

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D. C. 20544

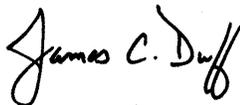
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GUIDE TO JUDICIARY POLICY

TRANSMITTAL **07-004** VOLUME/PART **7A** CHAPTER(S) **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
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Circuit Librarians

FROM: James C. Duff



RE: DEFENDER SERVICES

This transmittal provides notice of changes to the *Guide to Judiciary Policy*, Vol. 7 (Defender Services), Pt. A (Guidelines for Administering the CJA and Related Statutes) and to certain CJA forms.

[Chapter 6 – Representation in Death Penalty Cases](#)

Policy guidance approved by the Judicial Conference of the United States at its March 2011 session on clemency representation by panel attorneys in state death-sentence cases has been codified in § 680 of this *Guide* chapter. The changes are detailed in the Redline Comparison below.

The guidance provides that: (1) separate appointments of counsel for clemency are unnecessary since, under 18 U.S.C. § 3599, each attorney appointed to represent a defendant for capital habeas corpus proceedings under 28 U.S.C. § 2254 must also represent the defendant in any available clemency proceeding; (2) district courts should issue two CJA payment vouchers to appointed counsel, one designated for the habeas corpus proceeding and the other for the potential clemency proceeding; and (3) all clemency vouchers (CJA Forms 30 and 31) should be submitted to the district court, regardless of whether the habeas corpus case is on appeal at the time.

For administrative purposes, court clerks should similarly register two representations, one for the habeas work and the other for the clemency work. The date of appointment should be the same for each.

Guide Transmittal 07-004 – Defender Services

Conforming modifications were also made to the relevant CJA voucher forms, adding "clemency" as a "Representation Type" (in field 9) and as a "Stage of Proceeding" (in field 14 and 15 for CJA Forms 30 and 31, respectively).

Separately, to improve CJA payment data collection and information, "State Court Appearance" was added as a "Stage of Proceeding" to CJA Forms 30 and 31, and "Litigation Support Services" and "Computer Forensics Expert" were added as a "Type of Service Provider" to CJA Forms 21 and 31.

The CJA payment system and instructions for CJA forms have been modified accordingly.

Questions regarding this transmittal may be directed to the AO Office of Defender Services, Legal and Policy Branch Duty Day Attorney, at 202-502-3030.

REDLINE COMPARISON REFLECTING CHANGES

§ 680 Clemency

§ 680.10 Clemency Representation by Counsel

§ 680.10.10 New Appointments

A new appointment for clemency representation is not necessary since, under 18 U.S.C. § 3599(e), each attorney appointed to represent the defendant for habeas corpus proceedings under 28 U.S.C. § 2254, unless replaced by similarly qualified counsel, "shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant."

§ 680.10.20 Motions to Withdraw

- (a) Motions to withdraw from the clemency representation should be brought in the federal district court where the habeas corpus matter was filed.
- (b) Upon granting a motion to withdraw, unless the defendant is represented by similarly qualified counsel or representation is waived by the defendant, the court shall appoint counsel to represent the defendant for any available clemency proceedings.

§ 680.20 Clemency Vouchers

§ 680.20.10 Issuance of Voucher for Clemency Work

Upon appointment of counsel for habeas corpus proceedings brought under 28 U.S.C. § 2254, the district court should issue appointed counsel two CJA payment vouchers (Form CJA 30 (Death Penalty Proceedings: Appointment of and Authority to Pay Court Appointed Counsel)): one designated for the habeas corpus proceeding and one designated for a potential clemency proceeding.

§ 680.20.20 Processing of Clemency Vouchers

All attorney compensation (Form CJA 30 (Death Penalty Proceedings: Appointment of and Authority to Pay Court Appointed Counsel)) and investigative, expert, or other services vouchers (Form CJA 31 (Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher for Expert and Other Services)) pertaining to the clemency representation should be submitted to the district court, regardless of whether the habeas corpus case is on appeal at the time.

REDLINE COMPARISON REFLECTING CHANGES

§ 680.30 Budgeting Clemency Work

- (a) Consistent with § 640, courts are encouraged to require counsel appointed in 28 U.S.C. § 2254 proceedings to submit a proposed initial clemency budget for court approval that will be subject to modification in light of facts and developments that emerge as the case proceeds.
- (b) The district court, in consultation with counsel, should determine when the clemency budget should be submitted — early in the habeas corpus proceedings, or at the beginning of the clemency work. In order to allow sufficient time for clemency preparation, budgeting should occur well in advance of final resolution of the case in the courts.