

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
CRIMINAL JUSTICE ACT PLAN**

Pursuant to the Criminal Justice Act of 1964, as amended (section 3006A of Title 18, United States Code (the “CJA”), and the “Guidelines for the Administration of the Criminal Justice Act,” contained in the Guide to Judicial Policies and Procedures (the “CJA Guidelines”), the United States District Court for the Southern District of Indiana adopts this Amended Criminal Justice Act Plan (the “Amended CJA Plan”) to prescribe the procedures and requirements for furnishing representation in the United States District Court for the Southern District of Indiana to any person financially unable to obtain adequate representation in accordance with the CJA.

I. OBJECTIVES OF THE AMENDED CJA PLAN

A. Principal Objective

The objective of this Amended CJA Plan is to attain the ideal of equality before the law for all persons. Therefore, this Amended CJA Plan shall be administered so that those accused of a crime, or otherwise eligible for services pursuant to the CJA, will not be deprived of legal services because they are financially unable to pay for adequate representation, or any element of representation necessary to an adequate defense.

B. Further Objective

The further objective of this Amended CJA Plan is to particularize the requirements of the CJA, the USA Patriot Act Reauthorization (codified in part at Section 3599 of Title 18, United States Code) (formerly the Anti-Drug Abuse Act of 1988 (codified in part at Section 848(q) of Title 21, United States Code)), and the CJA Guidelines to meet the needs of this judicial district.

C. Compliance

The court, its Clerk, the Indiana Federal Community Defender, 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 Amended CJA Plan.

II. DEFINITIONS

- A. “Appointed Attorney” includes private attorneys, the Executive Director of the Indiana Federal Community Defenders, Inc., and staff attorneys employed by the Community Defender.

- B. "Clerk" means the Clerk of the United States District Court for the Southern District of Indiana.
- C. "Community Defender" means the Indiana Federal Community Defenders, Inc., which has previously been established and recognized by the court as a community defender organization pursuant to the provisions of the CJA.
- D. "Court" means the United States District Court for the Southern District of Indiana and includes any of the District Judges and Magistrate Judges assigned to this judicial district.
- E. "Judicial Officer" includes a United States District Judge assigned to the court, a United States Magistrate Judge assigned to the court, a Judge of the United States Court of Appeals for the Seventh Judicial Circuit, or a Justice of the United States Supreme Court.
- F. "Representation" includes counsel and investigative, expert and other services.

III. PROVISION OF REPRESENTATION

A. Circumstances

1. Mandatory. 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 of 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;
 - 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;

- j. faces loss of liberty in a case, and federal law requires the appointment of counsel;
 - k. is entitled to appointment of counsel under section 4109 of Title 18, United States Code; or
 - l. is entitled to appointment of counsel under the Sixth Amendment to the Constitution.
2. Discretionary. Whenever a Judicial Officer 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 who faces 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 proceedings, or face loss of liberty;
 - e. is proposed by the United States Attorney for processing under a pretrial diversion program;
 - 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 pursuant to subsection (c) of the CJA.

B. When Counsel Shall Be Provided

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

C. Number and Qualifications of Counsel

1. Number.

- a. General Provision. More than one attorney may be appointed in any case determined by the court to be extremely difficult by the court.
- b. Defendants Charged With Crime Punishable By Death. In every criminal action in which a defendant is charged with a crime which may be punishable by death, a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services at any time either:
 - (i). before judgment, shall be entitled to two counsel, of whom at least one shall be learned in the law applicable to capital cases; or
 - (ii). after the entry of a judgment imposing a sentence of death but before the execution of that judgment, shall be entitled to the appointment of one or more attorneys and the furnishing of investigative, expert, or other reasonably necessary services as set forth in this subsection C. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two counsel.
- c. Post Conviction Proceedings Seeking to Vacate or Set Aside Death Sentence. In any post conviction proceeding under section 2254 or 2255 of Title 28, United States Code, seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of one or more attorneys and the furnishing of investigative, expert, or other reasonably necessary services as set forth in this subsection C.

- 2. Qualifications. If an appointment under subsection C(1)(b), is made before judgment, at least one attorney so appointed must have been admitted to practice in the court for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in the court. Pursuant to 18 U.S.C. § 3005, at least one of the

attorneys appointed must be knowledgeable in the law applicable to capital cases.

Pursuant to 18 U.S.C. § 3005, in assigning counsel under this section, the court shall consider the recommendation of the Indiana Federal Community Defenders, Inc.

If an appointment under subsection C(1)(b), is made after judgment, at least one attorney so appointed must have been admitted to practice in a federal court of appeals for not less than five years, and must have had not less than three years experience in the handling of federal appeals in felony cases.

In appointing counsel in federal capital appeals and federal post conviction cases, the court should consider the recommendation of the Indiana Federal Community Defenders, Inc.

Counsel appointed in federal capital prosecutions, appeals, or post conviction cases shall comply with the American Bar Association's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.

With respect to this subsection, the court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to represent, properly, the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

D. Eligibility of 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 eligibility.
2. 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.

IV. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. Criminal Justice Act Panels

1. Approval. The court shall establish for each division of the court a panel of private attorneys (hereinafter referred to as the "CJA Panel" or "CJA Panels") who are eligible and willing to be appointed to provide representation under the CJA. The court shall approve attorneys for membership on the CJA Panels for each division of the court.
2. Size. The court shall fix, periodically, the size of the CJA Panel for each division of the court. 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 a CJA Panel must be members in good standing of the federal bar of this court and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines. Attorneys who serve on a CJA Panel will also be expected to have and maintain acceptable standards of competence, judgment, character and demeanor to provide their clients with all the benefits of high quality legal counsel.
4. Equal Opportunity. All qualified attorneys shall 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.

B. Existing CJA Panels

1. Prior Establishment. The court previously established four panels of eligible private attorneys willing to provide representation to those persons eligible for services within the jurisdiction of the court pursuant to the CJA: the "Indianapolis CJA Panel", the "Terre Haute CJA Panel", the "Evansville CJA Panel" and the "New Albany CJA Panel".
2. Confirmation of Existing CJA Panels. The existing previously established CJA Panels are recognized and confirmed.

C. Application for Membership on a CJA Panel

1. Application. Application forms for CJA Panel membership shall be made available, upon request, by the Clerk.

2. Submission of Application. Completed applications for CJA Panel membership shall be submitted to the Clerk as to the Evansville and New Albany CJA Panels, or the Community Defender as to the Indianapolis and Terre Haute CJA Panels. Completed applications will be forwarded to the appropriate person(s) charged with review and decision making.

D. Appointments to a CJA Panel

1. Indianapolis and Terre Haute CJA Panels.

- a. Referral to Panel Selection Committee. Applications for membership shall first be referred to the CJA Panel Selection Committee.
- b. Appointments to the CJA Panel. Appointments to the CJA Panel shall be made after receiving recommendations from the Panel Selection Committee.
- c. The Panel Selection Committee.
 - (i). Membership. A Panel Selection Committee shall be established by the court. The Committee shall be appointed by the Chief Judge of the court and shall consist of one District Judge assigned to the court, one Magistrate Judge assigned to the court, one attorney member of the Indianapolis or Terre Haute CJA Panels, and the Executive Director of the Community Defender. The Committee shall select its own Chairperson.
 - (ii). Duties. The Panel Selection Committee shall meet at least once a year or upon call of the Chairperson to consider applications for any vacancies on the panel. The Committee shall review the qualifications of applicants and recommend, for approval by the court, those applicants best qualified to fill vacancies.

The Panel Selection Committee shall be empowered to review the operation and administration of the Indianapolis and Terre Haute CJA Panels and recommend to the court any changes deemed necessary or appropriate regarding the appointment process and panel management.

2. Evansville and New Albany CJA Panels. Appointments to the Evansville and New Albany CJA Panels shall be made by the court.

E. Term of Appointment

1. Three-Year Term. Members of CJA Panels shall serve three-year terms, except in those instances in which an attorney is appointed to fill an unexpired term.
2. Presumption of Reappointment. A private attorney who provides high quality representation as a member of a CJA Panel shall have a presumption of reappointment.
3. Appointments Subject to the Pleasure of the Court. Notwithstanding the provisions of paragraphs E(1) and 2 above, each member of a CJA Panel shall serve at the pleasure of the court.

F. Inquiry into Continued Service on a CJA Panel

1. Indianapolis and Terre Haute CJA Panels. The Executive Director of the Community Defender shall, from time to time, inquire as to the continued availability and willingness of each member of the Indianapolis and Terre Haute CJA Panels to accept future appointments.
2. Evansville CJA Panel. The District Judge or Magistrate Judge assigned to the Evansville Division shall, from time to time, inquire as to the continued availability and willingness of each member of the Evansville CJA Panel to accept future appointments.
3. New Albany CJA Panel. The District Judge or Magistrate Judge assigned to the New Albany Division shall, from time to time, inquire as to the continued availability and willingness of each member of the New Albany CJA Panel to accept future appointments.

G. Maintenance of Lists of Members of CJA Panels

The Clerk and the Community Defender shall maintain a current list of all attorneys on the Indianapolis and Terre Haute CJA Panels, and the Community Defender will maintain updated resumes detailing each member's experience in the field of criminal law. The Clerk shall maintain a current list of all attorneys on the Evansville and New Albany CJA Panels, as well as updated resumes detailing each member's experience in the field of criminal law. The membership lists must contain the current office addresses and telephone numbers for each panel attorney. The Clerk will provide a copy of these lists to each Judicial Officer in the district.

H. Management of the CJA Panels

1. The Indianapolis and Terre Haute CJA Panels. The Community Defender shall be responsible for the systematic distribution of actions to and for the management of the Indianapolis and Terre Haute CJA Panels.
2. The Evansville CJA Panel. Any Magistrate Judge assigned to the Evansville Division, or if absent, any District Judge assigned to the Evansville Division, shall be responsible for the systematic distribution of actions to and management of the Evansville CJA Panel.
3. The New Albany Division. The part-time Magistrate Judge assigned to the New Albany Division, or if absent, any District Judge assigned to the New Albany Division, shall be responsible for the systematic distribution of actions to and management of the New Albany CJA Panel.

V. APPOINTMENT OF CJA ATTORNEYS

A. Indianapolis and Terre Haute Divisions

1. Appointment of the Community Defender. Upon the determination by a Judicial Officer of a need for the appointment of counsel, the Judicial Officer shall notify the Community Defender of the need for counsel and the nature of the action, except as provide in subsection V(A)(4) below. The court will ordinarily appoint the Executive Director of the Community Defender or an attorney employed by the Community Defender.
2. Unavailability of the Community Defender. If the Community Defender, or designee, is unable to accept the appointment, the Executive Director of the Community Defender shall notify an available member of the Indianapolis or Terre Haute CJA Panel who has handled, or assisted in, an action of equal or greater complexity than the action for which appointment of counsel is required. The Executive Director shall provide the name of the selected panel member to the Judicial Officer.
3. Inappropriateness of Appointment of the Community Defender. When circumstances of an action indicate that it would be inappropriate for the Community Defender to be involved in the appointment of counsel, the court may appoint a member of the Indianapolis or Terre Haute CJA Panel without consulting the Community Defender, but shall advise the Community Defender of the appointment. When necessary, the court may appoint a qualified defense lawyer who is not a member of the Indianapolis or Terre Haute CJA Panel.

4. Required Appointment of Private Attorneys. Where practical and cost effective, the Community Defender shall insure that approximately twenty-five percent (25%) of the appointments in the Indianapolis and Terre Haute Divisions are assigned to members of the Indianapolis and Terre CJA Panels.

B. Evansville Division

Upon the determination of the need for the appointment of counsel, any District Judge or Magistrate Judge, assigned to or handling a case filed or pending in the Evansville Division, shall appoint an available member of the Evansville CJA Panel who has handled, or assisted in, an action of equal or greater complexity than the action for which appointment of counsel is required. When necessary, the court may appoint a qualified defense lawyer who is not a member of the Evansville CJA Panel.

C. New Albany Division

Upon the determination of the need for the appointment of counsel, any District Judge or Magistrate Judge, assigned to or handling a case filed or pending in the New Albany Division, shall appoint an available member of the New Albany CJA Panel who has handled, or assisted in, an action of equal or greater complexity than the action for which appointment of counsel is required. When necessary, the court may appoint a qualified defense lawyer who is not a member of the New Albany CJA Panel.

D. Emergency

In the event of an emergency, *i.e.*, weekends, holidays, or other non-working hours, a Judicial Officer may appoint any attorney from the appropriate CJA Panel. In all actions where members of the Indianapolis and Terre Haute CJA Panel are appointed out of sequence, the appointing Judicial Officer shall notify the Community Defender of the attorney's name and the appointment date.

E. Special Appointment

When a Judicial Officer presiding over a case, or the Chief Judge, if no Judicial Officer has been assigned to the case, determines that the appointment of a specific attorney is in the interest of justice, economy or continuity of representation, or there is some compelling circumstances warranting his or her appointment, the attorney may be admitted to a CJA Panel *pro hac vice* and appointed to represent the CJA defendant.

Consideration for preserving the effectiveness of the CJA 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 a CJA Panel in this judicial district in the ordinary course of Panel selection.

F. Rotation of CJA Panel Members

Appointments from the list of private Panel attorneys should be made on a rotational basis, subject to the court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panels and quality representation for each CJA defendant.

G. Record of Assignments

1. Indianapolis and Terre Haute CJA Panels. The Community Defender shall maintain a public record of assignments of private attorneys from the Indianapolis and Terre Haute CJA Panels, and, when appropriate, supporting statistical data.
2. Evansville and New Albany CJA Panels. The Clerk shall maintain a public record of assignments of private attorneys from the Evansville and New Albany CJA Panels, and, when appropriate, supporting statistical data.

H. Distribution of a Copy of This Plan

Each private attorney shall be provided a copy of this Amended CJA Plan by the Clerk upon the attorney's first appointment under the CJA or designation as a CJA Panel member. The Clerk shall maintain a current copy of the CJA Guidelines for the use of members of the CJA Panels and shall make known to such attorneys its availability.

VII. DUTIES OF APPOINTED COUNSEL

A. Standards

Services rendered by an appointed attorney shall be commensurate with those rendered if counsel were privately employed by the person.

B. Professional Conduct

Appointed counsel shall conform to the highest standards of professional conduct, including but not limited to the provisions of the Rules of Professional Conduct adopted by the Supreme Court of the State of Indiana 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* 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.

In cases involving a defendant charged with a crime punishable by death or post conviction proceedings seeking to vacate or set aside a death sentence, unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each appointed attorney shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of *certiorari* to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

VIII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

A. Pretrial Services Interview

When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial interview without counsel, financially eligible defendants will be furnished appointed counsel prior to being interviewed by a pretrial services officer.

When counsel has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release hearing (*see*, 18 U.S.C. § 3154(1)) or a detention hearing held under 18 U.S.C. § 3142(f).

B. Notice of Indictment or Criminal Information

Upon the return or unsealing of an indictment or the filing of a criminal information, the United States Attorney shall immediately mail or otherwise deliver a copy of the document to the defendant and defendant's appointed or retained counsel. If counsel for the defendant is unknown, for cases assigned to the Indianapolis or Terre Haute Divisions, a copy of the document shall be delivered to the Community Defender.

Upon the filing or unsealing of a petition to revoke or modify probation or supervised release, the Clerk shall immediately mail or otherwise deliver a copy of the document to the defendant and defendant's appointed or retained counsel. If counsel for the defendant is unknown and the case is assigned to the Indianapolis or Terre Haute Division, a copy of the document shall be delivered to the Community Defender. If counsel for the defendant is unknown and the case is assigned to the Evansville or New Albany Division, previously appointed or retained counsel shall be contacted to determine if continued representation will occur.

IX. 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 shall be used, where applicable, in all proceedings under this Amended CJA Plan.

B. Claims

1. Indianapolis Division. Absent conflicts of interest, claims for compensation of private attorneys providing representation in the Indianapolis Division under the CJA shall be submitted on the appropriate CJA form to the office of the Community Defender. That office shall review the claim form for mathematical and technical accuracy, for reasonableness, for recordation of statistical information, and for conformity with the CJA Guidelines. If correct, the Community Defender shall forward the claim form for consideration by the appropriate Judicial Officer. The court will exert its best effort to avoid delays in reviewing payment vouchers.
2. Evansville, Terre Haute and New Albany Divisions. Absent conflicts of interest, claims for compensation of private attorneys providing representation in the Evansville, Terre Haute and New Albany Divisions under the CJA shall be submitted on the appropriate CJA form to the office of the Clerk in the division where the case was assigned. The Clerk shall review the claim form for mathematical and technical accuracy, for reasonableness, for recordation of statistical information, and for conformity with the CJA Guidelines. If after review, the Clerk shall forward the claim form for consideration by the appropriate Judicial Officer. The court will exert its best effort to avoid delays in reviewing payment vouchers.

C. Limitation on Review of Claims

The CJA provides that the reviewing Judicial Officer shall fix the compensation and reimbursement to be paid to private counsel. If the court determines that a claim should be reduced, private counsel will be provided (a) prior notice of the proposed reduction with a brief statement of the reason(s), and (b) an opportunity to address the matter. However, notice need not be given to a private attorney where the reduction is based on mathematical or technical errors.


Nothing contained in this Plan or in the CJA Guidelines 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.

D. Supersession

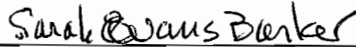
This Plan supersedes all prior Criminal Justice Act Plans of this court.

X. EFFECTIVE DATE

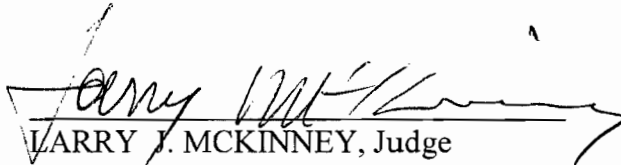
This Plan, as amended this 12th day of November 2009, shall take effect when approved by the Judicial Council of the Seventh Circuit.



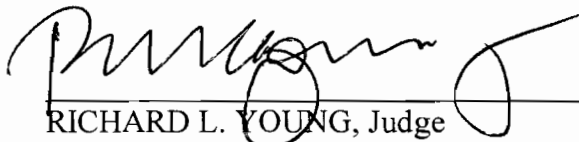
DAVID F. HAMILTON, Chief Judge
United States District Court



SARAH EVANS BARKER, Judge
United States District Court



LARRY J. MCKINNEY, Judge
United States District Court



RICHARD L. YOUNG, Judge
United States District Court



WILLIAM T. LAWRENCE, Judge
United States District Court

APPROVED BY THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT this 2nd day
of December, 2009.

s/Collins T. Fitzpatrick

by: Collins T. Fitzpatrick, Circuit Executive
Seventh Circuit