained counsel, (b) terminate the appointment of counsel, or (c) require a partial payment of counsel fees by the defendant. The defendant shall furnish such financial and related information as may be requested during the re-examination, unless he desires to proceed without counsel.
3. INSUFFICIENCY OF FUNDS; PARTIAL PAYMENT: If a defendant's net financial resources and anticipated income are in excess of the amount needed to provide him and his dependents with the necessities of life and to provide for his release on bond, but are insufficient to pay fully for retained counsel, this Court will find the defendant eligible for the appointment of counsel but will direct him to pay the available excess funds to the clerk at the time of appointment. The Court may increase or decrease the amount of such payments and impose appropriate conditions, where applicable. All such payments by the defendant shall be received pursuant to the prescriptions of subsection (f) of the Criminal Justice Act.
4. FAMILY RESOURCES: Funds and property standing in the name of, or held by, members of a defendant's family will be considered available for the payment of the fees of retained counsel if there is a finding, upon a reasonable basis of fact, that the family has indicated a willingness and a financial ability to pay all or part of the costs of representation. The initial determination of a defendant's eligibility for the appointment of counsel should be made without regard to family resources unless the family plans and is financially able to retain counsel promptly.
5. ATTORNEY'S INFORMATION: If at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal services in connection with his representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall so advise this Court.

IV. PANEL OF ATTORNEYS

FOURTH CIRCUIT CJA PANEL PLAN: The Fourth Circuit has established a panel of attorneys qualified and willing to accept new appointments on appeal. Procedures for administration of the panel are set forth in Appendix A, CJA Panel Administration.

V. ATTORNEY'S DUTY TO CONTINUE REPRESENTATION

1. TRIAL COUNSEL: Every attorney, including retained counsel, who represented a defendant in the district court shall continue to represent the client after termination of those proceedings, unless relieved of further responsibility by this Court. Where counsel has not been relieved: If there is a judgment of conviction or an order revoking probation, counsel shall inform the defendant of his right to appeal and of his right to have counsel appointed on appeal. If so requested by the defendant, counsel shall file a timely notice of appeal. Thereafter, unless the defendant otherwise so instructs, counsel shall take appropriate and

timely steps to perfect and present the appeal, including, where appropriate, the ordering of such part of the transcript as may be necessary for consideration on appeal.

Similarly, if there is an appeal by the United States from an order or judgment adverse to it, counsel shall continue to represent the client.

In any case brought pursuant to 28 U.S.C. § 2241, 2254, or 2255 which results in an order by the district court denying the relief requested, counsel shall inform the petitioner of his right to appeal and of the Court's authority to appoint appellate counsel in its discretion. If so requested by the petitioner, counsel shall file a timely notice of appeal and a motion for appointment of appellate counsel, and counsel's duty is thereby ended. On the other hand, if petitioner is granted the relief requested, counsel shall continue to represent the petitioner in the event the respondent appeals the judgment.

2. APPELLATE COUNSEL: Every attorney, including retained counsel, who represents a defendant in this Court shall continue to represent his client after termination of the appeal unless relieved of further responsibility by this Court or the Supreme Court. Where counsel has not been relieved: If the judgment of this Court is adverse to the defendant, counsel shall inform the defendant, in writing, of his right to petition the Supreme Court for a writ of certiorari. If the defendant, in writing, so requests and in counsel's considered judgment there are grounds for seeking Supreme Court review, counsel shall prepare and file a timely petition for such a writ and transmit a copy to the defendant. Thereafter, unless otherwise instructed by the Supreme Court or its clerk, or unless any applicable rule, order or plan of the Supreme Court shall otherwise provide, counsel shall take whatever further steps are necessary to protect the rights of the defendant, until the petition is granted or denied.

If the appellant requests that a petition for writ of certiorari be filed but counsel believes that such a petition would be frivolous, counsel may file a motion to withdraw with this Court wherein counsel requests to be relieved of the responsibility of filing a petition for writ of certiorari. The motion must reflect that a copy was served on the client. If the United States seeks a writ of certiorari to review a judgment of this Court, counsel shall take all necessary steps to oppose the United States' petition.

Similarly, in any proceeding brought pursuant to 28 U.S.C. § 2241, 2254, or 2255 which results in an order by this Court, appointed counsel shall take those steps necessary, as set forth above, to protect the rights of the defendant in the Supreme Court.

VI. COMPENSATION AND REIMBURSEMENT OF EXPENSES

1. VOUCHER: Upon the completion of service in this Court, appointed counsel shall submit a voucher for compensation and reimbursement through the Fourth Circuit CJA eVoucher system. Vouchers shall be submitted no later than 60 days after the final disposition of the case, unless good cause is shown. In preparing and submitting vouchers, counsel shall be guided by this court's payment memoranda and by the Guidelines for Administering the CJA and Related Statutes, Vol. 7, Part A, Guide to Judiciary Policy.

2. HOURLY RATES: Counsel may be compensated at rates authorized by the Judicial Conference pursuant to 18 U.S.C. § 3006A(d)(1) for non-capital cases and pursuant to 18 U.S.C. § 3599(g)(1) for capital cases.
3. MAXIMUM COMPENSATION ALLOWABLE: Limitations on maximum compensation shall be as prescribed in 18 U.S.C. § 3006A(d)(2) for non-capital cases. In capital cases, maximum compensation limits do not apply, and compensation shall be in such amounts as the Court determines to be reasonably necessary.

In all cases where there has been a substitution of counsel, or where multiple defendants have been represented by one attorney or multiple appointments have been made for one defendant, total compensation shall be determined pursuant to Section II, Paragraphs 4, 5, and 6.

Payment in excess of the prescribed limitations may be made to provide fair compensation in a case involving extended or complex representation, upon approval by the Chief Judge of this Court or other active or senior circuit judge designated by him. Counsel claiming in excess of the statutory maximum must submit with his voucher a detailed memorandum supporting and justifying counsel's claim that the representation given was in a complex or extended case, and that the excess payment is necessary to provide fair compensation. If the legal or factual issues in a case are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case, the case is "complex." If more time is reasonably required for total processing than would normally be required in the average case, the case is "extended." Attorneys seeking compensation have the burden of providing sufficient details to support their claim that the case is more complex or time consuming than the average case. This burden also exists with regard to the reasonableness of hours claimed for representation.

4. NON-APPOINTED CO-COUNSEL: Co-counsel or associate attorneys may not claim compensation unless appointed under the CJA. However, appointed counsel may claim compensation for services furnished by non-appointed co-counsel or associate attorneys within their firm, so long as the total claim for services furnished by all counsel is within the attorney case compensation maximum set by the CJA in 18 U.S.C. § 3006A(d)(2). In all other situations, counsel must obtain preauthorization from the Court to use the services of non-appointed counsel.
5. REPRESENTATION TO THE SUPREME COURT: Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari to the Supreme Court, and in the protection of the defendant's rights up until the time that Court disposes of a petition, should be included in the voucher for services performed in this Court.
6. REIMBURSABLE EXPENSES: Counsel shall be entitled to reimbursement for reasonably incurred out-of-pocket expenditures. Travel by privately owned automobile should be claimed at the mileage rate currently applicable to federal employee travel, plus parking fees and tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis. Necessary airline travel will be reimbursed only at coach class rates.

Expenditures for meals and lodging are reimbursable in accordance with prevailing limitations imposed on federal judiciary employees by government travel regulations.

Expenditures for telephone toll calls, postage, and copying are reimbursable; the cost of printing is not. Reimbursement for photocopying services, whether performed in counsel's office or by a commercial printer, shall be limited to out-of-pocket expenses, not to exceed 15 cents per page, and shall be itemized by date, number of pages, and cost per page. No joint appendix in a court-appointed case may exceed 500 pages without advance permission from the Court; unless such permission is granted, reimbursement of copy expenses will be limited to 500 pages.

Detailed bills or receipts are required for all travel and lodging expenses and any other expense in excess of \$50.00. Failure to provide sufficient detail may result in the expense being denied. Any expense in excess of \$50.00 must be itemized in a manner which will permit a review of the amount expended.

7. NON-REIMBURSABLE EXPENSES: General office overhead, personal items and non-legal personal services for the person represented, filing fees, services of process, and printing are non-reimbursable. (A person represented under the Criminal Justice Act is not required to pay filing fees or costs, or give security therefor, nor must he file the 28 U.S.C. § 1915(a) affidavit, for an appeal.)
8. AUTHORIZATION AND PAYMENT FOR EXPERT AND OTHER SERVICES: CJA counsel may arrange for services necessary to the representation, including law clerk, interpreter, translator, paralegal, litigation support services, and computer-assisted legal research services. Up to \$900 per case, excluding expenses, may be expended without prior authorization, subject to subsequent review. Once the \$900 case limit is reached, prior authorization is required for any expenditure.
9. AUTHORIZED TRANSCRIPTS: Authorized transcripts should not be claimed in the voucher submitted by counsel through the Fourth Circuit CJA eVoucher system. Instead, counsel should submit transcript authorization requests and CJA 24 payment vouchers through the district court CJA eVoucher system.
10. INTERIM PAYMENT OF EXPENSES: This Court, in rare cases, will entertain requests for interim reimbursement of extraordinary and substantial expenses.
11. DIRECT PAYMENT FROM PERSON REPRESENTED: No appointed counsel shall accept a payment or a promise of payment from a defendant for representation in this Court without prior authorization from the Court.
12. PUBLIC DEFENDER: Where a defendant is represented by a federal public defender, the defender shall be compensated solely by his federal salary and shall not submit a Criminal Justice Act Voucher for compensation.

VII. RULES AND REGULATIONS

RULES AND REGULATIONS: This Plan shall be subject to and held to have been amended pro tanto by any rule or regulation adopted by the Judicial Conference of the United States concerning the operation of plans under the Criminal Justice Act.

The Judicial Council or this Court may adopt rules or regulations concerning the operation of this Plan, which, when promulgated, shall have the same force as provisions of this Plan.

VIII. ADMINISTRATION

GENERALLY; CLERK'S OFFICE: Any act to be done by the Court may be done by any judge of the Court, by the clerk, or by a deputy clerk pursuant to delegated authority.

IX. DEFINITIONS

1. SUPREME COURT: Supreme Court of the United States.
2. ADMINISTRATIVE OFFICE: Administrative Office of the United States Courts.
3. THIS COURT; THE COURT: The United States Court of Appeals for the Fourth Circuit.
4. CRIMINAL JUSTICE ACT: Criminal Justice Act of 1964, 18 U.S.C. § 3006A, as amended.
5. DEFENDANT; DEFENDANTS: Where appropriate in this Plan, the word “defendant” or “defendants” shall be construed to include petitioner or petitioners in a collateral proceeding.
6. JUDICIAL COUNCIL: Judicial Council of the Fourth Judicial Circuit of the United States.

X. AMENDMENTS

This Plan may be amended at any time by the Judicial Council effective when a copy of the amendatory resolution is filed with the Administrative Office or at such later date as may be specified in the resolution.

XI. EFFECTIVE DATE

This amended plan is effective ~~June 1, 2018~~ June 15, 2023.
~~Technical amendment May 2, 2022.~~

APPENDIX A TO THE PLAN IN IMPLEMENTATION OF THE CRIMINAL JUSTICE ACT

CJA PANEL ADMINISTRATION

I. CJA APPELLATE PANEL

A. PANEL QUALIFICATIONS.

The Court shall establish a panel of attorneys who are eligible and willing to accept appellate appointments under the Criminal Justice Act. The Court shall approve attorneys for membership on the panel after receiving recommendations from the CJA Appellate Panel Committee established pursuant to section II of this Plan.

Members of the CJA Appellate Panel are appointed in criminal cases when new counsel must be appointed on appeal. To qualify for the CJA Appellate Panel, attorneys must be members in good standing of the Fourth Circuit bar and have demonstrated experience in, and knowledge of, federal criminal law and appellate procedure and the Sentencing Guidelines. CJA Appellate Panel members should maintain [at their primary](#) physical office within the Circuit.

B. PANEL SIZE.

The CJA Appellate Panel shall be large enough to provide a sufficient number of experienced attorneys to handle the caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency and thereby provide a high quality of representation.

C. TERMS OF PANEL MEMBERSHIP.

The initial CJA Appellate Panel established pursuant to this Plan will be divided into three groups, equal in number. Members will be assigned to one of the three groups on a random basis. Members of the first group will serve on the panel for a term of one year, members of the second group will serve on the panel for a term of two years, and members of the third group will serve on the panel for a term of three years. Thereafter, attorneys admitted to the panel will each serve for a term of three years.

A panel member may be removed from the panel whenever the Court, in its discretion, determines that the member has failed to fulfill satisfactorily the obligations of panel membership, including the duty to afford competent counsel, or has engaged in other conduct that renders inappropriate his or her continued service on the panel.

D. PANEL REAPPOINTMENTS.

Upon expiration of the term of a CJA Appellate Panel member, the panel member must apply for renewal of membership if he or she wishes to continue as a member of the panel.

E. PANEL APPLICATIONS.

The Court will set and publicize an annual application period for panel appointments. Application forms for [membership](#) and [renewal](#) of membership shall be available on the Court's web site and from the Clerk. Completed applications shall be submitted to the Clerk, who will transmit the applications to the CJA Appellate Panel Committee.

II. CJA APPELLATE PANEL COMMITTEE

A. MEMBERSHIP.

A CJA Appellate Panel Committee shall be established by the Court. The Committee shall consist of the following members appointed by the Chief Circuit Judge: a Circuit Judge, a Federal Public Defender from within the Circuit, at least one attorney from each District within the Circuit, the Circuit Executive, the Clerk, the Senior Staff Attorney, and the CJA Budgeting Attorney. The Committee shall be chaired by the Circuit Judge. Attorneys appointed to the Committee shall serve staggered three year terms and may serve two consecutive terms. The Federal Defender representative shall serve a three-year term and may serve two consecutive terms.

B. DUTIES.

The CJA Appellate Panel Committee shall meet at least once a year in person or by teleconference to consider applications for the CJA Appellate Panel. The Committee shall review the qualifications of applicants for the panel and recommend, for approval by the Court, those applicants best qualified to fill the panel.

At its annual meeting the Committee shall also review the operation and administration of the panel over the preceding year and the legal education and training opportunities provided to panel members and make any recommendations for improvement to the Court.

III. SELECTION FOR APPOINTMENT

A. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS.

The Clerk shall maintain a current list of all attorneys included on the CJA Appellate Panel, with law firm names, current office addresses, and telephone numbers. The Clerk shall also maintain a record of all new appointments made on appeal and statistical data reflecting the proration of new appointments between private attorneys and the Federal Public Defender Offices.

B. METHOD OF SELECTION.

Appointments shall be initially offered to the Federal Public Defender for the district out of which the appeal arises. If the Defender for that district cannot accept a case, appointments may be made to the Federal Public Defender for another district within the Circuit or to a member of the CJA Appellate Panel. CJA Appellate Panel appointments should be made on a

rotational basis to the next panel member from the district in which the appeal arises who is qualified and available for appointment. Exceptions to these guidelines may be made due to the nature and complexity of the case, an attorney's experience or expertise, the defendant's place of confinement or residence if on bail, or the relative unavailability of counsel within the district from which the appeal arises. When such an exception is appropriate, the attorney selected for appointment need not be a member of the CJA Appellate Panel. Any variance in the appointment of attorneys by rotation must be approved in advance by the Chief Judge or the Chief Judge's designee.

C. REPRESENTATION IN DEATH PENALTY CASES.

Counsel in death penalty cases shall be appointed in accordance with the policies and procedures set forth in Volume 7A, Chapter 6, GUIDE TO JUDICIARY POLICY, rather than under the procedures established for the CJA Appellate Panel.