

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 (18 U.S.C. § 3006A) [CJA] and the *Guidelines for the Administration of the Criminal Justice Act*, Volume VII, *Guide to Judiciary Policies and Procedures* [CJA Guidelines], the Judges¹ of the United States District Court for the Eastern District of Wisconsin adopt the following amended Criminal Justice Act Plan [Plan] for furnishing representation in federal courts to any person financially unable to obtain adequate representation.

II. STATEMENT OF OBJECTIVES

A. The objective of this Plan is to attain the goal of equal justice under the law for all persons. This Plan, therefore, shall be administered so that those accused of crime, or those otherwise eligible for

¹Use of the term judge in this Plan includes both district judges and magistrate judges.

representation by an attorney pursuant to the CJA, will not be deprived of the right to counsel or any element of representation necessary to an effective defense.

B. The further objective of this Plan is to particularize the requirements of the CJA and the CJA Guidelines in a manner that meets the needs of this district.

III. ESTABLISHMENT OF A COMMUNITY DEFENDER ORGANIZATION

A. Pursuant to subsections (g)(1) and (g)(2)(B) of the CJA, 18 U.S.C. § 3006A, and the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes*, Volume VII, *Guide to Judiciary Policies and Procedures*, Federal Defender Services of Eastern Wisconsin, Inc., a Community Defender Organization [Federal Defender], shall be designated to provide representation in the Eastern District of Wisconsin. The offices and staff of Federal Defender Services of Eastern Wisconsin, Inc. shall be located and housed in the United States Courthouse and Federal Building at 517 East Wisconsin Avenue, Milwaukee, Wisconsin unless otherwise

ordered by the court. A copy of the Bylaws of Federal Defender Services of Eastern Wisconsin, Inc. shall be found as Appendix B to this CJA Plan.

Upon organization of Federal Defender Services of Eastern Wisconsin, Inc., a Community Defender Organization, the Federal Defender shall notify this court that he/she is available to accept appointments for representation. Under the direction of the Board of Directors of Federal Defender Services of Eastern Wisconsin, Inc., the Federal Defender shall be responsible for the management and supervision of the office of Federal Defender Services of Eastern Wisconsin, Inc. Accordingly, the Federal Defender shall be appointed in all cases assigned to Federal Defender Services of Eastern Wisconsin, Inc. for subsequent assignment to Assistant Federal Defenders at the discretion and under the supervision of the Federal Defender.

The Federal Defender shall provide each private attorney with a current copy of this Plan upon the attorney's first appointment under the CJA or upon designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Federal Defender shall

maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel and shall make its availability known to such attorneys.

B. Federal Defender Services of Eastern Wisconsin, Inc., acting by and through its Board of Directors and the Federal Defender, shall submit, to the Director of the Administrative Office of the United States Courts or his authorized representative at such times and in the format prescribed, reports of the activities of the office together with its financial position and proposed budget.

C. In accordance with and subject to the provisions of this Plan and further orders of the Court, authority to administer the Criminal Justice Act is herewith assigned and delegated to Federal Defender Services of Eastern Wisconsin, Inc.

D. It shall be the responsibility of the Federal Defender, subject to the approval of the court, to notify panel attorneys of appointments and the first appearance date.

E. Neither the Federal Defender nor any staff attorney appointed as an Assistant Federal Defender may engage in the private practice of law.

IV. DETERMINATION OF ELIGIBILITY FOR REPRESENTATION

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

B. In every case in which appointment of counsel pursuant to 18 U.S.C. § 3006A(a) is appropriate, it is the duty of the judge to advise the party of his or her right to counsel. The judge shall appoint counsel promptly if it is found that the party is financially unable to obtain an attorney, unless the party waives his or her right to be represented by counsel.

C. Representation *shall* be provided for any financially eligible person who:

1. is charged with a felony or Class A misdemeanor;
2. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
3. is under arrest, when such representation is required by law;
4. is charged with a violation of probation, parole, or supervised release or faces modification, reduction, or enlargement of a condition or extension or revocation of a term of probation, parole, or supervised release;

5. is subject to a mental condition hearing under Chapter 313 of Title 18;
6. is in custody as a material witness;
7. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;
8. has been called as a witness before a Grand Jury or a court that has the power to compel testimony, and there is reason to believe the witness risks self-incrimination, loss of liberty, or contempt of court;
9. is the subject of federal law enforcement interest and faces the risk of federal charges;
10. is entitled to appointment of counsel under the Sixth Amendment to the Constitution;
11. faces loss of liberty in a case, and federal law requires the appointment of counsel.

D. Whenever a judge determines that the interests of justice so require, representation *may* be provided for a financially eligible person who:

1. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
2. is seeking relief under 28 U.S.C. § 2241, 2254, or 2255;

3. is proposed by the United States Attorney for processing under a pretrial diversion program;
4. is financially eligible for ancillary matters appropriate to the proceedings pursuant to subsection(c) of the CJA;
5. is under federal supervision or in the custody of the Federal Bureau of Prisons, or is otherwise in contact with federal law enforcement officials, whenever the interests of justice require and the Court determines that assignment of counsel would be of assistance to the Court.

V. PROVISIONS FOR FURNISHING COUNSEL

A. This Plan provides for the furnishing of legal services by the Federal Defender's office and for the continued appointment and compensation of private counsel in a substantial proportion of cases.

B. When appointing counsel under this Plan, the Court should be mindful of directives from the Judicial Conference of the United States. When practicable, private attorney appointments should be made in at least 25% of the cases.

C. The Court, in cooperation with the Federal Defender, will make such arrangements with federal, state, and local investigative and police agencies as will adequately assure that at the earliest practicable

stage, persons arrested under circumstances where representation is required by federal law may promptly have counsel furnished to them.

D. Prior to a defendant's first scheduled court appearance, if it becomes known that the defendant desires representation of an attorney, but claims to be unable to afford such services, the Federal Defender shall be notified. If feasible, in order to conserve the time of the Court, a staff attorney of the Federal Defender or a panel attorney shall then advise the defendant of his/her right to representation by counsel and to appointment thereof if he/she is unable financially to retain an attorney. If in the judgment of the panel or staff attorney of the Federal Defender, based upon inquiry of the defendant, a judge is likely to appoint counsel, with or without requiring payments by defendant toward the cost of such representation, said attorney shall commence representation.

E. In the interests of justice, the Federal Defender is authorized under this Plan, subject to the approval or ratification of the court, to initially represent all persons arrested in the district before the first appearance and at bail hearings or arraignments where, in the judgment of the Federal Defender, the defendant is eligible or likely to be determined

eligible for assigned counsel by the court and the defendant will likely be assigned to the Federal Defender or a panel attorney for representation.

F. The judge before whom a case is pending may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

G. If at any time after the appointment of counsel, a judge finds that the party is financially able to obtain counsel or make partial payment for the representation, the judge may terminate the appointment of counsel or recommend that any funds available to the party be ordered paid as provided in 18 U.S.C. § 3006A(f).

H. If at any stage of the proceedings, a judge finds that the party is financially unable to continue to pay retained counsel, the judge may make an original appointment of counsel in accordance with the general procedure set forth in this Plan.

I. 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.

VI. CRIMINAL JUSTICE ACT PANEL

A. Formation of a Standing Committee to Oversee the Criminal Justice Act Panel

1. The judges of the United States District Court for the Eastern District of Wisconsin hereby create a standing committee to oversee the CJA Panel. This committee shall consist of five (5) attorneys, each a voting member, who possess sufficient experience and interest in the federal criminal justice system to administer the CJA Panel. Four members of the standing committee shall be selected by a majority vote of the judges of the court. Members of the committee shall serve without compensation.

2. The Federal Defender or his or her representative shall serve as a permanent member of the committee.

3. In addition to the Federal Defender or his or her representative, two (2) of the members of the standing committee will be appointed for a two year term and the remaining two (2) members for a

three year term. Thereafter, appointments will be made for three year terms.

4. The standing committee shall meet formally at least once a year and at such additional times as may be required under this Plan. In addition to reviewing Panel membership, the committee shall identify and define any operating difficulties encountered in the administration of the Panel and make recommendations to the court for appropriate changes.

5. The standing committee shall act consistent with the requirements of Appendix A to this Plan in making recommendations concerning selection to the Panel and recommendations concerning disputes involving claims for compensation or other services provided under this Plan.

6. The standing committee shall also coordinate with the Federal Defender's office in providing training for the CJA Panel. Such training shall include correspondence with Panel attorneys on substantive and procedural changes in the law, local rules, and other matters affecting Panel attorneys, and shall also include regularly scheduled seminars for Panel attorneys as well as members of the bar.

7. The standing committee will be permitted to use the staff of the Federal Defender for clerical and record-keeping matters. However, the standing committee is not authorized to make requests for services which would incur financial obligations without prior approval of the court.

B. Formation of the CJA Panel

1. CJA Panel attorneys must be admitted to practice before the United States District Court for the Eastern District of Wisconsin and the United States Court of Appeals for the Seventh Circuit. In addition to bar membership, Panel attorneys should have prior federal and/or state criminal trial experience, significant involvement in serious or complex criminal cases, knowledge of the Sentencing Guidelines and the Bail Reform Act, knowledge of other relevant areas of federal criminal practice, and/or clinical experience or participation in trial advocacy programs.

2. Each Panel attorney must carry professional malpractice insurance with minimum liability coverage of \$200,000 for each occurrence.

3. The Panel shall consist of attorneys recommended by the standing committee and approved by a majority of the judges of the district, pursuant to the procedures outlined in Appendix A. A majority of the judges of the district may remove a member of the Panel at any time.

C. Obligations of Panel Members

In addition to meeting the training and qualification requirements established by the standing committee, Panel members are expected to:

1. Have an office procedure in place that facilitates the prompt receipt of information concerning appointment in a CJA case.
2. Be qualified and willing to represent an assigned client through the appellate process unless or until relieved.
3. Promptly notify the standing committee, in writing, in the event any action is taken by any court or bar affecting the standing of the attorney to practice before such court or bar.
4. Participate actively in the representation of eligible individuals.

5. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct.

6. 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.

7. Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari (as governed by Seventh Circuit Rules or CJA Plan provisions concerning representation on appeal), is closed; substitute counsel has filed a notice of appearance; an order has been entered allowing or requiring the person represented to proceed pro se; or the appointment is terminated by order of the court.

VII. ASSIGNMENT OF CASES TO THE CJA PANEL

A. The Federal Defender shall be responsible for overseeing the assignment of cases to Panel attorneys.

B. Selection of attorneys for individual cases shall be handled by the Federal Defender. To facilitate this process, the appropriate court unit shall notify the Federal Defender of the need for counsel as expeditiously as possible.

C. In the normal course, the Federal Defender shall locate counsel by calling from the appropriate list of attorneys in rotational order. The Federal Defender may go out of rotation at the direction of the court or for a case which requires particular expertise, is of particular complexity or severity, or involves a client with unusual needs.

D. Attorneys on the emeritus panel [see Appendix A(I)(B)] may be called for cases which require particular expertise, are of particular complexity or severity, or involve clients with unusual needs. They may also inform the Federal Defender from time to time of their desire to take a case and to be considered for the next available assignment.

E. In the interests of justice, where continuity of representation is a factor or other special circumstances exist, the court may assign an attorney who is not on the panel. Consideration for preserving the integrity of the panel selection process requires that such appointments 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.

F. The Federal Defender shall maintain a master list of CJA appointments, which will include the date of each appointment, the case name, and the date of each refusal ("pass") by a Panel attorney.

G. If the Federal Defender determines that a Panel member has repeatedly passed assignments, the Federal Defender may refer the name of the attorney to the standing committee. The standing committee shall then consider the information provided by the Federal Defender and make such further inquiry as it deems appropriate.

H. The Federal Defender shall also maintain a public record of assignments to the Federal Defender's office and to the CJA Panel, as well as current statistical data reflecting the respective percentages of cases assigned to the Federal Defender and to private counsel.

VIII. INVESTIGATIVE, EXPERT, AND OTHER SERVICES

Counsel (whether or not appointed under the Act) for a party who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense in his or her case may request such services in an *ex parte* application before a judge as provided in 18 U.S.C. § 3006A(e)(1). Upon finding that the services are necessary and that the person is financially unable to obtain them, the judge shall authorize appointed counsel to obtain the services.

Counsel may obtain, subject to statutory limitations as to dollar amount [see 18 U.S.C. § 3006A(e)(2)] and later review, investigative, expert, or other services without prior authorization. Expenditures without prior court authorization, however, are not generally favored.

Counsel shall comply with all provisions regarding financial limitations and requests for services, as set forth in 18 U.S.C. § 3006A(e), and any guidelines or regulations approved by the court or the Judicial Conference of the United States.

In the event that a judge indicates an intention not to approve, in whole or in part, compensation for services requested or rendered under

this paragraph, counsel may request review and recommendation by the standing committee pursuant to the procedures set forth in Appendix A.

IX. COMPENSATION

Payments of fees and expenses to counsel appointed under this Plan, other than to the Federal Defender's office, and payments for investigative, expert, and other expenses incurred shall be made in accordance with any statutory limitations, with such rules, regulations, and guidelines as have been or may be prescribed from time to time by the Judicial Conference of the United States, and with the fiscal policies of the Administrative Office of the United States Courts. No appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a party unless such payment is approved by order of court.

Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form to the office of the Federal Defender. That office shall review the claim form for mathematical accuracy and for conformity with the CJA

Guidelines and, if correct, shall forward the claim form for consideration by the appropriate judge.

Except in cases involving mathematical or technical corrections, no claim for compensation submitted for services provided under the CJA shall be reduced without affording counsel the opportunity to be heard as provided below.

In any case where a judge has a question or concern with the amount of compensation claimed, the voucher shall be referred to the standing committee for review and recommendation before final action on the claim is taken. The judge may, at the time the voucher is submitted to the standing committee, provide the committee with a statement describing questions or concerns with the voucher. Counsel shall be given the opportunity to provide information or documentation relevant to the voucher and questions or concerns raised by the judge. The standing committee shall act in accordance with the procedures outlined in Appendix A and issue a written recommendation to the judge.

Notwithstanding the procedure described above, a judge may in the first instance contact counsel to inquire regarding questions or concerns

about a claim for compensation. In the event that the matter is resolved to the satisfaction of the judge and Panel member, the claim for compensation need not be referred to the standing committee for review and recommendation.

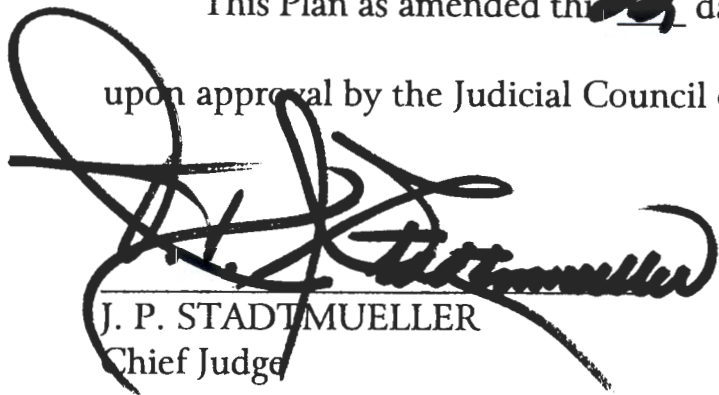
X. COMPLIANCE

1. The Court, the Clerk of the Court, the Probation Office, the Federal Defender's office, and private attorneys appointed under the CJA shall comply with all statutory requirements, with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services, and with this Plan.

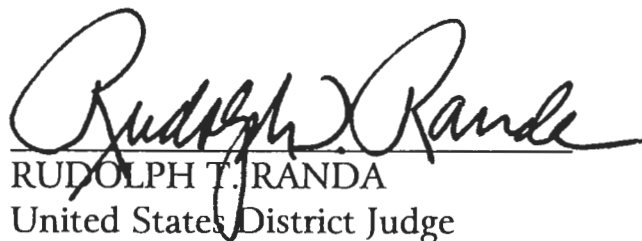
XI. EFFECTIVE DATE

This Plan as amended this 29th day of April, 1999, shall take effect

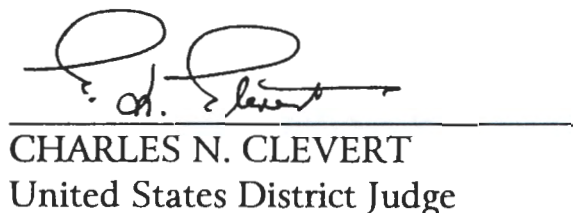
upon approval by the Judicial Council of the Seventh Circuit.



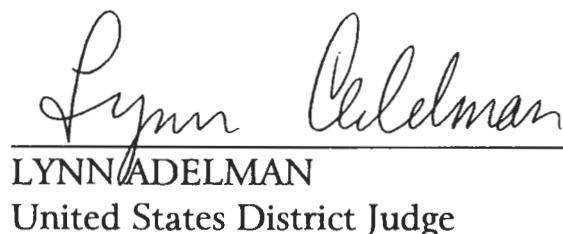
J. P. STADTMUELLER
Chief Judge



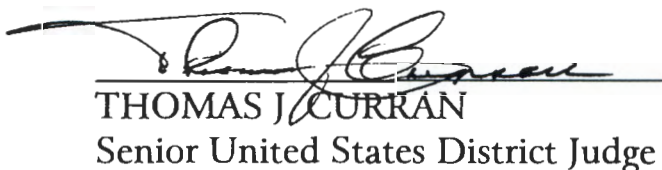
RUDOLPH T. RANDA
United States District Judge



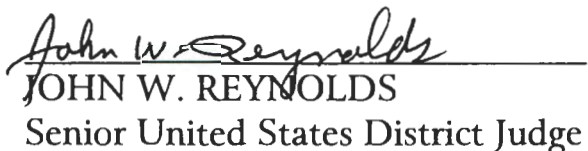
CHARLES N. CLEVERT
United States District Judge



LYNN ADELMAN
United States District Judge



THOMAS J. CURRAN
Senior United States District Judge



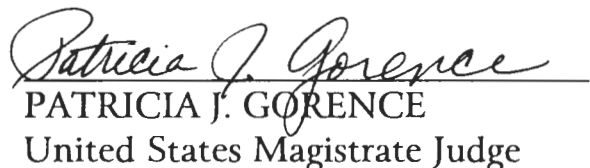
JOHN W. REYNOLDS
Senior United States District Judge



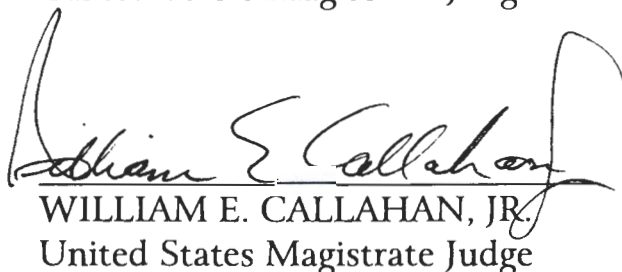
MYRON L. GORDON
Senior United States District Judge



AARON E. GOODSTEIN
United States Magistrate Judge



PATRICIA J. GORENCE
United States Magistrate Judge



WILLIAM E. CALLAHAN, JR.
United States Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
CRIMINAL JUSTICE ACT PLAN

APPENDIX A

STANDING COMMITTEE FUNCTIONS

I. CREATION AND MAINTENANCE OF THE CJA PANEL OF PRIVATE ATTORNEYS

A. The standing committee shall solicit applications for the CJA Panel from interested members of the bar of the Eastern District of Wisconsin including attorneys who have in the past participated in providing representation under the CJA. The standing committee shall otherwise publicize and seek applications for Panel attorneys in a way that facilitates and encourages diversity and geographic balance.

B. The standing committee shall create an emeritus panel. Attorneys will be eligible for inclusion on the emeritus panel when they have served with distinction on the active panel for at least seven years and wish to be active in

CJA matters but are no longer able or no longer needed to take a significant number of assignments.

C. The standing committee shall compile and review all applications and shall prepare lists of applicants who possess the qualifications required for inclusion on the panel. The standing committee shall also compile lists for appellate, emeritus, and pending application panels.

D. The standing committee shall solicit comment from the court concerning the individuals included on the compiled lists. After receiving such comment and such further comment as the committee deems necessary, and after further discussion, the committee shall, by majority vote, make recommendations to the court concerning which prospective Panel members should be included on the final Panels. Final decisions regarding membership on or removal from the Panel will be made by a majority of the judges of the district. The Panel shall consist of not less than fifty members. The pending applications panel will have no size restriction and will include those otherwise qualified individuals who were not included due to size limitations or a need for further training and experience.

E. The standing committee shall monitor the operation of the Panel to determine whether it meets the needs of current case load requirements. Additions to the Panel shall be filled through the approval of new applications

and by moving attorneys from the pending applications list to the regular Panel. New applications shall be collected by the Federal Defender and referred to the standing committee for periodic review.

F. The standing committee shall periodically submit to the court names of attorneys recommended for inclusion on the Panel. Final decisions on inclusion will be made by a majority of the judges.

G. Every two years, the committee shall poll attorneys on the Panel to determine whether any individuals wish to voluntarily terminate service on the Panel. The vacancies shall be filled in the aforementioned manner.

II. RESPONSIBILITIES OF PENDING APPLICATIONS PANEL

Before being placed on the pending applications panel, the standing committee shall determine whether the applicant is willing to provide “second chair” assistance to Panel attorneys without compensation. The standing committee shall keep a list of those applicants who are willing to undertake “second chair” responsibilities and shall provide those names to members of the Panel. In cooperation with the Federal Defender, the standing committee will coordinate requests for “second chair” assistance with individuals on the pending applications list. Information concerning the performance of the “second chair”

attorney will be provided to the standing committee for consideration when evaluating changes in Panel membership.

III. TRAINING REQUIREMENTS

The standing committee shall, in conjunction with the Federal Defender, develop a regular program for providing training for members of the CJA Panel and pending applications list. The standing committee shall establish training requirements and shall monitor compliance of Panel members and individuals on the pending applications list.

IV. VOUCHER REVIEW

Every Panel attorney has a right to request that the standing committee review and make appropriate recommendations when a judge has indicated a concern with a claim for compensation or for services provided pursuant to 18 U.S.C. § 3006A(e). The standing committee shall meet as soon as practical to review the disputed claim and in no event more than thirty (30) days after receipt of the request. The standing committee shall consider the record and the comments submitted by the court and counsel in making its recommendation. The standing committee shall submit its recommendation to the court and counsel within sixty (60) days of the request for review. In making its recommendation the committee shall consider definitions or standards describing

“extending or complex” cases as published by the Judicial Conference of the United States. In addition, the committee shall consider, among other factors, the following:

1. Whether the case goes to trial or ends with a guilty plea.
2. The number of defendants in the case.
3. Unusual characteristics of the defendant (unable to speak English, mental health issues, particularly uncooperative).
4. Location of the defendant (e.g., how much travel is required for counsel to meet with the defendant).
5. Type and number of crimes charged.
6. Complexity or novelty of legal issues (requiring an unusually great amount of legal research).
7. Number of witnesses presented by all parties at the trial or hearing.
8. Amount of pretrial discovery and investigation required, number of documents, open or closed file case.
9. Number of motions in the case; number and length of hearings on motions and other hearings; nature of hearings (evidentiary or mere argument).
10. Amount of trial preparation required.
11. Length of trial.
12. Length and complexity of sentencing hearing and severity of potential sentence.

Following receipt of the standing committee's report and recommendation, the judge may request additional information from counsel. The judge shall take final action on the claim for compensation within fifteen (15) days following receipt of the standing committee's report and recommendation.

V. COST CONTAINMENT MEASURES

The standing committee shall explore and develop cost containment measures for representation under the CJA. The standing committee shall specifically explore and discuss the following possibilities:

1. Use of a pool of experts and investigators who have agreed, in nonspecialized cases, to provide their services at a discounted or most reasonable cost.
2. Use of a brief bank developed by the Federal Defender and made available to Panel attorneys with a topics index for the brief bank being made available to all Panel attorneys.
3. Development of a "pro bono" panel of attorneys who are willing to volunteer time to research and write motions, review documents, and provide limited investigation.
4. Creation of a panel of paralegals and document technicians who have agreed to work at a discounted rate and who will be available to provide assistance in summarizing transcripts and organizing documents in complex litigation cases.
5. Providing assistance to Panel attorneys in identifying "government rates" for transportation and travel related expenses for attorneys, witnesses, and experts through the Panel administration team in the Federal Defender's office.

6. Establishing a liaison with the United States Attorney's Office to discuss ways to lessen costs associated with bail requests and discovery disputes.
7. Creation of a liaison with the United States Marshals Service to discuss ways to lessen costs associated with travel to visit clients housed in outlying jails.
8. Creation of a liaison with Pretrial Services and the United States Probation Department to develop cost containment measures with those agencies.

VI. YEAR-END REPORT

The standing committee shall prepare a brief year-end report to be provided to the Chief Judge of the Eastern District of Wisconsin describing the fiscal year operation of the Panel. The Federal Defender shall provide relevant statistical information to the standing committee for inclusion in its yearly report of operations. The report of operations shall cover the fiscal year ending September 30 and shall be submitted not later than December 31.