

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO



PLAN FOR IMPLEMENTATION AND ADMINISTRATION OF THE CRIMINAL JUSTICE ACT

**Reviewed and Approved on November 21, 2024
Effective on January 1, 2025**

I.	Authority.....	1
II.	Statement of Policy.....	1
	A. Objectives	1
	B. Compliance	1
III.	Definitions	2
	A. Representation.....	2
	B. Appointed Attorney.....	2
IV.	Determination of Eligibility for CJA Representation.....	2
	A. Subject Matter Eligibility	2
	1. Mandatory	2
	2. Discretionary	3
	3. Ancillary Matters.....	4
	B. Financial Eligibility.....	5
	1. Presentation of Accused for Financial Eligibility Determination	5
	2. Factual Determination of Financial Eligibility	6
V.	Timely Appointment of Counsel	7
	A. Timing of Appointment	7
	C. Pretrial Service Interview	8
	D. Retroactive Appointment of Counsel.....	8
VI.	Provision of Representational Services	8
	A. Administration	8
	B. Apportionment of Cases.....	8
	C. Appointment of Co-Counsel	8
	D. Capital Cases.....	8
VII.	Federal Public Defender Organization	9
	A. Establishment.....	9
	B. Standards.....	9
	C. Workload	9
	D. Training	10
VIII.	CJA Panel of Private Attorneys.....	10

A.	Establishment of the CJA Panel Committee.....	10
B.	Duties of the CJA Panel Committee.....	11
IX.	Establishment of a CJA Panel	14
A.	Approval of CJA Panel Members	14
B.	Size of CJA Panel	14
C.	Qualifications and Membership on the CJA Panel	14
1.	Application	14
2.	Equal Opportunity.....	14
3.	Eligibility	15
4.	Appointment to CJA Panel	16
5.	Terms of CJA Panel Members	16
6.	Reappointment of CJA Panel Members	16
7.	Removal from the CJA Panel	17
X.	CJA Panel Attorney Appointment in Non-Capital Cases.....	19
A.	Appointment List	19
B.	Appointment Procedures.....	19
XI.	Duties of CJA Panel Members.....	20
A.	Standards and Professional Conduct.....	20
B.	Training and Continuing Legal Education.....	21
C.	Facilities and Technology Requirements.....	21
D.	Continuing Representation.....	21
E.	Miscellaneous	22
XII.	Compensation of CJA Panel Attorneys.....	22
A.	Policy of the Court Regarding Compensation	22
B.	Payment Procedures.....	23
XIII.	Investigative, Expert, and Other Services	25
A.	Financial Eligibility	25
B.	Applications.....	25
C.	Compliance	25
XIV.	Appointment of Counsel and Case Management in CJA Capital Cases.....	25
A.	Applicable Legal Authority.....	25
B.	General Applicability and Appointment of Counsel Requirements.....	26

C.	Appointment of Trial Counsel in Federal Death-Eligible Cases	28
1.	General Requirements	28
2.	Qualifications of Learned Counsel.....	29
3.	Qualifications of Second and Additional Counsel	30
D.	Appointment and Qualifications of Direct Appeal Counsel in Federal Death Penalty Cases.....	31
E.	Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. § 2255).....	32
XV.	Appeals.....	33
XVI.	Effective Date	33

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
CRIMINAL JUSTICE ACT PLAN**

I. Authority

Under the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and *Guide to Judiciary Policy (Guide)*, Volume 7A, the judges of the United States District Court for the District of Puerto Rico adopt this Plan, as approved by the First Circuit Council, for furnishing representation in federal court to any person financially unable to obtain adequate representation in accordance with the CJA.

II. Statement of Policy

A. Objectives

The objectives of this Plan are:

1. to attain the goal of equal justice under the law for all persons;
2. to provide all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, are cost-effective, and protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and
3. to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), and *Guide*, Vol. 7A, in a way that meets the needs of this district.

This Plan must therefore be administered so that those accused of a crime, or otherwise eligible for services under the CJA, 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.

B. Compliance

1. The court, its clerk, the federal public defender organization, and private attorneys appointed under the CJA must comply with *Guide*, Vol. 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, and with this Plan.

2. The court will ensure that a current copy of the CJA Plan is made available on the court's website and provided to CJA counsel upon the attorney's designation as a member of the CJA panel of private attorneys (CJA Panel).

III. Definitions

A. Representation

"Representation" includes counsel and investigative, expert, and other services.

B. Appointed Attorney

"Appointed attorney" is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys, the federal public defender, and staff attorneys of the federal public defender organization.

IV. Determination of Eligibility for CJA Representation

A. Subject Matter Eligibility

A CJA Panel attorney must be available to represent defendant(s) at the same stage of proceedings as is the Federal Public Defender.

1. Mandatory

Representation **must** 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 faces a change of a term or condition of probation (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 charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
- g. is subject to a mental competency or mental condition hearing under 18 U.S.C. chapter 313;
- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255;
- j. 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;
- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary

Whenever a district judge or magistrate judge determines that the interest of justice so requires, 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, or face loss of liberty;

- e. has been advised by the United States attorney or a law enforcement officer that they are the target of a grand jury investigation;
- f. is proposed by the United States attorney 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 consider whether such representation is reasonably necessary:

- a. to protect a constitutional right;
- b. to contribute in some significant way to the defense of the principal criminal charge;
- c. to aid in preparation for the trial or disposition of the principal criminal charge;
- d. to enforce the terms of a plea agreement in the principal criminal charge;
- e. 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
- f. effectuates 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).

B. Financial Eligibility

1. Presentation of Accused for Financial Eligibility Determination

a. Duties of Law Enforcement and U.S. Attorney's Office

- (i) When a person taken into custody, subject to criminal charges or subject of a "target letter" has not retained or waived counsel, law enforcement agents and/or the United States Attorney's Office, shall take necessary steps and petition the Court for the appointment of counsel. In doing so, they should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.
- (ii) When seeking the appointment of counsel, the United States Attorney's Office shall notify the Court of any known or potential conflict of interest between the target and the Federal Public Defender.

b. Duties of Federal Public Defender Office

- (i) In cases in which the federal public defender may be appointed, the office will:
 - immediately investigate and determine whether an actual or potential conflict exists; and
 - in the event of an actual or potential conflict, promptly notify the court to facilitate the timely appointment of other counsel.
- (ii) When practicable, the federal public defender will discuss with the person seeking appointment of counsel and, if appointment of counsel seems likely, assist in the completion of a financial affidavit (Form CJA 23), and arrange to have the person promptly presented before a magistrate judge or district judge of this court for determination of financial eligibility and appointment of counsel.

c. Duties of Pretrial Services Office

- (i) When practicable, the pretrial services officer will not conduct the pretrial service interview of a financially eligible defendant until counsel has been appointed, unless the right to counsel is waived or the defendant otherwise consents to a pretrial service interview without counsel.
- (ii) When counsel has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release or detention hearing.
- (iii) A defendant charged with a death penalty eligible offense is not to be interviewed by USPT without the presence of counsel.

2. Factual Determination of Financial Eligibility

- a. In every case where appointment of counsel is authorized under 18 U.S.C. § 3006A(a) and related statutes, the court must advise the person that he or she has a right to be represented by counsel throughout the case and that, if so desired, counsel will be appointed to represent the person if he or she is financially unable to obtain counsel.
- b. 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. Other employees of the court may be designated to obtain or verify the facts relevant to the financial eligibility determination.
- c. Relevant information bearing on the person's financial eligibility should be reflected on a financial eligibility affidavit (Form CJA 23).
- d. 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.

- e. 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.
- f. Any doubts about a person's eligibility should be resolved in the person's favor. Erroneous determinations of eligibility may be corrected at any stage of the proceedings.
- g. 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).
- h. 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. Timing of Appointment

Counsel must be provided to eligible persons as soon as feasible in the following circumstances, whichever occurs earliest:

- 1. after they are taken into custody;
- 2. when they appear before a magistrate or district court judge;
- 3. when they are formally charged or notified of charges if formal charges are sealed; or
- 4. when a magistrate or district court judge otherwise considers appointment of counsel appropriate under the CJA and related statutes.

B. Court's Responsibility

- 1. The appointment of counsel being a non-delegable function of the Court, shall remain the exclusive province of the Court. The judicial officer (District or Magistrate), in his or her discretion, shall determine

whether a party entitled to representation will be represented by the FPD or private (CJA) counsel.

2. The court, in cooperation with the federal public defender/community defender and the United States attorney, will make such arrangements with federal, state, and local investigative and police agencies as will ensure timely appointment of counsel.

C. 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 and prior to the initial appearance.

D. Retroactive Appointment of Counsel

Appointment of counsel may be made retroactive to include representation provided prior to appointment.

VI. Provision of Representational Services

A. Administration

Administration of the CJA Panel, as set forth in this Plan, is hereby delegated and assigned to the Court's CJA Panel Committee.

B. Apportionment of Cases

Where practical and cost effective, private attorneys from the CJA Panel will be appointed in a substantial proportion (in at least 35% of the cases and/or defendants eligible for appointment) of the cases in which the accused is determined to be financially eligible for representation under the CJA.

C. Appointment of Co-Counsel

More than one attorney may be appointed in any case determined by the Court to be extremely difficult or involves complex or novel legal issues.

D. 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. §§ 2255, are set forth in section XIV(D) of this Plan.

VII. Federal Public Defender Organization

A. Establishment

The Federal Public Defender is established in this district under the CJA and is responsible for rendering defense services on appointment throughout this district.

B. Standards

1. The Federal Public Defender 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. The Federal Public Defender organization must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct and other standards for professional conduct adopted by the court.
3. 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.
4. The Federal Public Defender will be responsible for the supervision and management of the Federal Public Defender organization. Accordingly, the Federal Public Defender will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender.
5. The FPD regularly shall furnish to the District Court the roster of Assistant Federal Defenders in the FPD's office and shall report any changes to the District Court.

C. Workload

The Federal Public Defender organization will continually monitor the workloads of its staff to ensure high quality representation for all clients.

D. Training

The Federal Public Defender will assess the training needs of Federal Public Defender staff and, in coordination with the CJA Panel Attorney District Representative, the training needs of the local panel attorneys, and provide training opportunities and other educational resources.

E. Reports and Budget

The FPD shall submit to the Director of the Administrative Office of the U.S. Courts, as required by the Director, reports on the activities and financial position, and proposed budget of the office. Copies of such reports shall be furnished to the District Court and the First Circuit Judicial Council.

VIII. CJA Panel of Private Attorneys

A. Establishment of the CJA Panel Committee

1. A CJA Panel Committee will be established by the Court. The CJA Panel Committee will consist of the Chief Judge of the District or any other District Judge so designated, a second District Judge, one (1) magistrate judge, the Clerk of Court or designee, the Federal Public Defender or designee, and six (6) attorneys who practice regularly in the district, of which five are to be CJA panel members. An ex officio staff member employed by the Clerk of Court will serve as administrative coordinator.

2. The Chief Judge or designee, the second District Judge, the Magistrate Judge, Federal Public Defender, and the Clerk of Court are permanent members of the CJA Panel Committee.

Membership on the CJA Panel Committee will otherwise serve for staggered terms of up to three years and may be extended for an additional term not to exceed three (3) years. To ensure continuity on the CJA Panel Committee, members' terms will be staggered.

3. The CJA Panel Committee will meet at least twice a year and at any time the Court asks the CJA Panel Committee to consider an issue, or as needed in order to advance matters under consideration of the CJA Panel Committee.
4. The Court should make a diligent effort to ensure that the composition of the CJA Panel Committee reflects the racial, ethnic, gender and geographical diversity of the district.

B. Duties of the CJA Panel Committee

1. Membership

Examine the qualifications of applicants for membership on the CJA Panel and recommend to the Court the approval of those attorneys who are deemed qualified and the rejection of the applications of those attorneys deemed unqualified.

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.

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 Court 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 panel members or their CJA clients.

4. Removal

Recommend to the Court 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.

See also Section IX.C.7

5. Training

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

6. Voucher Review

- a. Pursuant to CJA Policies (Section 230.33.30 of the CJA Guidelines), the Court adopts an independent review process intended to ensure that panel attorneys have a mechanism to challenge or explain intended voucher reductions.
- b. Upon receipt of a claim for payment, where the presiding judicial officer contemplates authorizing a reduction of amounts claimed for reasons other than mathematical errors, the presiding officer may:
 - (i) meet and discuss with counsel the reasons or grounds for the intended reduction, in an attempt to have the matter resolved and agreed upon; or
 - (ii) opt to refer the voucher to the Independent Review Committee ("IRC") either on its own initiative, or, if having met with counsel, the Court intends to reduce the voucher over the panel attorney's objection to the intended reductions.
- c. When directly referred for review, the judicial officer will provide the Independent Review Committee (IRC) and panel attorney with a statement (notice) describing questions of concerns with the voucher and the grounds on which the intended reduction is based.
- d. Counsel will be given the opportunity to provide the IRC information or documentation relevant to the voucher and concerns raised by the presiding judicial officer within five days of referral. Similarly, the IRC may request from counsel for any information deemed necessary.
- e. Upon conclusion of the review process the IRC will issue, in writing, its recommendation to the presiding judicial officer.
- f. The presiding judicial officer retains full authority to accept or reject the recommendation resulting from the IRC process.

- g. Were the Court to reject the recommendation(s) made by the IRC, the Court will articulate its reasons for departing from the IRC's recommendations and approve the voucher at the amount the Court determines to be proper in light of the facts and principles set forth in this Plan and under 18 U.S.C. §3006A.
- h. Voucher adjustments shall be limited to:
 - i. mathematical errors.
 - ii. instances in which the work billed is not compensable.
 - iii. instances in which work was not undertaken or completed,
 - iv. instances in which hours billed are clearly more than what was reasonably required to complete the task (reasonableness).

See also Section XII.C

7. Mentoring Program

- a) The CJA Panel Committee will appoint experienced CJA panel members to serve on a Subcommittee to create and administer a mentoring program designed to identify and help prepare viable candidates to qualify for consideration for appointment to the CJA Panel. The Mentoring Program shall be periodically reviewed and approved by the CJA Panel Committee.
- b) Experienced members of the criminal defense bar and the Federal Public Defender's Office, who have maintained an extensive criminal practice while adhering to the highest professional standards, may qualify and be selected as mentors.
- c) Upon completion of the Mentoring Program, the Subcommittee will make recommendations to the CJA Panel Committee concerning the mentees' participation in the program, identify appropriate cases for the mentoring program, evaluate the success of the mentoring program, and provide guidance to the mentors.

IX. Establishment of a CJA Panel

A. Approval of CJA Panel Members

1. The existing, previously established panel of attorneys who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.
2. The District Court will approve attorneys for membership on the CJA Panel after receiving recommendations from the CJA Panel Committee.

B. Size of CJA Panel

1. The size of the CJA Panel will be determined by the CJA Panel Committee based on the caseload and activity of the panel members, subject to review by the Court.
2. The CJA Panel must be large enough to provide enough experienced attorneys to handle the CJA caseload, yet small enough so that CJA panel members will receive an adequate number of yearly appointments to maintain their proficiency in federal criminal defense work. This measure is intended to provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.
3. Membership in the CJA Panel is a privilege, not a right. No panel attorney is assured a fixed number of appointment of cases.

C. Qualifications and Membership on the CJA Panel

1. Application

Application forms for membership on the CJA Panel are available from the Court's website (www.prd.uscourts.gov) and at the Clerk's Office.

2. Equal Opportunity

All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.

3. Eligibility

- a. Applicants must have five years of experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.
- b. Applicants must at least possess strong litigation skills and demonstrate proficiency with the federal sentencing guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Local Rules for the District of Puerto Rico.
- c. 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 the CJA Panel Committee's consideration.
- d. Attorneys must agree to accept appointments in the full range of CJA cases, other than those cases where the death penalty is sought.
- e. Applicants for the CJA Panel must be members in good standing of the federal bar of this district and the First Circuit Court of Appeals.
- f. Based on the CJA Panel needs, applications from qualified attorneys from other districts may be considered for membership to the panel. In addition to meeting all qualification criteria, counsel must be fluent in the Spanish language and/or be otherwise able to effectively communicate with the client, must maintain a primary, satellite or shared office within the District of Puerto Rico. While applying, counsel shall be mindful that costs of interpreters for attorney/client communications, travel (from district to district) lodging, meals, are not subject to reimbursement.
- g. Annually, attorneys must meet the Continuing Legal Education (CLE) requirements as required by Section XI.B(3).

4. Appointment to CJA Panel

- a. After considering the recommendations of the CJA Panel Committee, the Court will appoint or reappoint attorneys to the CJA Panel.
- b. Due to the highly complex and demanding nature of capital and habeas corpus cases, special procedures will be followed for the eligibility and appointment of counsel in such cases. See Section XIV of this Plan.

5. Terms of CJA Panel Members

Attorneys admitted to membership on the CJA Panel for the first time will serve for a term of one year, during which time no more than six (6) cases will be assigned. Thereafter, attorneys can seek reappointment and, if admitted, serve for terms of three years. Attorneys seeking reappointment are subject to the reappointment procedures set forth in this plan and are not assured as a matter of right reappointment to CJA Panel.

6. Reappointment of CJA Panel Members

- a. As the date of the expiration of their current term draws near, the Court will notify CJA Panel members, prior to expiration of their current term, of the need to apply for re-appointment. CJA panel members who wish to be considered for re-appointment must apply for reappointment to the CJA Panel by completing the reappointment application and evaluation process.
- b. The application for reappointment is to be submitted to the Clerk of Court at least three months prior to the expiration of his or her current term.
- c. The CJA Panel Committee will solicit input concerning the quality of representation provided by lawyers seeking reappointment.
- d. The CJA Panel Committee will also consider how many cases the CJA panel member has accepted and declined during the review period, whether the member has participated in training opportunities, whether the member has been the subject of any complaints, the member's voucher billing history, and whether the member continues to meet the

prerequisites and obligations of CJA panel members as set forth in this Plan.

7. Removal from the CJA Panel

a. Mandatory removal

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 or any federal court, will be immediately removed by the Court from the CJA Panel.

b. Automatic disciplinary review

The CJA Panel Committee will conduct an automatic disciplinary review of any CJA panel member against whom any licensing authority, grievance committee, or administrative body has acted, or when a finding of probable cause, contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.

c. Complaints

(i) Initiation

A complaint against a panel member may be initiated by the CJA Panel Committee, a judge, another panel member, a defendant, or a member of the Federal Public Defender's office. A complaint need not follow any form, but it must be in writing and state the alleged deficiency with specificity. Any complaint should be directed to the CJA Panel Committee, which will determine whether further investigation is necessary.

(ii) Notice

When investigating, the CJA Panel Committee will notify the panel member of the specific allegations.

(iii) Response

A panel member subject to investigation may respond in writing within a term specified by the CJA Panel

Committee and appear, if so directed, before the CJA Panel Committee or its subcommittee.

(iv) Protective action

Prior to disposition of any complaint, the CJA Panel Committee may recommend to the Court the 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 this Plan.

(v) Review and recommendation

After investigation, the CJA Panel Committee may recommend dismissing the complaint, or recommend appropriate remedial action, including removing the attorney from the panel, limiting the attorney's participation to particular types or categories of cases, removal or termination from pending CJA cases; or direct the attorney to complete specific CLE requirements before receiving further panel appointments.

(vi) Final disposition by the court

The CJA Panel Committee will forward its recommendation to the Court for consideration and final disposition.

If the action taken by the Court entails counsel's removal from the Panel, when making such determination the Court shall indicate if counsel is to be removed from the future participation in some or all CJA appointed cases pending at that time.

(vii) Confidentiality

Unless otherwise directed by the court, any information acquired concerning any possible disciplinary action, including any complaint and any related proceeding, will be confidential.

(viii) None of these procedures create a property interest in being on or remaining on the CJA Panel.

d. Notification

The Federal Public Defender and the Clerk of Court will be immediately notified when any member of the CJA Panel is removed or suspended.

X. CJA Panel Attorney Appointment in Non-Capital Cases

A. Appointment List

The Clerk of Court will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience. CJA Panel members have a duty to update their personal and contact information with the Clerk of Court.

B. Appointment Procedures

1. The judicial officers sitting in the District are responsible for overseeing the appointment of cases to panel attorneys. The Clerk of Court will maintain a record of panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the Federal Public Defender's office and panel attorneys.
2. Appointment of cases to CJA panel members will ordinarily be made by judicial officers using a random computerized selection system. If the Federal Public Defender is not appointed in a particular case, the name(s) of counsel to be appointed in that case shall be randomly generated from the centralized list of CJA Panel members by a computer program designed to distribute appointments equally among CJA panel members. The Federal Public Defender may be accorded direct initial assignment in cases, as determined by the Judicial Officer, and absent a direct or potential conflict of interest, shall always be directly assigned in those cases featuring a single defendant.

In a multi-defendant, complex or otherwise difficult case, the judicial officer may appoint counsel outside of the normal rotation to ensure the defendant is appointed a sufficiently experienced counsel.

3. Under special circumstances, the court may appoint a member of the bar of the court who is not a member of the CJA Panel. Such special circumstances may include cases in which the court determines, by exception, that the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason.
4. Direct appointments made under this section, shall be the exception; and the reasons, therefore, will be reported, in writing, to the Clerk of Court. The Clerk of Court shall keep records of the total number of direct appointments made, including information such as the case number, judicial officer making the direct appointment, reasons for departing from the random appointment process, and attorney's name. Direct appointment data shall be made available upon request to the CJA Committee and the Court.

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. See Polk County v. Dodson, 454 U.S. 312, 318 (1981) ("Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program." (Quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980))).
2. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct and any other standards for professional conduct adopted by the Court.

Consistent with the above standards, CJA Panel Attorneys shall communicate and inform the CJA Panel Committee of circumstances that would hinder, even if on a temporary basis, his or her ability to provide quality legal services. Examples include illness, workload and number of retained cases, workload and number of CJA appointments, among others.

3. CJA panel members must notify the chair of the CJA Panel Committee within 30 days when any licensing authority, grievance committee, or administrative body has acted 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. Attorneys on the CJA Panel are expected to remain current with developments in federal criminal defense law, practice, and procedure, including the Recommendation for Electronically Stored Information (ESI), and discovery production in federal criminal cases.
2. Attorneys on the CJA Panel are expected to attend trainings sponsored by the Federal Public Defender's Office and other professional organizations and, more so, those related to procedural and substantive criminal matters.
3. CJA panel members must complete, on a yearly basis, 16 hours of training or attend at least two continuing legal education training sessions relevant to federal criminal practice.
4. Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel.

C. Facilities and Technology Requirements

1. CJA panel attorneys must have facilities, resources, and technological capability to manage assigned cases effectively and efficiently.
2. CJA panel attorneys must comply with the requirements of electronic filing and eVoucher.
3. CJA panel attorneys must know and abide by procedures related to requests for investigative, expert, and other services, and guidelines requiring their participation in filing expert services vouchers while using eVoucher system.

D. Continuing Representation

1. A person for whom counsel is appointed shall be represented at every stage of the proceedings from his or her initial appearance before the judicial officer through appeal, or until substitute counsel has filed a notice of appearance; or until an order is entered allowing

or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

2. CJA Panel members may represent assigned clients on ancillary matters, upon determination and approval of the court, as long as those ancillary matters are related or otherwise relevant to the assigned case.

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 consistent with *Guide*, Vol. 7A, Ch. 2, §§ 230.26.10–20. Said budgets are to be approved by the presiding district judge.

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 of legal services, and the source of counsel's information is not protected as a privileged communication, counsel will advise the court.

XII. Compensation of CJA Panel Attorneys

A. Policy of the Court Regarding Compensation

1. Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA panel attorneys must be compensated for time expended in court and time reasonably expended out of court and reimbursed for expenses

reasonably incurred, so long as they are reasonably necessary for the adequate representation as per 18 U.S.C. 3006 A.(a).

B. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the court's eVoucher system.
2. Claims for compensation should be submitted within 45 days after final disposition of the case, unless within the 45-day period, a motion is filed showing good cause for an extended period.
3. The Clerk of Court or designee will review the claim for mathematical and technical accuracy, for conformity with local billing policies and Guide, Vol. 7A and forward the claim, along with any recommended adjustments, if any, for consideration and action by the presiding judge.
4. Except in cases involving mathematical corrections, no claim for compensation of services provided under the CJA will be reduced without affording counsel notice and the opportunity to respond, either in person or in writing.
5. Notwithstanding the procedure described above, the Clerk of Court or designee and/or the judicial officer may, in the first instance, contact appointed counsel to inquire regarding questions or concerns with a claim for compensation. If the matter is resolved to the satisfaction of the court and the CJA panel member, the claim for compensation need not be referred to the CJA Panel Committee for review and recommendation.
6. Absent extraordinary circumstances, the Court should review and/or process CJA compensation claims (subject to the district's approval) within 30 days of submission, and voucher payment should not be delayed or reduced for the purposes of diminishing Defender Services program costs in response to adverse financial circumstances. In cases where the amount of CJA compensation sought exceeds the statutory maximums, absent exigent circumstances, voucher processing, absent exigent circumstances, should be completed within a 90-day period (to include Court of Appeals review and approval process.)

C. Independent Review Committee ("IRC")

1. Membership

- a. No judicial officer will be member of the Independent Review Committee. The IRC will be comprised of:
 - i) The Clerk of Court or designee;
 - ii) a CJA Panel Committee member; and
 - iii) a practicing attorney, non CJA Panel member, experienced in criminal defense work.
- b. The attorneys participating in the IRC members will be appointed by the Chair of the CJA Committee for a staggered three-year term.

2. Procedure

- a. To the extent that participation in the voucher review process poses a conflict for a member of the IRC, the member shall recuse and notify the Chair of the CJA Panel Committee. Once notice is received, and for such review process, a temporary substitution or appointment shall be made.
- b. The Chair of the CJA Panel Committee will provide notice to the Court regarding the composition of the IRC.
- c. The IRC is expected to adhere to CJA Guidelines and policies while conducting the review process. Upon conclusion of the same, the IRC will submit a written recommendation to the presiding judicial officer.
- d. Upon receipt of the IRC's recommendations, the presiding judicial officer will consider the same and proceed in accordance with Section VIII.B.6(a-f).
- e. The Court's final determination is not subject to appeal.

XIII. Investigative, Expert, and Other Services

A. Financial Eligibility

Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request such services in an *ex parte* application to the court as provided in 18 U.S.C. § 3006A(e)(1), regardless of whether counsel is appointed under the CJA. Upon finding that the services are necessary, and that all required documentation and information of the vendor has been submitted, and that the person is financially unable to obtain them, the court must authorize counsel to obtain the services.

B. Applications

Requests for authorization of funds for investigative, expert, and other services that exceed the case maximum set forth *Guide*, Vol. 7A, Ch. 2, §§ 310.20.10 must be submitted in an *ex parte* application to the court (using the court's CM/ECF), along with a copy of the vendor's curriculum vitae, describing the nature and scope of the services to be provided, the amount of time allocated to such services and applicable rate, along with the estimated date of completion for the task assigned. This information must not be disclosed except with the consent of the person represented or as required by law or Judicial Conference policy.

Once expert services are retained, counsel shall be responsible for compliance with applicable policies regarding the creation of the voucher and certification of services rendered by the expert, to ensure proper and timely payment.

C. Compliance

Counsel must comply with Judicial Conference policies set forth in *Guide*, Vol. 7A, Ch. 3.

XIV. Appointment of Counsel and Case Management in CJA Capital Cases

A. 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, and *Guide*, Vol. 7A, Ch. 6.

B. General Applicability and Appointment of Counsel Requirements

1. The provisions set forth in this section apply to all capital proceedings in the federal court (federal capital trials). Such 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. §§ 2255 seeking to vacate or set aside a death sentence, applications for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings.
2. Any person 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 the 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 defendant. See 18 U.S.C. § 3599(e).
3. Learned qualified counsel must be appointed in capital cases at the earliest possible opportunity. The random selection method shall not be used. If no qualified Panel member is available, the presiding District Judge may select an attorney who is not a Panel member.
4. When appointing Learned counsel in a capital case, the Court shall consider the recommendation(s) of the Federal Public Defender. See 18 U.S.C. §3005.
5. Given the complex and demanding nature of capital cases, where appropriate, the court will utilize the expert services available through the Administrative Office of the United States Courts (AO), Defender Services Death Penalty Resource Counsel projects ("Resource Counsel projects") which include: (1) Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials), (2) Federal Capital Appellate Resource Counsel Project, (3) Federal Capital Habeas § 2255 Project, and (4)

National and Regional Habeas Assistance and Training Counsel Projects (§ 2254). These attorneys are death penalty experts who may be relied upon by the court for assistance during the selection and appointment of counsel process, case budgeting, and legal, practical, and other matters arising in federal capital cases.

6. The Federal Public Defender's Office should promptly notify and consult with the appropriate Resource Counsel projects about potential and actual federal capital trial, appellate, and habeas corpus cases, and submit its recommendations to the Court, providing at least three names for appointment of counsel.
7. All attorneys appointed in federal capital cases must be well qualified, by their training, commitment, and distinguished prior capital defense experience at the relevant stage of the proceeding.
8. All attorneys appointed in federal capital cases must have sufficient time and resources to devote to the representation, considering their current caseloads and the extraordinary demands of federal capital cases. Upon appointment, attorneys should consult regularly with the appropriate Resource Counsel projects.
9. All attorneys appointed in federal capital cases should comply with the American Bar Association's 2003 Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (Guidelines 1.1 and 10.2 et seq.), and the 2008 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases.
10. As early as practicable, the appointed counsel in a capital case shall contact the First Circuit Case Budgeting Attorney to submit an initial case budget ("Seed Budget") to prepare for the presiding district judge. The Seed Budget will be subject to modifications based on the facts and developments of the case as it progresses. Guide to Judiciary Policy Vol. 7A, Ch. 6, §640. Counsel so appointed should regularly consult with the appropriate Resource Counsel projects.
11. There should be no formal or informal statutory cap on capital cases, whether on capital trial(s), direct appeal, or habeas proceeding(s).
12. Questions about the appointment and compensation of counsel and the authorization and payment of investigative, expert, and other service providers in federal capital cases may also 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.

C. Appointment of Trial Counsel in Federal Death-Eligible Cases

1. General Requirements

- a. Appointment of qualified capital trial counsel must occur no later than when a defendant is charged with a federal criminal offense that is death penalty eligible. See 18 U.S.C. § 3005.
- b. To protect the rights of an individual who, although uncharged, is the subject of an investigation in a federal death-eligible case, the court may appoint capital qualified counsel upon request, consistent with Sections C.1, 2, and 3 of these provisions.
- c. At the outset of every capital case, the court must appoint two attorneys, at least one of whom meets the qualifications for "learned counsel" as described below. Neither of the two appointments is subject to random computerized appointment process. The second attorney appointed (usually, local counsel), if not qualified as Learned Counsel, shall be appointed by the Court among the most qualified and experienced litigators with the CJA Panel or the District. If necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in a capital case. See 18 U.S.C. § 3005.
- d. When appointing counsel, the District Judge must consider the recommendation of the Federal Public Defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. The FPD, when recommending attorneys, shall provide the Court with information regarding special skills and/or qualifications of counsel, as well as data (i.e., number of cases) on their current caseload, including other capital cases.
- e. To effectuate the intent of 18 U.S.C. § 3005 that the Federal Public Defender's recommendation be provided to the court, the district judge should ensure the Federal Public Defender has been notified of the need to appoint capital qualified counsel.

- f. Reliance on a list for appointment of capital counsel is not recommended because selection of trial counsel should account for the particular needs of the case and the defendant and be based on individualized recommendations from the Federal Public Defender in conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel projects.
- g. Out-of-district counsel, including federal 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.
- h. In evaluating the qualifications of proposed trial counsel, 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.

2. Qualifications of Learned Counsel

- a. Learned counsel must either be a member of this district's bar or be eligible for admission pro hac vice based on his or her qualifications. Appointment of counsel from outside the jurisdiction is common in federal capital cases to achieve cost and other efficiencies together with high quality representation.
- b. Learned counsel must meet the minimum experience standards set forth in 18 U.S.C. §§ 3005 and 3599.
- c. 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.
- d. "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.

- e. The suitability of learned counsel should be assessed with respect to the demands of the case, the stage of the litigation, and the defendant.
- f. Learned counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
- g. Learned counsel should satisfy the qualification standards endorsed by bar associations and other legal organizations regarding the quality of representation in capital cases.

3. Qualifications of Second and Additional Counsel

- a. Second and additional counsel may, but are not required to, satisfy the qualifications for learned counsel, as set forth above.
- b. Second and additional counsel must be well qualified, by virtue of their distinguished prior criminal defense experience, training, and commitment, to serve as counsel in this highly specialized and demanding litigation.
- c. Second and additional counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
- d. The suitability of second and additional counsel should be assessed with respect to the demands of the individual case, the stage of the litigation, and the defendant.
- e. Reliance on a list or the CJA Panel attorneys' roster, for appointment of second and additional counsel is not recommended. The appointment of counsel, at all times, shall account for defendant's and case needs. Nonetheless, to ensure that qualified and experienced litigators within the CJA Panel or District are appointed, a list of attorneys meeting such requirements may be generated with the consensus of the CJA Panel Committee (of which the FPD is a permanent voting member) and the Court. Subject to case needs and those of the defendant, the judicial officer may appoint counsel among any of those identified as the most qualified.

D. Appointment and Qualifications of Direct Appeal Counsel in Federal Death Penalty Cases

1. When appointing appellate counsel, the judge must consider the recommendation of the Federal Public Defender, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.
2. In appointing appellate counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.
3. Counsel appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial.
4. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.
5. 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 together with cost and other efficiencies.
6. Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals and capital appeals.
7. At least one of the attorneys appointed as appellate counsel must have the requisite background, knowledge, and experience required by 18 U.S.C § 3599(c) or (d).
8. In evaluating the qualifications of proposed appellate counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representations in capital cases.
9. In evaluating the qualifications or proposed appellate counsel, 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.

E. Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. § 2255)

1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2255 is entitled to appointment of fully qualified counsel. See 18 U.S.C. § 3599(a)(2).
2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys, of which at least one did not represent the appellant at trial.
3. Considering the accelerated timeline applicable to capital § 2255 proceedings, prompt appointment of counsel is essential. Wherever possible, appointment should take place prior to the denial of certiorari on direct appeal by the United States Supreme Court.
4. When appointing counsel in a capital § 2255 matter, the court should consider the recommendation of the Federal Public Defender, who will consult with the Federal Capital Habeas § 2255 Project.
 - 4(a) In appointing post-conviction counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.
5. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2255 cases to achieve high quality representation together with cost and other efficiencies.
 - 5(a) Local or circuit restrictions prohibiting capital habeas units (CHUs) from engaging in cross-district or cross-circuit representation should not be imposed without good cause. Every district should have access to a CHU.
6. Counsel in § 2255 cases should have notable prior experience in federal post-conviction proceedings and in capital post-conviction proceedings.
7. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.

8. In evaluating the qualifications of proposed post-conviction counsel, 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.
9. In evaluating the qualifications of proposed post-conviction § 2255 counsel, 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.

XV. Appeals

- A. If a defendant is convicted following trial, a straight plea or his or her sentence departs or varies from the recommendation in the plea agreement's recommendation as to sentence, upon which a waiver of appeal is conditioned, counsel appointed hereunder shall advise the defendant of the right to appeal and the right to counsel on appeal.
- B. This obligation shall not be affected or diminished by similar advice given to the defendant by the judicial officer. If a defendant does wish to appeal or is undecided, counsel shall file a timely notice of appeal and shall continue to represent the defendant unless or until counsel is relieved by the Court of Appeals. However, Counsel should note that a separate CJA appointment by the Court of Appeals is also required.

XVI. Effective Date

This Plan shall take effect immediately upon its approval by the Judicial Council of the First Circuit, or on January 1, 2025 whichever is later. It shall supersede the Plan for the Administration of the Criminal Justice Act Panel of Attorneys, adopted by this Court on January 21, 2004, and amended from time to time thereafter by this Court. However, counsel appointed under the previous Plan to represent defendants shall be authorized to complete the services for which they were appointed and shall be entitled to be paid under the previous Plan for such services and expenses.

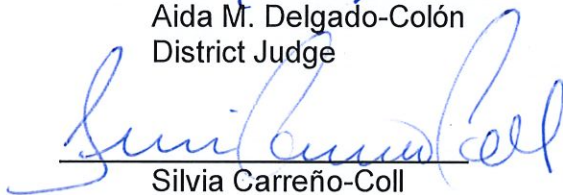
Enter for the Court on 11/21, 2024.



Raúl Arias-Marxuach
Chief Judge



Aida M. Delgado-Colón
District Judge



Silvia Carreño-Coll
District Judge



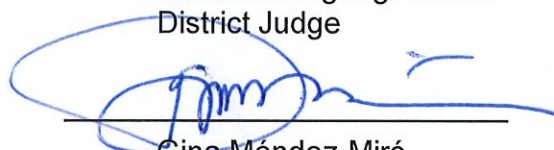
Camille Vélez-Rivé
District Judge



Pedro A. Delgado-Hernández
District Judge



Maria Antongiorgi Jordán
District Judge



Gina Méndez-Miró
District Judge

The foregoing amended plan is approved by the Judicial Council of the First Circuit as of the 3rd day of October 2024.



Susan J. Goldberg, Circuit Executive
Secretary to the Judicial Council