

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JERMAINE FOSTER,

Petitioner,

v.

CASE NO. 6:06-cv-648-Orl-22KRS

JAMES MCDONOUGH, et al.,

Respondents.

ORDER

This case is before the Court on the following matters:

1. The Court finds that Petitioner is entitled to the appointment of counsel pursuant to 18 U.S.C. § 3599. *See McFarland v. Scott*, 512 U.S. 849 (1994). The Court further finds that Frank J. Bankowitz is well qualified under the applicable provisions to undertake representation of Petitioner. See 18 U.S.C. § 3599; Volume VII, Guide to Judiciary Policies and Procedures, Chapter VI § 6.01. Alternatively, the Court finds good cause pursuant to § 3599(d) to appoint Mr. Bankowitz because he is qualified to represent defendants in capital cases in Florida and has been practicing law in Florida for thirty-two years.

It appears that Mr. Bankowitz is not a Criminal Justice Act ("CJA") Panel attorney for the Middle District of Florida. The Court finds that in the interests of justice and judicial economy, Mr. Bankowitz will be admitted to the CJA panel *pro hac vice* and will be appointed to represent Petitioner. *See* Volume VII, Guide to Judiciary Policies and Procedures, Chapter II § 2.01(D). His qualifications satisfy the requirements for admission

to the District's CJA panel in the ordinary course of panel selection. *See id.*; *see also* Public Notice Concerning CJA Panel Membership, United States District Court, Middle District of Florida.

Upon consideration of the foregoing, Petitioner's Motion for Appointment of Counsel (Doc. No. 21) is **GRANTED** to the extent that Mr. Bankowitz is appointed for the purpose of representing Petitioner in relation to his federal habeas corpus proceeding. Mr. Bankowitz is hereby admitted to the CJA panel *pro hac vice* and is appointed to represent Petitioner pursuant to 18 U.S.C. § 3006A and 18 U.S.C. § 3599.

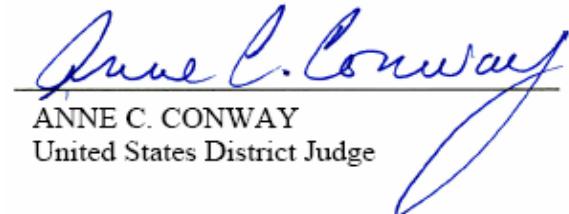
2. The appropriate Criminal Justice Act form - a CJA-30 form ("Death Penalty Proceedings: Appointment of and Authority to Pay Court Appointed Counsel") shall issue to Mr. Bankowitz with this Order. Claims for compensation and reimbursement of expenses for attorneys furnishing services in death penalty proceedings should be submitted on this CJA form.

3. Petitioner may submit an application to obtain investigative, expert, or other services pursuant to 18 U.S.C. § 3006A(e) and 18 U.S.C. § 3599(f)-(g). Any application for investigative and expert fees must include the hourly rate of the party and the estimate of the total cost of such services.

4. The appropriate federal Criminal Justice Act form -- a CJA-31 ("Death Penalty Proceedings: *Ex Parte* Request for Authorization and Voucher for Expert and Other Services") -- shall issue to counsel simultaneously herewith. Claims for compensation and reimbursement of expenses for investigative, expert, or other services should be submitted on this CJA form.

5. Counsel for Petitioner shall, within **FORTY-FIVE (45) DAYS** from the date of this Order, submit a proposed litigation budget for Court approval. *See* Volume VII, Guide to Judiciary Policies and Procedures, Chapter VI § 6.02(F). This proposed budget shall be submitted *ex parte* and be filed and maintained under seal. The proposed budget shall include all matters affecting counsel's compensation and reimbursement and payments for investigative, expert, and other services. Counsel shall also include a proposed hourly rate at which counsel should be compensated in this action.¹ *See* 18 U.S.C. § 3599(g)(1). The proposed budget shall include an estimate of the cost of all services to be provided by counsel, expert(s), investigator(s), or others for the entire case. After the proposed budget is submitted, the Court will determine whether a conference is necessary to reach an agreement on a litigation budget.

DONE AND ORDERED at Orlando, Florida this 25th day of April, 2007.


Anne C. Conway
ANNE C. CONWAY
United States District Judge

Copies to:
pslc 4/25
Jermaine Foster
Counsel of Record

¹For instance, if a team of attorneys assisted in the preparation of the petition, it would be appropriate to compensate the lead attorney at a higher hourly rate than the rate proposed for any attorney(s) with less experience who may have assisted the lead attorney.