

GENERAL ORDER NO. 2A
ADDENDUM TO THE PLAN FOR THE IMPLEMENTATION OF
THE CRIMINAL JUSTICE ACT OF 1964,
AS AMENDED, 18 U.S.C. § 3006A

WHEREAS, the number of death row inmates who will exhaust their state court remedies and be in a position to seek federal habeas corpus relief in this district is expected to increase;

WHEREAS, representation of persons who have been convicted and sentenced to death requires a specialized knowledge of state and federal appellate procedure, certiorari practice, state and federal habeas corpus procedure, criminal and constitutional jurisprudence, and entails an extraordinary commitment of time;

WHEREAS, this court is responsible for ensuring the adequate representation of financially eligible persons seeking federal habeas corpus relief when such representation is required in the interest of justice;

WHEREAS, the Northern District of California already has a Federal Public Defender organization established pursuant to subsection (g)(2)(A) of the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A (hereinafter referred to as "the Act"), and has clearly demonstrated need to supplement the services of this organization with the services of the California State Public Defender's Office and the California Appellate Project, both of which will provide representational and other services under the Act in death penalty federal habeas corpus matters only;

WHEREAS, the California State Public Defender's Office is a governmental agency of the state of California which provides representation to death-sentenced inmates in the state of California;

WHEREAS, the California Appellate Project is a nonprofit defense counsel service designed to furnish representation and assistance in connection with the representation of death-sentenced inmates in the state of California;

WHEREAS, subsection (g) of the Act authorizes the establishment of Community Defender Organizations in adjacent districts in which at least 200 persons annually require the appointment of counsel, and the four districts of California meet that requirement, and subsection (g)(1) of the Act and paragraph 4.01 of the Guidelines for the Administration of the Criminal Justice Act authorize the establishment of more than one federal defender organization in a district where there is a clearly demonstrated need;

IT IS THEREFORE ORDERED, that General Order No. 2, Criminal Justice Act Plan, Northern District of California, (hereinafter CJA Plan), is hereby amended to designate the California State Public Defender as a legal aid agency pursuant to subsection (a)(3)(A) of the Act and said organization is authorized to provide representation and other services in connection with death penalty federal habeas corpus cases;

IT IS FURTHER ORDERED, that the CJA Plan is hereby amended to provide for the designation of the California Appellate

Project as a Community Defender Organization in accordance with subsection (g)(2)(B) of the Act, and subject to the conditions set forth below:

1. The California Appellate Project is authorized by this Plan to provide representation, assistance, resource information, training or other related services pursuant to subsection (g)(2)(B) of the Act to appointed or pro bono attorneys, or other eligible persons, in connection with death penalty federal habeas corpus cases. As provided in the Criminal Justice Act Plans for the Central, Eastern and Southern Districts of California, the Community Defender Organization also may provide such services in those courts. The by-laws of the California Appellate Project are incorporated as part of the Plan, and a copy of said by-laws shall be maintained by the Clerk of Court and attached to the original of this Plan.

2. The California Appellate Project shall operate pursuant to the provisions of subsection (g)(2)(B) of the Act, the terms and conditions of any sustaining grant that may be approved by the Judicial Conference of the United States, and the Guidelines for the Administration of the Criminal Justice Act, (Volume VII, Guide to Judiciary Policies and Procedures) promulgated by the Judicial Conference pursuant to subsection (h) of the Act.

3. The California Appellate Project shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the next fiscal year.

4. The primary goal of the California Appellate Project under this addendum to the CJA Plan will be to assist the Court in ensuring that adequate representation is provided to persons under death sentence who seek federal habeas corpus relief. Toward that end:

a. The California Appellate Project shall monitor federal capital litigation in the Northern District of California, except for those cases in which the California State Public Defender's Office has been appointed.

b. The California Appellate Project shall recruit and screen qualified members of the private bar who are willing to provide representation in death penalty post-conviction proceedings in federal court and submit a list of such attorneys to the court for approval as a "Special Death Penalty Habeas Corpus Panel."

c. In each federal death penalty habeas corpus case in which the court has determined that private counsel shall be appointed, the California Appellate Project shall provide to the court the name of an available member of the "Special Death Penalty Habeas Corpus Panel." In cases where the interest of justice requires the appointment of more than one attorney, the California Appellate Project shall furnish the name of two attorneys.

d. The California Appellate Project shall be appointed as counsel of record in a minimal number of cases in which it provided direct representation in the state courts.

e. Pursuant to subsection (e) of the Act and paragraph 3.16 of the Guidelines for the Administration of the Criminal Justice Act, the California Appellate Project shall provide consulting services in such areas as, but not limited to, record completion, exhaustion of state remedies, identification of issues, and review of draft pleadings and briefs.

f. The California Appellate Project is authorized to coordinate resources with other state and national organizations providing legal assistance to death-sentenced inmates.

g. The California Appellate Project is authorized to maintain a brief bank and clearinghouse of materials to assist lawyers in death penalty habeas corpus cases in federal courts.

h. The California Appellate Project is authorized to perform such other tasks, including the preparation and filing of amicus briefs, as may be necessary to ensure that adequate representation is provided to financially eligible persons in death penalty federal habeas corpus proceedings.

5. In order to ensure the effective supervision and management of the California Appellate Project, its Executive Director will be responsible for the assignment of cases (both as counsel of record and as consultant) among the staff attorneys in that office. Accordingly, in those cases in which the CAP provides direct representation, the court will assign cases in the name of the Executive Director rather than in the name of individual staff attorneys.

6. The California Appellate Project may obtain investigative, expert, or other services without regard to the requirements or limitations set forth in General Order No. 2, CJA Plan, with respect to procurement of such services by staff attorneys, provided that total expenditures of the organization for investigative, expert, and other services do not exceed its grant authorization for these specific categories.

The provisions of General Order No. 2, CJA Plan, shall remain in effect except to the extent that they are inconsistent with the provisions of this addendum, in which case the provisions of the addendum shall govern.

This amendment shall take effect upon its approval by the Judicial Council of the Ninth Circuit.

ADOPTED BY THE COURT: September 1, 1988

APPROVED BY THE JUDICIAL COUNCIL: December 6, 1988