

**Provisions Applicable in Federal Criminal Cases Involving
the Death Penalty**

**Addendum to the Plan for the Representation of Defendants
in the United States District Court
for the Northern District of Illinois
Pursuant to the Criminal Justice Act of 1964 – 18 U.S.C. § 3006A**

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

**PROVISIONS APPLICABLE IN FEDERAL CRIMINAL CASES INVOLVING THE
DEATH PENALTY**

**ADDENDUM TO THE PLAN FOR THE REPRESENTATION OF DEFENDANTS IN
THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS PURSUANT TO THE CRIMINAL JUSTICE ACT – 18 U.S.C. §3006A**

The Judges of the United States District Court for the Northern District of Illinois have adopted the following Addendum to the Criminal Justice Act Plan for this District which will apply in all cases involving the death penalty.

The phrase “cases involving the death penalty” or “capital cases” includes cases pending in this District or the Central or Southern District of Illinois wherein the government is seeking the death penalty under federal law and cases in those districts wherein the penalty of death has been imposed 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. § 2254 or § 2255. This shall include prosecutions pursuant to any provision of federal law which authorizes the penalty of death. All such cases shall be referred to in this Addendum as “capital cases” regardless of the nature of the proceeding unless otherwise specified.

I. CAPITAL LITIGATION DIVISION OF THE STATE APPELLATE DEFENDERS OFFICE

The Capital Litigation Division of the State Appellate Defenders Office, is authorized by this Plan to provide representation, assistance, information and other related services to eligible death-sentenced persons and appointed attorneys in connection with cases involving the death penalty. The Capital Litigation Division of the State Appellate Defenders Office shall provide representation and assistance in capital cases in the Northern, Central and Southern Districts of Illinois.

The Director of the Capital Litigation Division shall be responsible for the assignment of cases (both as counsel of record and as consultant) among the staff attorneys in that office. The assigned attorney shall file his or her appearance of record.

II. PROCEDURES WHERE DEATH PENALTY IS SOUGHT UNDER FEDERAL LAW

A. Appointment of Counsel

1. **Appointment** Due to the complex, demanding and protracted nature of death penalty proceedings, when appointing 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.

a. In appropriate cases, consistent with the resources available to those offices, the Federal Defender Program, Inc. (hereafter FDP) and/or the Capital Litigation Division may be appointed as counsel in capital cases.

b. Before the formal appointment of counsel occurs in a capital case, an attorney with the FDP and/or the Capital Litigation Division may appear and act as counsel for the defendant, subject to subsequent approval by the Court or the appointment of additional or other counsel under the provisions of subsection 2(e).

c. To ensure the effective supervision and management of the FDP and the Capital Litigation Division, the Executive Director of the FDP and the Director of the Capital Litigation Division shall be responsible for the assignment of cases (either as counsel of record or as a consultant) among the staff attorneys in those offices. Accordingly, when appropriate, cases will be assigned in the name of the Executive Director of the FDP or the Director of the Capital Litigation Division, rather than in the name of individual staff attorneys.

2. **Appointment Guidelines** Counsel shall meet, to the extent practical, the guidelines adopted by the American Bar Association, Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases. At a minimum, at least one attorney so appointed must have been admitted to practice in the federal district courts of Illinois for not less than five years and must have had not less than three years experience in the actual trial of felony prosecutions in the federal district courts of Illinois. Second, such attorney must have at least fourteen hours approved continuing legal education in the defense of capital cases in the preceding two (2) years before the trial.

3. **Waiver of Appointment Guidelines** Upon the joint recommendation of the FDP and the Capital Litigation Division, 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.

4. **Appointment Mechanism** Before the appointment of counsel is made in a capital case, the presiding judicial officer shall inform the FDP that a capital case is pending and the counsel is needed. The FDP, after consultation with the Administrative Office of the United States Courts and the Director of the Capital Litigation Division, shall provide the appointing officer the names of at least two attorneys for appointment as counsel, who shall meet the guidelines for counsel in capital cases as set forth in subsection II(A)(2), or the exception thereto, set forth in subsection II(A)(d). Where there is no FDP available in the district, the Administrative Office of the United States Courts will be consulted regarding the appointment of counsel.

5. **Timing of Appointment of Trial Counsel**

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 FDP and/or the presiding judicial officer may assign interim counsel before the appointment of counsel occurs, either at their

own initiative or upon the request of any interested party. 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 before the judge or magistrate judge 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 declining to 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. In the event that counsel for the defendant has already been appointed or retained at the time the government either withdraws its notice declining 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 to comply with sections II(A)(1)(2) and (3). 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 and adequate opportunity to prepare, provided that, if necessary to comply with the provisions of 18 U.S.C. § 3161, a motion to continue the trial is filed by the defendant.

B. Appointment of Appellate Counsel In the event the defendant is convicted and sentenced to death, after consultation with trial counsel and the condemned, the FDP, after consultation with the Capital Litigation Division, shall provide the presiding judicial officer the name of at least two attorneys to perfect a direct appeal. Unless a compelling reasons exists to appoint the trial attorneys as appellate counsel, the presiding judicial officer shall appoint counsel to perfect the appeal other than those who represented the defendant at trial. The attorneys appointed shall meet, to the extent practical, the ABA qualifications set out in its guidelines for appellate counsel referred to in subsection II(A)(2) or the exception thereto in subsection II(A)(3).

C. Appointment of Post-Conviction Counsel 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 1) the defendant and 2) former counsel of record, the FDP, after consultation with the Capital Litigation Division, shall provide the presiding judicial officer with the names of at least two attorneys to prosecute any post-conviction action. The attorneys appointed shall meet, to the extent practical, the ABA qualifications guidelines referred to in subsection II(A)(2) as to post-conviction counsel or the exception thereto in subsection II(A)(3).

III. PROCEDURES IN DEATH PENALTY HABEAS CORPUS PROCEEDINGS PURSUANT TO 28 U.S.C. § 2254 OR § 2255

A. Appointment of Counsel The Capital Litigation Division shall monitor all habeas corpus cases pending in the United States District Courts in Illinois in which death sentences have been imposed by an Illinois state court.

1. **Appointment** Due to the complex, demanding and protracted nature of death penalty proceedings, when appointing counsel under this section a person shall be entitled to the timely appointment of at least two qualified attorneys as provided in paragraph 6.01 of the Guidelines for the Administration of the Criminal Justice Act.

2. **Appointment Guidelines** The Capital Litigation Division shall be authorized to serve as counsel of record, and shall recommend to the Court those cases in which its appointment as counsel of record is appropriate.

Counsel shall meet, to the extent practical, the guidelines adopted by the American Bar Association, Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases. At a minimum, at least one attorney so appointed must have been admitted to practice in the federal district courts of Illinois for not less than five years and must have had not less than three years experience in the actual trial of felony prosecutions in the federal district courts of Illinois, at least one of which was a murder prosecution. Second, such attorney must have prior experience as post-conviction counsel in at least three cases in state or federal court.

3. **Waiver of Appointment Guidelines** Upon the recommendation of the Capital Litigation Division, 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.

4. **Appointment Mechanism** In each federal death penalty habeas corpus case in which the Court has determined that counsel shall be appointed, the Capital Litigation Division shall provide the Court with at least two names of attorneys qualified to provide representation in the case. In the interest of justice and judicial and fiscal economy, unless precluded by a conflict of interest, the persons whose names are submitted should be the same persons who represented the party in the state post-conviction proceedings, if those persons are qualified. If those persons are not qualified or are otherwise unavailable, the Capital Litigation Division shall submit the names of at least two attorneys who are qualified.

IV. PROCEDURES TO BE FOLLOWED IN ALL FEDERAL CAPITAL CASES

A. Investigative, Expert and Other Services

1. **CJA Limitations** Fees and expenses for investigative, expert and other services in capital cases commenced on or after April 24, 1996, are limited to the statutory amount, unless the payment in excess of that amount is certified as necessary by the presiding judicial officer.

2. **With or Without Prior Authorization** Upon a finding in ex parte proceedings that investigative, expert or other services are reasonably necessary for the representation of the defendant in a capital case, the presiding judicial officer shall authorize counsel to obtain such services on behalf of the defendant. Upon a finding that timely procurement of necessary investigative, expert or other services could not practicably await prior authorization, the presiding judicial officer shall authorize such services nunc pro tunc.

3. **Ex Parte Applications** Appointed counsel is required to show a need for confidentiality before making an ex parte request for services other than counsel.

4. **Claims** Claims for compensation of persons providing investigative, expert and other services under the Act shall be submitted on the appropriate CJA form, to the office of the Clerk. That office shall review the claim form for mathematical and technical accuracy for conformity with the Guidelines for the Administration of the Criminal Justice Act, and if correct, shall forward the claim form for the consideration of the appropriate judicial officer. If incorrect, the office shall return any claims for compensation to the person submitted them form for correction.

B. Payment for Representation by Private Counsel

1. **Applicability of Hourly Rates and Compensation Maximums** In accordance with the provisions of 21 U.S.C. § 848 (q)(10), an attorney appointed in a capital case shall be compensated at a rate of \$125 per hour for in-court and out-of-court time in capital cases commenced on or after April 24, 1996. Counsel shall bear the burden of justifying payment at a rate in excess of that recommended by the Judicial Conference.

Enter for the Court on this 18th day of November, 1999.

/s/

Chief Judge Aspen
United States District Court