

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

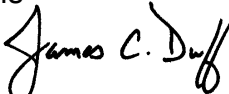
WASHINGTON, D.C. 20544

Date: 05/21/2019

GUIDE TO JUDICIARY POLICY

TRANSMITTAL 07-012 VOLUME/PART 7A CHAPTER(S) 2, 4, 6

TO: Judges, United States Courts of Appeals
Judges, United States District Courts
United States Magistrate Judges
Circuit Executives
Federal Public/Community Defenders
District Court Executives
Clerks, United States Courts of Appeals
Clerks, United States District Courts
Chief Probation Officers
Chief Pretrial Services Officers
Senior Staff Attorneys
Chief Circuit Mediators
Circuit Librarians

FROM: James C. Duff 

RE: DEFENDER SERVICES

This transmittal provides notice of changes to *Guide to Judiciary Policy*, Volume 7 (Defender Services):

[Chapter 2 – Appointment and Payment of Counsel](#)
[Appendix 2A – Model Plan for Implementation and Administration of the Criminal Justice Act](#)
[Chapter 4 – Defender Organizations](#)
[Chapter 6 – Federal Death Penalty and Capital Habeas Corpus Representations](#)

The revisions incorporate policies adopted by the Judicial Conference in March 2019 as recommended by the Ad Hoc Committee to Review the Criminal Justice Act Program (Cardone Committee). Chapter 2 sets out a new independent review policy for challenged CJA voucher reductions and new policies for case-budgeting attorneys. Chapter 4 requires circuit courts to give due weight to Judicial Conference-approved staffing formulas when approving the number of assistant federal defenders in a district. Chapter 6 adds new policies that (1) ask judges to give due weight to the recommendations made by federal defenders in appointing counsel in capital cases, (2) provide guidance in evaluating qualifications for appointed counsel in capital cases, (3) eliminate non-statutory budgetary caps on capital cases whether in capital trial, direct appeal, or habeas matters; (4) require every district to have access to a Capital Habeas Unit; and

Guide Transmittal 07-012 – Defender Services

(5) provide that all capital cases be budgeted with the assistance of case-budgeting attorneys or resource counsel. Finally, Appendix 2A incorporates these new policies in the Model CJA Plan. The significant changes are detailed in the Redline Comparison below.

Questions regarding this transmittal may be directed to the AO Defender Services Offices, at 202-502-3030.

REDLINE COMPARISON REFLECTING CHANGES

[Significant changes in Chapter 2 (Appointment and Payment of Counsel) follow:]

§ 230 Compensation and Expenses of Appointed Counsel

[. . .]

§ 230.26 Case Budgeting

[. . .]

§ 230.26.15 Case-Budgeting Attorneys

- (a) Every circuit should have available at least one case-budgeting attorney.
- (b) Reviewing judges should give due weight to the case-budgeting attorney's recommendations in reviewing vouchers and requests for expert services, and must articulate their reasons for departing from those recommendations.

See: JCUS-MAR 2019, p. _____.

§ 230.33 Review and Approval of CJA Vouchers

[. . .]

§ 230.33.40 Independent Review Process

- (a) Every district or division should implement an independent review process for panel attorneys who wish to challenge any reductions to vouchers that have been made by the presiding judge.
- (b) Any challenged reduction should be subject to review consistent with this independent review process.
- (c) All processes implemented by a district or division must be consistent with the statutory requirements for fixing compensation and reimbursement to be paid under 18 U.S.C. § 3006A(d).

See: JCUS-MAR 2019, p. _____.

[Significant changes in Appendix 2A (Model Plan for Implementation and Administration of the Criminal Justice Act) follow:]

[. . .]

XII. Compensation of CJA Panel Attorneys

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

XII. [cont'd]

C. Independent Review Process

1. The [district/division] must create an independent review process for panel attorneys who wish to challenge any reductions to vouchers that have been made by the presiding judge.
2. Any challenged reduction should be subject to review consistent with this independent review process.
3. All processes implemented by a district or division must be consistent with the statutory requirements for fixing compensation and reimbursement to be paid under 18 U.S.C. § 3006A(d).

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

[. . .]

B. General Applicability and Appointment of Counsel Requirements

[. . .]

6. In appointing counsel in capital cases, judges should consider and give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.

[. . .]

12. There should be no formal or informal non-statutory budgetary caps on capital cases, whether in a capital trial, direct appeal, or habeas matter.

13. All capital cases should be budgeted with the assistance of case-budgeting attorneys and/or resource counsel where appropriate.

[. . .]

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

1. General Requirements

[. . .]

- e. In appointing counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.

[. . .]

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

[. . .]

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.

[. . .]

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

[. . .]

5. 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.

REDLINE COMPARISON REFLECTING CHANGES

XIV. [cont'd]

6. 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.

7. 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.

[. . .]

F. Appointment and Qualifications of Counsel in Federal Capital Habeas Corpus Proceedings ([28 U.S.C. § 2254](#))

[. . .]

4. In appointing counsel in a capital § 2254 matter, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.

5. 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.

[. . .]

[Significant changes in Chapter 4 (Defender Organizations) follow:]

§ 420 Types of Defender Organizations

§ 420.10 Federal Public Defender Organizations

[. . .]

§ 420.10.25 Setting the Number of Assistant Federal Public Defenders in a District

Circuit court judges should give due weight to Defender Services Office recommendations and Judicial Conference-approved Judicial Resources Committee staffing formulas when approving the number of assistant federal defenders in a district.

See: JCUS-MAR 19, p. ____.

[Significant changes in Chapter 6 (Federal Death Penalty and Capital Habeas Corpus Representations) follow:]

§ 620 Appointment of Counsel in Capital Cases

[. . .]

§ 620.30 Procedures for Appointment of Counsel in Federal Death Penalty Cases

(a) Recommendations for Appointment of Qualified Counsel

(1) In appointing counsel in federal death penalty cases, [18 U.S.C. § 3005](#) requires the court to consider the recommendation of the federal defender, or, if no such organization exists in the district, of the AO's Defender Services Office. Judges should consider and give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so. See: JCUS-MAR 2019, p. ____.

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 620.30 *[cont'd]*

- (e) Evaluating the Qualifications of Counsel Considered for Appointment
[. . .]

§ 620.40 Federal Death Penalty Cases: Special Considerations in the Appointment of Counsel on Appeal

- (a) In appointing counsel in capital cases, judges should consider and give due weight to the recommendations by federal defenders and resource counsel and articulate reasons for not doing so. See: JCUS-MAR 2019, p. ____.
[. . .]

§ 620.50 Federal Death Penalty Cases: Special Considerations in the Appointment of Counsel in Post-Conviction Proceedings

- (a) In appointing counsel in capital cases, judges should consider and give due weight to the recommendations by federal defenders and resource counsel and articulate reasons for not doing so. See: JCUS-MAR 2019, p. ____.
[. . .]

§ 635 Elimination of Non-Statutory Budgetary Caps

There should be no formal or informal non-statutory budgetary caps on capital cases, whether in a capital trial, direct appeal, or habeas matter. See: JCUS-MAR 2019, p. ____.

§ 640 Case Budgeting

§ 640.10 Overview

- (a) All capital cases should be budgeted with the assistance of case-budgeting attorneys and/or resource counsel where appropriate.
See: JCUS-MAR 2019, p. ____.
[. . .]

§ 655 Establishment of Capital Habeas Units and Other Resources

[. . .]

- (b) Every district should have access to a capital habeas unit. See: JCUS-MAR 2019, p. ____.
- (c) Local or circuit restrictions prohibiting capital habeas units from engaging in cross-district or cross-circuit representation should not be imposed without good cause. See: JCUS-MAR 2019, p. ____.

See: JCUS-SEP 2018, p. 40.