

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF  
KENTUCKY**

**CRIMINAL JUSTICE ACT PLAN**

**I. AUTHORITY**

Pursuant to the Criminal Justice Act of 1964 as amended (CJA), section 3006A of title 18, United States Code, and the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (*CJA Guidelines*), Volume 7A of the *Guide to Judiciary Policy*, the judges of the United States District Court for the Western District of Kentucky adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

**II. STATEMENT OF POLICY**

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. The further objective of this Plan is to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), and the *CJA Guidelines* in a way that meets the needs of this district.

B. Compliance.

1. The Court, its Clerk, the Community Defender Organization, and private attorneys appointed under the CJA shall comply with the *CJA Guidelines* approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. Each private attorney shall be provided by the Clerk of Court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Clerk shall maintain a current copy of the *CJA Guidelines* for the use of members of the CJA Panel and shall make known to such attorneys its availability.

### III. DEFINITIONS

- A. "Representation" includes counsel and investigative, expert, and other services.
- B. "Appointed attorney" includes private attorneys, the Executive Director and staff attorneys of the Community Defender Organization.
- C. "Judicial officer" includes a United States District Judge or a United States Magistrate Judge or a Judge of the United States Court of Appeals for the Sixth Judicial Circuit or a Justice of the United States Supreme Court.

### IV. PROVISION OF REPRESENTATION

#### A. Circumstance.

- 1. Mandatory Representation. Representation **shall** be provided for any financially eligible person who:
  - a. is charged with a felony or with a Class A misdemeanor;
  - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18, United States Code;
  - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
  - d. is under arrest, when such representation is required by law;
  - e. is entitled to appointment of counsel in parole proceedings;
  - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
  - g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code (18 U.S.C. §4241, et seq.);
  - h. is in custody as a material witness;
  - i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of title 28, United States Code (18 U.S.C. §3559);
  - j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of title 18, United States Code;

- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
  - l. faces loss of liberty in a case and federal law requires the appointment of counsel.
2. Discretionary Representation. Whenever a judge or magistrate judge determines that the interests of justice so require, representation **may** be provided for any financially eligible person who:
- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
  - b. is seeking relief, other than to set aside or vacate a death sentence, under sections 2241, 2254, or 2255 of Title 28, United States Code.
  - c. is charged with civil or criminal contempt and faces a loss of liberty;
  - d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
  - e. is proposed by the United States attorney for processing under a pretrial diversion program; or
  - f. is held for international extradition under chapter 209 of title 18, United States Code.
3. Ancillary Matters. Representation may also be furnished for financially eligible persons in “ancillary matters appropriate to the proceedings” under subsection (c) of the CJA.
- a. In determining whether a matter is “ancillary” to the proceedings, the court should consider whether the matter, or the issues of law or fact in the matter, arose from, or are the same as or closely related to, the facts and circumstances surrounding the principal charge.
  - b. In determining whether representation in an ancillary matter is “appropriate to the proceedings,” the court should consider whether such representation is reasonably necessary to accomplish, among other things, one of the following objectives:
    - i. to protect a Constitutional right;

- ii. to contribute in some significant way to the defense of the principal criminal charge;
- iii. to aid in preparation for the trial or disposition of the principal criminal charge;
- iv. to enforce the terms of a plea agreement in the principal criminal charge;
- v. to preserve the claim of the CJA client to an interest in real or personal property subject to a civil forfeiture proceeding under 21 U.S.C. § 881, 19 U.S.C. §1602 or similar statutes, which property, if recovered by the client, may be considered for reimbursement under subsection (f) of the CJA and § 210.40.30 of the *CJA Guidelines*; or
- vi. to effectuate the return of real or personal property belonging to the CJA client which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the CJA client, may be considered for reimbursement under subsection (f) of the CJA and § 210.40.30 of the *CJA Guidelines*.

4. Civil Forfeiture Proceedings.

Under 18 U.S.C. 983(b)(1), if a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under the CJA in connection with a related criminal case, the Court may authorize counsel to represent that person with respect to the claim.

In determining whether to authorize counsel to represent a person in a judicial civil forfeiture proceeding under a civil forfeiture statute, the court shall take into account such factors as:

- a. the person's standing to contest the forfeiture; and
- b. whether the claim appears to be made in good faith.

B. Timely Appointment of Counsel.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a United States magistrate judge or district judge, when they are formally charged or notified of charges if formal charges are sealed, or when a United States magistrate judge or judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualifications of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the Court to be extremely difficult. In a capital case, the following applies:
  - a. Federal Capital Prosecutions. Under 18 U.S.C. § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom must be learned in the law applicable to capital cases. Under 18 U.S.C. § 3599(a)(1)(B), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.
  - b. Habeas Corpus Proceedings. Under 18 U.S.C. § 3599(a)(2), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§ 2254 or 2255 is entitled to appointment of at least two qualified attorneys.
2. Qualifications. Qualifications for appointed counsel shall be determined by the court. In capital cases, the following also applies:

- a. Appointment of Counsel Prior to Judgment.

Under 18 U.S.C. § 3599(b), at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court. Under 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

Under 18 U.S.C. § 3005, in appointing counsel in federal capital prosecutions, the court shall consider the recommendation of the Community Defender. In fulfilling this responsibility, the Community Defender shall consult with counsel, if counsel has already been appointed or retained, and the court regarding the facts and circumstances of the case to determine the qualifications which may be required to provide effective representation. In evaluating the qualifications of counsel considered for appointment, the Community Defender shall consider:

- i. the minimum experience standards set forth in 18 U.S.C. § 3599(b)-(d), 18 U.S.C. § 3005, and other applicable laws or rules;
- ii. the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases;

- iii. the recommendations of other federal public and community defender organizations and local and national criminal defense organizations;
- iv. the proposed counsel's commitment to the defense of capital cases; and
- v. the availability and willingness of proposed counsel to accept the appointment and to represent effectively the interests of the client.

b. Appointment of Counsel After Judgment.

Under 18 U.S.C. § 3599(c), at least one of the attorneys appointment must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years of experience in the handling of appeals in felony cases in the court.

c. Attorney Qualification Waiver.

Under 18 U.S.C. § 3599(d), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c) but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

3. Fort Campbell Military Reservation.

The Federal Public Defender for the Middle District of Tennessee may be appointed to represent eligible persons within the jurisdiction of the Fort Campbell Kentucky Military Reservation.

D. Eligibility for Representation

1. Fact-finding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a judicial officer after making appropriate inquiries concerning the person's financial condition.

All statements made by a person requesting appointed counsel or during the inquiry into eligibility should be either:

- a. Reflected on Form CJA 23 (Financial Affidavit) and the form should be completed and executed before a judicial officer or employee; or

- b. Under oath in open court.
2. Standards for Eligibility. A person is “financially unable to obtain counsel” within the meaning of this Plan if the person’s net financial resources and income are insufficient to enable him or her to obtain qualified counsel. Any doubts as to a person’s eligibility should be resolved in the person’s favor. At the time of determining eligibility, judicial officer should inform the person of the penalties for making a false statement and of obligation to inform the court and appointed counsel of any change in financial status.
3. Partial Eligibility. If a person’s net financial resources and income anticipated prior to trial are in excess of the amount needed to provide that person’s dependents with the necessities of life and to provide the defendant’s release on bond, but are insufficient to pay fully for retained counsel, the judicial officer should find the person eligible for the appointment of counsel under this Plan and should direct the person to pay the available excess funds to the clerk of court at the time of such appointment or from time to time thereafter. The judicial officer may increase or decrease the amount of such payments and may impose such other conditions from time to time as may be appropriate. Funds collected pursuant to this subsection are held and disposed pursuant to 18 U.S.C. § 3006A(f).
4. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney’s information is not protected as a privileged communication, counsel shall advise the court.
5. Use of Financial Information. The USAO may not use, as part of its case-in-chief, other than in prosecution for perjury or making a false statement, any information provided by an individual in connection with his/her request for the appointment of counsel pursuant to this Plan.

V. **COMMUNITY DEFENDER ORGANIZATION**

- A. Recognition of Community Defender Organization.
  1. The Western Kentucky Federal Community Defender, Inc., previously established in this District pursuant to the provisions of the CJA, is hereby recognized as a community defender organization for this district.
  2. The Community Defender is capable of providing legal services throughout the district and shall provide general legal representation to persons entitled to services under Paragraph IV hereof throughout the district.

3. The Community Defender will maintain an office in Louisville, Kentucky, establishing branch offices as necessary. Such branch offices shall be under the supervision of the Community Defender, and to the extent the caseload in each division permits, and pursuant to the discretion of the Community Defender, the staff of one office shall be available to assist the staff of any other office.
4. Neither the Community Defender nor any appointed staff attorney may engage in the private practice of law.

B. Supervision of Community Defender Organization.

The Board of Directors shall be responsible for the supervision and management of the Community Defender organization. Accordingly, the Community Defender shall be appointed in all cases assigned to that organization. Subsequent assignment to staff or panel attorneys shall be made at the discretion of the Community Defender.

C. Management of CJA Panel.

The Community Defender is not responsible for management of the CJA panel but shall take the lead in providing educational programs for the CJA Panel and other members of the bar and is responsible for providing training sessions for members of the CJA panel at least annually. Similarly, the Community Defender's office shall serve as a central repository for materials which may be valuable to members of the CJA Panel, such as legal memoranda on recurring issues and jury instructions.

**VI. PRIVATE ATTORNEYS**

A. Establishment of CJA Panel.

The existing, previously established panel of attorneys (CJA Panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.

B. Organization.

The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the CJA is found at Appendix I of this CJA Plan.

C. Ratio of Appointments.

Where practical and cost effective, private attorneys from the CJA Panel will be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" shall be defined as no less than 25% of the appointments under the CJA annually throughout the district.



**VII. REPRESENTATION IN DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. §§ 2254 and 2255.**

The court may appoint the Director of the Kentucky Capital Litigation Resource Center, the recognized resource center for the district, to represent financially eligible persons seeking habeas corpus relief in death penalty proceedings under 28 U.S.C. §§ 2254 and 2255.

**VIII. DUTIES OF APPOINTED COUNSEL**

- A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the American Bar Association's Model Rules of Professional Conduct, the Rules of Professional Conduct adopted by the Supreme Court of Kentucky, and other standards for professional conduct adopted by the court.
- C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the Court.
- D. Continuing Representation. Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari (as governed by the Sixth Circuit's CJA plan provisions concerning representation on appeal), is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed *pro se*; or until the appointment is terminated by court order.
- E. Acceptance of Appointments. Attorneys on the CJA Panel List are expected to make themselves available to accept appointments and to serve as a mentor for less experienced counsel when called upon to do so. It may be grounds for removal from the Panel for an attorney to repeatedly decline appointments. The Clerk's Office shall maintain a record of the date of each refusal, the case name and docket number, and the reason given (if any) for the refusal.

The Clerk's Office shall notify the Court if an attorney declines appointments on three successive occasions as such may constitute grounds for removal.

**IX. SERVICES OTHER THAN COUNSEL**

- A. With Prior Authorization.

Counsel for a person who is financially unable to obtain investigative, expert or other services necessary for an adequate defense in his or her case may request

authority to obtain and pay for such services in an ex parte application before a judicial officer as provided in 18 U.S.C. § 3006A(e)(1). Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the district judge, or the magistrate judge if the services are required in connection with a matter over which the magistrate judge has jurisdiction, shall authorize counsel to obtain the services requested.

Compensation for services under this subsection is limited to the statutorily authorized amounts set out in the *CJA Guidelines*. Payment in excess of the compensation limit for services authorized prior to the performance thereof may be made when certified by a judge or U.S. magistrate judge and approved by the chief judge of the circuit, or the chief judge's delegate, as being necessary to provide fair compensation for services of an unusual character or duration. If it can be anticipated that the compensation will exceed the statutory maximum, advance approval should be obtained from the court and the Chief Judge of the circuit, or the Chief Judge's delegate.

B. Without Prior Authorization.

Counsel appointed under the CJA and this Plan may obtain, subject to later review, investigative, expert or other services without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed financial limitations set forth in 18 U.S.C. § 3006A(e)(2), including expenses reasonably incurred. However, these limitations may be waived if the presiding judge or magistrate judge, if the services were rendered in a case disposed of entirely before the magistrate judge, in the interest of justice, finds that timely procurement of necessary services could not await prior authorization.

C. Consulting Services in Capital Federal Habeas Corpus Cases.

Where necessary for adequate representation, 18 U.S.C. § 3006A(e) and 18 U.S.C. § 3599(f) authorize the reasonable employment and compensation of expert attorney consultants to provide consultation services to appointed and *pro bono* attorneys in federal capital habeas corpus cases and in federal death penalty cases in such areas as records completion, determination of need to exhaust state remedies, identification of issues, review of draft pleadings and briefs, etc.

An expert attorney consultant may not be paid an hourly rate exceeding that which an appointed counsel could be authorized to be paid.

D. Services for *Pro Se* Litigants.

Persons who are eligible for representation under the CJA, but who have elected to proceed *pro se*, may, upon request, be authorized to obtain investigative, expert, and other services in accordance with 18 U.S.C. § 3006A(e).

## X. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

### A. Presentation of Accused for Appointment of Counsel.

Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, must promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and must, in such cases in which the person indicates that he or she is not able, notify the community defender who will discuss with the person the right to representation and right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (Form CJA 23) and arrange to have the person promptly presented before a United States magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel.

### B. Notice of Indictment or Criminal Information.

Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States attorney or the probation officer, as appropriate, must immediately mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

## XI. MISCELLANEOUS

### A. Forms.

Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, must be used, where applicable, in all proceedings under this Plan.

### B. Claims.

1. Submission. Claims for compensation of private attorneys providing representation under the CJA must be submitted on the appropriate CJA form to the office of the clerk of the court, no later than 45 days after the final disposition of the case, unless good cause is shown. That office will review the claim form for mathematical and technical accuracy and for conformity with the *CJA Guidelines*, and, if correct, will forward the claim form for consideration by the appropriate judge or magistrate judge. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

2. Reduction in Claims. If the judicial officer determines that a claim for compensation should be reduced, counsel shall be provided with prior notice of the proposed reduction, a brief statement of the reason(s) for the reduction, and an opportunity to respond. The notice and opportunity to respond should be provided regardless of whether the amount is over or under the statutory maximum following the reduction. Such notice and opportunity to respond need not be provided when the reduction is based on mathematical or technical errors. Nothing contained in this Plan should be construed as requiring a hearing or as discouraging the judicial officer or designee from communicating informally with counsel about questions or concerns.

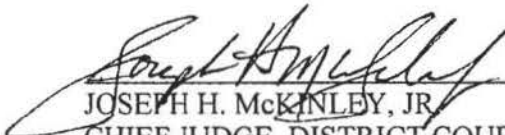
C. Supersession.

This Plan supersedes all prior Criminal Justice Act Plans of this Court.

**XII. EFFECTIVE DATE**

This Plan will become effective when approved by the Judicial Council of the Sixth Circuit.

ON BEHALF OF THE DISTRICT COURT

  
\_\_\_\_\_  
JOSEPH H. MCKINLEY, JR.  
CHIEF JUDGE, DISTRICT COURT

12/13/13  
\_\_\_\_\_  
DATE

APPROVED BY THE JUDICIAL COUNCIL OF THE SIXTH CIRCUIT

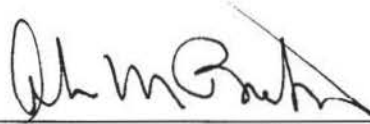
\_\_\_\_\_  
ALICE M. BATCHELDER  
CHIEF JUDGE, CIRCUIT

\_\_\_\_\_  
DATE

## CERTIFICATE OF APPROVAL

This is to certify that, in accordance with the Criminal Justice Act of 1964 as amended, 18 U.S.C. § 3006A, *et seq*, the foregoing Amended Criminal Justice Act Plan for the United States District Court for the Western District of Kentucky as amended December 13, 2013, has been duly received and approved as complying with the law by the Judicial Council of the Sixth Circuit of the United States. The said Amended Plan shall become effective upon the date of this approval.

This 12<sup>th</sup> day of May, 2014.

A handwritten signature in black ink, appearing to read "Alice M. Batchelder", written over a horizontal line.

Alice M. Batchelder, Chief Judge  
United States Court of Appeals  
for the Sixth Circuit

---

**APPENDIX I  
TO THE CRIMINAL JUSTICE ACT PLAN**

**PLAN FOR THE COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE  
PANEL OF PRIVATE ATTORNEYS  
UNDER THE CRIMINAL JUSTICE ACT**

**I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS**

A. CJA Panel.

1. *Approval.* The Court shall establish a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The court shall approve attorneys for membership on the panel. Members of the CJA Panel shall serve at the pleasure of the Court.
2. *Size.* The Court shall fix periodically, the size of the CJA Panel. The Panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work and thereby provide a high quality of representation.
3. *Eligibility.* Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines.

However, when the district judge presiding over the case, or the chief judge if a district judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA Panel is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA Panel *pro hac vice* and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district should possess such qualities as would qualify him or her for admission to the district's CJA Panel in the ordinary course of Panel selection.

Efforts should be made to assure that members of the CJA Panel, the Community Defender, and the staff of the Community Defender Organization are highly qualified and sensitive to the diversity of the population they represent. In the pursuit of that goal, all qualified individuals should be encouraged to seek appointment to the CJA Panel or employment within the Community Defender Organization without regard to race, creed, color, national origin, religion, sex, age or handicap.

4. *Equal Opportunity.* All qualified attorneys are be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.

## II. SELECTION FOR APPOINTMENT

### A. Maintenance of List and Distribution Of Appointments.

The Clerk shall maintain a current list of all attorneys included on the CJA Panel with current office addresses and telephone number. The Clerk shall furnish a copy of this list to each judge and magistrate judge. The Clerk shall also maintain a public record of assignments to private counsel and when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Community Defender Office and private attorneys according to the formula described in the CJA Plan for the Western District of Kentucky.

### B. Method of Selection.

The objective of this plan is to ensure competent and effective representation of each person to whom legal services are provided. While appointments from the list of private attorneys shall be primarily made on a rotational basis, the appointing judicial officer must evaluate the nature and complexity of the matter or case, an attorney's experience, language skills, geographical locations, availability, and any special circumstances in making the appointment.

The clerk of the court shall advise the judge or magistrate judge as to the status of distribution of cases, where appropriate, as between the Community Defender and the panel of private attorneys. If the United States magistrate judge or judge decides to appoint an attorney from the panel, the clerk will determine the name of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and will provide the name to the appointing judge or United States magistrate judge.

## III. COMPENSATION- FILING OF VOUCHERS

### A. Limitations.

Counsel providing representation under this Plan will be compensated and reimbursed as provided in 18 U.S.C. § 3006A(d), and compensation and reimbursement will be subject to all of the limitations appearing in that subsection or to such limitations as may be fixed from time to time by the Judicial Conference.

Compensation will not exceed the hourly rates set forth in the CJA or subsequently adjusted by the Judicial Conference for time reasonably expended in court or out of court. The hourly rates of compensation as designated are intended to be maximum rates and are to be treated as such.

B. Expenses.

Attorneys will be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the court or United States magistrate judge. Out-of-pocket expenses reasonably incurred may be claimed on the voucher, and must be itemized and reasonably documented.

Compensation may be approved for time spent in necessary and reasonable travel. Counsel must obtain prior approval from the presiding judicial officer for unusually large amounts of travel, out-of-state travel, and travel which will involve an overnight stay.

Travel by privately owned automobile should be claimed at the rate currently prescribed for federal judiciary employees who use a private automobile to conduct official business, plus parking fees, etc. However, compensation will not be approved for travel by privately owned automobile to the courthouse when such travel is less than 10 miles. Parking expenses will be reimbursed regardless of the duration of travel.

C. Excess Payment.

Payment in excess of any maximum amount provided in the CJA may be made for extended or complex representation whenever the court in which the representation was rendered, or the United States magistrate judge, if the representation was furnished exclusively before the United States magistrate judge, certifies that the amount of the excess payment is necessary to provide fair compensation, and the payment is approved by the district judge or United States magistrate judge and by the Chief Judge of the Sixth Circuit Court of Appeals, or that judge's designee.

In any case in which compensation claimed is in excess of the statutory case compensation maximum, counsel must submit, with the voucher, a detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and the excess payment is necessary to provide fair compensation.

For purposes of determining whether or not an excess payment is warranted under this subsection, the case is considered "complex" if the legal or factual issues are unusual, thus requiring the expenditure of more time, skill, and effort by the attorney than would normally be required in an average case. The case is considered "extended" if more time is reasonably required for total processing than the average case, including pre-trial and post-trial hearings.

After establishing that a case is extended or complex, the approving judicial officer should determine if excess payment is necessary to provide fair compensation. The following criteria, among others, may be used in this regard: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and injury thereto; any extraordinary pressure of time or other



factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

Upon preliminary approval of such claim, the presiding judicial officer should furnish to the Chief Judge of the Sixth Circuit Court of Appeals, or that judge's designee, a memorandum containing the recommendation and a detailed statement of reasons.

D. Interim Payments to Counsel.

Where it is considered necessary and appropriate in a specific case, the presiding trial judge may arrange for periodic and interim payments for both services and expenses.

E. Filing Claims.

Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the final voucher for an appointment.

A separate claim for compensation and reimbursement must be made to the district court for representation in the district court, and to each appellate court before which the attorney provided representation for the person involved.

Each claim must be submitted on a form CJA Form 20 and supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court or United States magistrate judge, and the compensation and reimbursement applied for or received in the same case from any other source.

Each claim will be further supported by such documentation as the Administrative Office of the United States Courts may require and itemized on such forms as the Administrative Office may prescribe.

F. Audit by CJA Liaison.

Each claim must be reviewed and audited by the CJA liaison in the clerk's office for mathematical and technical accuracy and for conformity with the *Guidelines for Administering the Criminal Justice Act*, Volume 7, Guide to Judiciary Policy, and if correct, will be forwarded to the appropriate district judge or United States magistrate judge for consideration.

G. Approval by District Judge or United States Magistrate Judge.

The district judge will fix the compensation and reimbursement to be paid to the claimant, except that in cases where representation is furnished exclusively before a United States magistrate judge, the claim will be submitted to the United States magistrate judge to fix the compensation and reimbursement to be paid.

H. Court Approval Required.

In cases where representation is furnished other than before the United States magistrate judge, district judge, or an appellate court, claims will be submitted to the district court to fix the compensation and reimbursement to be paid.

I. New Trials.

For purposes of compensation and other payments authorized under this Plan, an order by the court granting a new trial will be deemed to initiate a new case.

J. Time Limits.

Vouchers should be submitted no later than 45 days after the final disposition of the case, unless good cause is shown.

K. Notification of Proposed Reduction

If the court determines that a claim should be reduced, appointed counsel should be provided prior notice of the proposed reduction with a brief statement of the reason(s) for it, and an opportunity to address the matter. Notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.

Nothing contained in this subsection should be construed as requiring a hearing or as discouraging the court from communicating informally with counsel about questions or concerns in person, telephonically, or electronically, as deemed appropriate or necessary.