

**PROGRAM DESCRIPTION
CJA CAPITAL FELLOWSHIP PROGRAM
EASTERN DISTRICT OF NEW YORK**

I. Objectives

- A. The Criminal Justice Act Panel Committee for the EDNY (“CJA Committee”) has designed a Capital Fellowship Program (the “Program”) to provide training opportunities and additional experience for qualified lawyers who will be available to provide quality representation to indigent defendants charged with death eligible offenses. The Program is designed to help identify and prepare experienced federal and state practitioners for appointment to the Capital Case Trial Lawyers List (the “Capital Panel”), after rigorous training and vetting. While the Program will draw primarily from applicants who are already members of the EDNY CJA panel, in both Brooklyn and Central Islip, the Program will also consider applicants from outside the EDNY CJA Panel if they meet the qualifications in Section II(C)(2)(a), *infra*.
- B. While the Program’s primary objective is to identify and train experienced federal and state practitioners to represent indigent defendants charged with capital offenses, another objective will be to improve the diversity of the Capital Panel.
- C. Participants in the Program are not guaranteed a position on or appointment to the Capital Panel.

II. Organization and Structure

A. Circuit Approval

The District Court will seek and obtain approval from the Chief Judge of the Second Circuit for the Program to be implemented.

B. Co-Directors

- 1. The Program will be administered by two (2) Co-Directors, who will serve exclusively at the pleasure of the Chairperson (“Chair”) of the CJA Committee. The Co-Directors will be responsible for: a) nominating Supervising Capital Counsel (“SCC”) from the Capital Panel, subject to approval of the Chair of the CJA Committee; b) identifying prospective Associate Capital Counsel (“ACC”); c) pairing ACCs with SCCs; d) providing SCCs with guidance as to the overall objectives, protocol and methods of the Program; and e) identifying appropriate cases for the Program.

2. The Co-Directors will also assist the District Court in collecting and maintaining data regarding the Program, including a current roster of all participating ACCs and SCCs in order to enable the District Court to provide the Office of Defender Services with pertinent and specific data about the Program, its participants, and its results.
3. The Co-Directors will meet on a periodic basis with each SCC and ACC to discuss the matters they have worked on together and the progress of the ACC in the Program.
4. The Co-Directors will not be compensated for administering the Program.

C. Supervising Capital Counsel; Associate Capital Counsel

1. **Supervising Capital Counsel:** The Co-Directors will propose an initial pool of Supervising Capital Counsel, subject to the approval of the Chair of the CJA Committee. Additional SCCs will be recruited if demand requires, with the approval of the CJA Chair.
 - a) Qualifications: Supervising Capital Counsel are expected to be experienced and respected members of the Eastern District Criminal Justice Act Capital Panel or an attorney from the Federal Death Penalty Resource Counsel Project.
 - b) Assignments: No Supervising Capital Counsel will be assigned more than one ACC, as long as there are willing SCCs who have not yet been assigned an ACC.
 - c) Requirements: The Supervising Capital Counsel, whether Capital Case Trial Counsel or Learned Counsel, will be responsible for supervising the ACC. The Capital Case Trial Counsel and Learned Counsel will bear primary responsibility to both the CJA client and the Court to ensure the highest quality representation.
 - d) Training and Supervision: The Co-Directors shall provide guidance to the Supervising Capital Counsel regarding, at a minimum:
 - i. the goals and objectives of the Program;
 - ii. the protocols and manner of instruction to be used by SCCs, including the selection of appropriate cases for training purposes;

- iii. the permissible roles and tasks available for ACCs; and
- iv. the requirement for frank and candid assessment of an ACC's progress and ability to practice in federal court on a federal capital case.

e) No Reimbursement: No SCC shall bill the CJA Panel for time spent training ACCs.

2. Associate Capital Counsel: The Co-Directors will consider applications from and propose an initial pool of ACCs, subject to the approval of the Chair of the CJA Committee. The Co-Directors will pair the ACCs with the SCCs.

- a) Qualifications: ACCs are expected to be attorneys who are currently on the EDNY CJA Panel, Assistant Federal Defenders, or state practitioners with significant homicide trial experience to verdict as lead counsel (or who possess comparable in-court experience) who might benefit from the Program and appear to have the potential to become strong capital defenders. ACCs should be individuals who, with the additional federal capital experience, would qualify for appointment to the Capital Panel. Although not a prerequisite, special attention shall be paid to recruiting a diverse pool of ACCs, including women, minorities, and persons with disabilities.
- b) Admission to the EDNY Bar: ACC candidates must be admitted to practice in the Eastern District of New York. Any applicant who is not already on the CJA Panel or an Assistant Federal Defender must submit a Certificate of Good Standing from the Bar of each state in which s/he is admitted, and promptly make application for admission to the EDNY Bar.
- c) Requirements: ACCs will serve as associate counsel, subject to the qualifications and budgeting protocols set forth in the Second Circuit Judicial Council Committee on Criminal Justice Act Representation Policy and Procedure Manual (Appendix E) and the policy guidelines promulgated by the Judicial Conference for Administration of the Criminal Justice Act, Vol. 7, Ch. 6 for the appointment of associate counsel in capital eligible cases and the approval of the presiding district court Judge.

- d) Endorsement and Appointment: ACCs who successfully complete the Program will be encouraged to apply for appointment to the Capital Panel. If an ACC does apply, the Panel Review Committee will solicit the views of the assigned SCC, Co-Directors and judges before whom the ACC has appeared in a death eligible case, as to whether the ACC qualifies for appointment.

Participants in the Program are not guaranteed appointment to the CJA Panel or the Capital Panel.

III. Program Parameters

A. Selected Cases

1. The prototypical case that will be appropriate for the Program will be a newly presented death eligible or capital case, which appears to have myriad issues across the spectrum of representation (*e.g.*, the development of mitigation for presentment to the Department of Justice on death penalty authorization; conferences regarding various issues and themes; capital legal research and writing; and the possibility of an evidentiary hearing or trial).
2. It is expected that the prototypical death eligible case will be of a type that would usually warrant and justify the authorization of an associate counsel to assist the Capital Panel attorney of record. It is anticipated that the use of an ACC will be cost effective, as an experienced practitioner will be performing services as an associate and billing at the associate counsel rate provided by the Second Circuit Criminal Justice Act Policy and Procedure Manual (Appendix E).
3. No ACC will receive more than two (2) appointments under the Program in an eighteen (18) month period. No ACC may be authorized as associate counsel for more than two (2) death eligible cases at a time. An ACC authorization shall continue until the final disposition of the case for which the ACC was authorized. If the case to which the ACC is appointed is not authorized as a death penalty case, or is later de-authorized, it will be in the discretion of the presiding Judge, depending on the particular circumstances of each case, to determine whether the ACC's appointment shall continue.

4. The Capital Fellowship Program will not interfere with the statutory mandate that two death penalty qualified attorneys, one Capital Case Trial Counsel and one Learned Counsel, be assigned to represent the capitally accused, pursuant to 18 U.S.C. § 3005. The ACC may be paired with either Capital Case Trial Counsel or Learned Counsel.

B. Associate Capital Counsel Protocols

Associate Capital Counsel will be expected and permitted to:

1. Appear and argue on the record as counsel for the defendant, with the SCC present, as counsel of record.
2. Confer, on behalf of the defendant and under the close direction of the SCC, as counsel of record, with: 1) the government, including with Main Justice; 2) the Court; 3) U.S. Pretrial Services Agency; 4) U.S. Probation Office; 5) federal, state and local law enforcement agents and agencies; 6) U.S. Bureau of Prisons personnel; 7) the defendant's family, friends, and potential witnesses; 8) interpreters; and 9) other members of the defense team, such as mitigation specialists, investigators, or paralegals.
3. Write and file submissions, pleadings, memoranda and motions, under the direction, review, and co-authorship of the SCC.
4. Under the close direction of the SCC, participate in hearings, trials and evidentiary proceedings. Examination of witnesses or any addresses or statements to a jury will be done only under the direction of the SCC and with the SCC present during the examination, the address, or statement.
5. Perform traditional assignments, such as organizing and reviewing discovery materials; performing legal research; organizing exhibits; obtaining discovery or reproducing discovery; and performing other work as necessary.
6. Prior to the commencement of work as an ACC on a death eligible case, ACCs will be required to complete a minimum of six (6) continuing legal education (CLE) credits that focus on the representation of defendants in federal death penalty cases by participating in programs hosted by the Federal Death Penalty Resource Counsel Project, the Administrative Office of the U.S. Courts Defender Services Program and/or the Federal Defenders. During their participation in the Fellowship Program, each ACC will be required to participate in the national Defending Against Death training program held annually by the Defender Services Program.

In addition, ACCs must attend seminars and workshops, coordinated by the Co-Directors, on specific federal practice skills in federal capital cases.

IV. Authorization and Compensation for an Associate Capital Counsel

- A.** Authorization and appointment of the ACC as an associate counsel will be made only by the presiding Judge.
- B.** Because the ACC will provide legal services comparable to that of an associate counsel, the ACC will be permitted to apply to the presiding Judge to have the ACC authorized as associate counsel and paid at the rate for experienced court authorized associate counsel in capital eligible cases in the Eastern District of New York.
- C.** The ACC shall bill for billable services on CJA Form 30, under the category “other services.” If the ACC expects to bill more than \$500, the SCC shall request approval from the presiding Judge to pre-authorize more than \$500, in accordance with paragraph 3.02A of the Guide to Judiciary Policies and Procedures. As in all CJA cases, payment of amounts in excess of \$1,600 for such “other services” will require certification by the District Judge and approval from the Chief Judge of the Circuit (or his or her designee) once the voucher is submitted.
- D.** An SCC and ACC may not bill for performing duplicate work. The SCC and ACC agree that they will bill only for legal services rendered, and that they will not bill for time spent principally on training and teaching, which time will be provided on a *pro bono* basis.

V. Promotion of the Fellowship Program

- A.** The Board of Judges, including the Chief Judge and the Chair of the CJA Committee, will help promote the Program and recruit Supervising Capital Counsel and Associate Capital Counsel, including by, *inter alia*, notifying all New York metropolitan bar associations of the Program’s existence.
- B.** Judges of the District will be encouraged to provide the name of prospective Associate Capital Counsel to the Co-Directors.
- C.** A brief description of the Fellowship Program will appear on the District’s web site at www.nyed.uscourts.gov under the CJA tab at the top of the webpage.

- D.** The Chair of the CJA Committee will inform the Magistrates Clericals' Office ("Magistrate Clericals") and the Attorney-in-Charge of the Federal Defenders of New York of the existence of the Capital Fellowship Program, and will request that the Magistrate Clericals and the Federal Defenders cooperate with the Co-Directors in identifying potential capital eligible cases for assignment.
- E.** The CJA Committee will refer any applicants who are deemed potential ACC candidates for the Capital Fellowship Program to the Co-Directors.
- F.** The Chair of the CJA Committee will inform the Clerk of the Court of the existence of the Program, and provide information to the Clerk's Office regarding the authorization and billing details for an ACC who is authorized to act as associate counsel on a Program case.