

RULE 144.2

APPOINTMENT OF COUNSEL AND CASE MANAGEMENT IN CAPITAL CASES

(a) Applicability and Purpose

The provisions set forth in this Rule shall govern in all capital cases. For the purposes of this Rule, "capital cases," or "cases involving the death penalty," are those criminal cases which have been identified as ones in which the death penalty may be or is being sought by the prosecution, as well as proceedings under 28 U.S.C. § 2254 or § 2255 seeking to vacate or set aside a death sentence. This Rule is intended to supplement the Criminal Justice Act Plan ("CJA Plan") for this district, which provides that in all capital cases, the presiding Judge "shall appoint the most qualified [CJA Panel] attorney, regardless of the number of previous appointments . . . [or] may select an attorney who is not a Panel member." In cases where counsel has already been appointed or retained, this Rule shall apply to permit the appointment of additional or, if necessary, substitute counsel.

The provisions of this Rule shall be implemented by the presiding Judge at the earliest practical opportunity, once a defendant is charged in a capital case.

(b) Identification of Capital Cases

Upon the filing of a Criminal Complaint or Indictment in a case in which the maximum possible penalty is death, the United States Attorney shall file, with the Clerk of Court, a Certificate of Death Penalty Case, thereby identifying the criminal matter as a capital case for purposes of this rule. The Clerk of Court shall devise and implement a special filing procedure for capital cases.

(c) Counsel in Capital Cases

Due to the complex, demanding, and protracted nature of death penalty proceedings, a defendant who is or has become financially unable to obtain adequate representation and who requests an appointment of counsel at government expense shall be entitled to the assignment of two attorneys who meet the qualifications set forth in this rule. At least one of the attorneys appointed to such a defendant shall be learned in the law applicable to capital cases, and, when applicable, qualified as required by 21 U.S.C. §§ 848(q)(5) or 848 (q)(6). As set forth in the Guidelines for Judiciary Policies, the presiding Judge shall appoint learned counsel promptly.

(1) Qualifications of Attorneys

(A) Learned Counsel. To be eligible for an appointment as Learned Counsel in a capital case, an attorney must:

- (i) be a member of the bar of this Court, or be admitted to practice *pro hac vice* on the basis of his or her qualifications;
- (ii) have at least five years experience in the field of federal criminal practice;

- (iii) have prior experience, within the last three years, as defense counsel in the actual trial of no fewer than three complex felony cases that were tried to completion in federal court, and have prior experience, within the last three years, as defense counsel in a capital case; and,
 - (iv) have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to the defense of capital cases.
 - (B) Assistant Counsel. To be eligible for appointment as Assistant Counsel in a capital case, an attorney must:
 - (i) be a member of the bar of this Court, or be admitted to practice *pro hac vice* on the basis of his or her qualifications;
 - (ii) have at least five years experience in the field of federal criminal practice;
 - (iii) have prior experience as defense counsel demonstrating adequate proficiency in connection with complex felony cases; and,
 - (iv) have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to the defense of capital cases.
- (2) Withdrawal. Each attorney representing a defendant in a capital case shall, unless excused by the presiding Judge, continue in his or her representation. Should the defendant be convicted, regardless of whether he or she is sentenced to death, counsel shall continue representing the defendant unless relieved by the presiding Judge, or by the Court of Appeals for the First Circuit. When applicable, appointed counsel must also meet the requirements of 21 U.S.C. §848(q)(8) before withdrawal would be authorized.
- (3) Termination of Appointment. If, following the appointment of counsel in a case in which a defendant was charged with an offense that may be punishable by death, it is determined that the death penalty will not be sought, the Court may consider the question of the number of counsel and the rate of compensation needed for the duration of the proceeding.

If the government withdraws its request for the death penalty, the Court may terminate learned counsel's appointment.

- (4) Record of Appointments. In accordance with the provisions of the CJA Plan, a listing of qualified attorneys and a record concerning appointment of counsel in capital cases shall be prepared by the Clerk of Court. The Clerk shall maintain, separate from the file of the case, such records and other documentation concerning each appointment, in order to monitor adherence to and compliance with the appointment process delineated in this rule. Based on the appointment records, the Clerk shall also maintain a roster of lead and assistant counsel who meet the eligibility requirements set forth in this rule.

(d) Assessment of Costs and Fees

Counsel appointed pursuant to this Rule shall be compensated at a rate and in an amount specified in Volume 7 of the “Guide to Judiciary Policies and Procedures” as approved by the Judicial Conference of the United States.

(e) Interim Billing and Payments

When authorized, interim payments shall be made upon counsel’s submission of interim vouchers no later than the 10th day following the month for which services are claimed.

(f) Interpreters

Should both counsel appointed to represent a defendant accused in a capital case not be fluent in the defendant’s native language, an interpreter shall be appointed to assist counsel pursuant to the provisions of this rule and the Criminal Justice Act.

(g) Investigative, Expert, and Other Services

Counsel may request compensation, fees, and expenses for investigative, expert and other services pursuant to Volume 7 of the “Guide to Judiciary Policies and Procedures” as approved by the Judicial Conference of the United States.

(h) Confidentiality

Upon a proper showing concerning the need for confidentiality, petitions for the payment of costs and fees, including the time and expense records of counsel, shall be heard *ex parte* and *in camera*. Such petitions shall be placed under seal and shall be inaccessible to the prosecution and the public, absent an order of the Court, until disposition of the petition.