D2 (Capital Prosecution/Appeal) Case Openings Bulletin

Modification to D2 Case Opening Procedure
Effective April 2, 2018

Summary

These instructions affect the procedure used to open D2 cases in dData and limit D2 openings to specific circumstances. Beginning April 2, 2018, D2 cases will not be available for case managers to open directly in dData. The following modifications to the instructions for D2 case openings affect Chapter 18, Part III, Section E.6, pp. 18 - 29-30, and Rule 5 procedures in D2 cases, Section E.1(g), p. 18 - 14 (rev. July 29, 2014).

New D2 Case Opening Procedure

- D2 cases will only be eligible to be opened by Justice Works, at the direction of DSO, subject to the limitations below;

- The DSO Data Analytics attorney shall contact Justice Works and permit the opening of a D2 case when the Defender presents proof of appointment to a capital case. Appropriate documentation includes an indictment or complaint alleging federal capital charges and statutory aggravating factors that can result in a death sentence. The documentation required would be the same needed to support a CJA appointment under 18 U.S.C § 3005. DSO will consult with CTEP for guidance if there are any questions regarding this documentation;

- DSO will also permit the opening of a D2 case in pre-indictment capital cases (such as prison killings), where the Defender presents documentation that the USAO is actively investigating capital charges with special circumstances;

- For D2 appellate openings, the Defender will provide a post-sentence appointment order for an appeal in a case where a death sentence was imposed. If the Defender Office opened a D2 in the district court, a new D2 will not be opened for the appeal in the same office.

- **Rule 5 cases** are no longer an appropriate basis for opening a D2 case. The new process for opening a Rule 5 case where the death penalty is a possibility will be to enter the CR charges in dData and mark the Rule 5 box **without** the DE enhancement that would trigger D2.