

United States District Court
Western District of Wisconsin
Robert W. Kastenmeier Courthouse
120 North Henry Street, Room 560
Madison, Wisconsin 53703

Chambers of
William M. Conley
District Judge

Telephone
608-264-5087

May 9, 2013

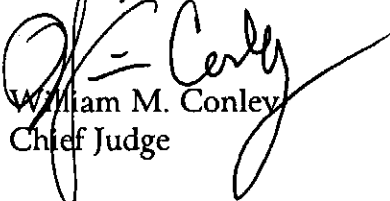
Ms. Cait T. Clarke
Assistant Director
Office of Defender Services
ODS
Administrative Office of the U.S. Courts
One Columbus Circle, N.E.
Washington, DC 20544

Re: Criminal Justice Act Plan

Dear Ms. Clark:

Enclosed please find a copy of the amended Criminal Justice Act Plan for the Western District of Wisconsin, which is being provided to your office pursuant to 18 U.S.C. § 3006A(a). The plan has been approved by a reviewing panel consisting of the members of the Judicial Council of the Seventh Circuit.

Sincerely,



William M. Conley
Chief Judge

WMC/mfh

Enc.

JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT

219 SOUTH DEARBORN STREET

CHICAGO, ILLINOIS 60604

COLLINS T. FITZPATRICK

CIRCUIT EXECUTIVE

PHONE (312) 435-5803

April 8, 2013

Chief District Judge William M. Conley
United States District Court
Western District of Wisconsin
Robert W. Kastenmeier United States Courthouse
120 North Henry Street, Room 560
Madison, WI 53703-4304

Dear Bill:

The Judicial Council of the Seventh Circuit has approved the Criminal Justice Act Plan for the United States District Court for the Western District of Wisconsin. Pursuant to 18 U.S.C. § 3006A(a), please notify the Administrative Office of the United States Courts of the Amended Plan

Sincerely,



Collins T. Fitzpatrick

CTF:tlw

cc: Chief Judge Frank H. Easterbrook
Peter A. Oppeneer
Gino J. Agnello

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

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 as amended (18 U.S.C. § 3006) and the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, the judges of the United States District Court for the Western District of Wisconsin adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation.

II. OBJECTIVES

A. The Plan's primary objective is to attain equality before the law for all persons. Therefore, this Plan shall be administered to ensure that every person accused of a crime or otherwise eligible for services pursuant to the CJA or other applicable federal statutes, who lacks the financial ability to obtain adequate representation, receives every element of representation necessary to an adequate defense.

B. This plan's secondary objective is to particularize the requirements of the CJA and the *CJA Guidelines* in a way that meets the needs of this district.

III. DETERMINATION OF ELIGIBILITY FOR REPRESENTATION

A. The determination of a person's eligibility for representation under the CJA is a judicial function to be performed by a United States judge or magistrate judge after

making appropriate inquiry into the person's financial situation. "Representation" includes counsel and investigative, expert, and other services necessary for an adequate defense.

B. Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a United States 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. Representation *shall* be provided for any financially eligible person who:

- a. is charged with a felony or a Class A misdemeanor;
- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
- c. 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 change of a term or condition of probation, parole or supervised release;
- d. is under arrest, when such representation is required by law;
- e. is subject to a mental condition hearing under Chapter 313 of Title 18;
- f. is in custody as a material witness;
- g. 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;
- h. is entitled to appointment of counsel under the Sixth Amendment to the Constitution;
- i. faces loss of liberty in a case and federal law requires the appointment of counsel; or

- j. is seeking to set aside or vacate a death sentence under section 2254 or 225 of title 28, United States Code.

D. Whenever a United States 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 under 28 U.S.C. §§ 2241, 2254 or 2255;
- c. is charged with civil or criminal contempt and faces loss of liberty;
- d. is proposed by the United States attorney for processing under a pretrial diversion program;
- e. is held for international extradition under chapter 209 of title 18, United States Code;
- f. is financially eligible for ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA;
- g. 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, 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;
- h. is the subject of federal law enforcement interest and faces the risk of federal charges;
- i. has standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute and meets the requirements of 18 U.S.C. § 1983(b)(1) or (2); or
- j. is under federal supervision or in the custody of the Federal Bureau of Prisons, or is otherwise in contact with federal law enforcement officials, when the court determines that assignment of counsel would be of assistance to the court and in the interests of justice.

E. 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).

F. 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 this plan.

G. 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 one or more attorneys. Due to the complex, demanding and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.

IV. COMMUNITY DEFENDER ORGANIZATION AND CJA PANEL

A. Federal Defender Services of Wisconsin, Inc., previously established in this district pursuant to the provisions of the CJA and the court's CJA Plan, amended March 25,

2003, is hereby recognized as a community defender organization for this district. The community defender organization shall be capable of providing legal services throughout this district and shall maintain an office in Madison, Wisconsin. Federal Defender Services of Wisconsin, Inc. shall continue to operate pursuant to the provisions of subsection (g)(2)(B) of the CJA, as well as the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes*, Volume VII, *Guide to Judiciary Policies and Procedures*. A copy of the Bylaws of Federal Defender Services of Wisconsin, Inc. is attached at Appendix I of this CJA Plan.

B. Under the direction of the Board of Directors of Federal Defender Services of Wisconsin, Inc., the community defender shall be responsible for the supervision and management of the community defender organization.

C. Representation under this plan shall be provided by the community defender's office and by a court-approved panel of private attorneys (the CJA Panel). However, when the community defender, 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. To preserve the integrity of the panel selection process, such appointments shall be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, must possess such qualities as would qualify him or her for admission to the district's CJA panel in the ordinary course of panel selection. *See Appendix II.*

D. The community defender is authorized to manage, administer and assign cases to the CJA Panel, subject to the provisions of this Plan and the Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act found at Appendix II. Private attorneys from the CJA Panel shall be assigned, on an annual basis, at least 25% of the cases in which the accused is determined to be financially eligible for representation under the CJA.

E. In any instance in which a movant is alleging constitutional ineffectiveness of trial counsel as a basis for post conviction relief, the movant was represented in this court by the community defender's office and the court determines that the appointment of counsel is necessary, the court will appoint a private attorney from the CJA Panel directly without asking the community defender to do so.

F. The community 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 CJA Panel. In addition, the community 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.

G. It shall be the responsibility of the community defender to notify panel attorneys of appointments and the first appearance date.

H. In the interests of justice, the community defender is authorized to represent all persons arrested in this district before the first appearance and at bail hearings or arraignments where, in the judgment of the community defender, the defendant is eligible or likely to be found eligible for CJA counsel by the court.

I. When requested to do so by the Director of the Administrative Office of the United States Courts, Federal Defender Services of Wisconsin, Inc., acting by and through its Board of Directors and the community defender, shall submit a report of the activities of the office, its financial position and proposed budget.

J. Neither the community defender nor any of the organization's staff attorneys may engage in the private practice of law.

V. DUTIES OF APPOINTED COUNSEL

A. Appointed counsel shall render the same services to a person found eligible for CJA counsel as he or she would render if privately employed by the person.

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

C. 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. Once 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 court order. The court may, in the interest of justice, substitute one appointed attorney for another at any stage of any proceeding in this court.

E. If, at any time after appointment, counsel obtains non-privileged 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, counsel shall advise the court.

VI. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

A. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall 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. In cases in which the person indicates that he or she is not able, the agency shall notify the federal community defender, who shall discuss with the person the right to representation and right to appointed counsel. If appointment of counsel seems likely, then the federal community defender shall assist in the completion of a financial affidavit (CJA Form 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. Pretrial services officers shall not interview a person who is in custody or otherwise may be entitled to counsel under the CJA until counsel has been appointed or retained to represent the person.

C. 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, shall immediately mail or otherwise deliver a copy of the document to appointed counsel (or to the defendant if s/he is without counsel),

at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

VII. INVESTIGATIVE, EXPERT, AND OTHER SERVICES

Counsel (whether or not appointed under the CJA) 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.

Subject to statutory dollar limitations (see 18 U.S.C. § 3006A(e)(2)) and later review, counsel may obtain investigative, expert, or other services without prior authorization, although the court disfavors expenditures without prior authorization.

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.

VIII. COMPENSATION

Payments of fees and expenses to counsel appointed under this Plan, other than to the community defender's office, and payments for investigative, expert, and other expenses incurred shall be made in accordance with statutory limitations, with such rules, regulations, and guidelines that have been or may be prescribed 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 for assisting in the representation of a party unless such payment is approved by order of court.

CJA panel attorneys should submit claims for compensation, on the appropriate CJA form, to the office of Federal Defender Services of Wisconsin, Inc. Vouchers should be submitted no later than 45 days after the final disposition of the case, unless good cause is shown. The community defender's office shall review the claim form for mathematical and technical accuracy and for conformity with the *CJA Guidelines*, and, if correct, shall forward the claim form to the appropriate judge. The court will exert best efforts to avoid delays in reviewing payment vouchers and shall strive to submit them for further processing within 30 days of submission.

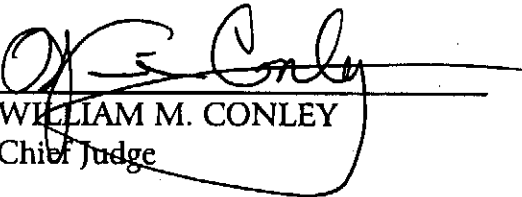
If the court determines that a claim should be reduced, before reducing the claim it will notify counsel of the proposed reduction and the reasons therefor, and will give counsel the opportunity to address the matter. However, notice need not be given when the reduction is based on mathematical or technical errors.


IX. COMPLIANCE


The court, its clerk, the community defender's office 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.

X. EFFECTIVE DATE

This Plan, as amended this 4th day of February, 2013, shall become effective when approved by the Judicial Council of the Seventh Circuit, and shall supersede all prior Criminal Justice Act Plans of this court.


WILLIAM M. CONLEY
Chief Judge


BARBARA B. CRABB
District Judge


STEPHEN L. CROCKER
Magistrate Judge

Approved by the Judicial Council of the Seventh Circuit on _____.

FRANK EASTERBROOK
Chief Judge, Seventh Circuit Court of Appeals

APPENDICES:

- I. Bylaws of the Community Defender Organization
- II. Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act

APPENDIX ~~E~~

BYLAWS OF FEDERAL DEFENDER SERVICES OF EASTERN WISCONSIN, INC.

ARTICLE I General Provisions

The purposes of this Corporation shall be as set forth in the Articles of Incorporation of the Corporation. These Bylaws specify various matters affecting the operations and governance of the Corporation.

ARTICLE II Members

The Corporation shall have no members but shall be managed by its Board of Directors as set forth in Article III of these Bylaws.

ARTICLE III Directors

Section 1. Powers.

(a) Subject to the limitations of the Articles of Incorporation of the Corporation and the laws of the State of Wisconsin, the approval or other action of the district judges and the magistrate judges of the United States District Court for the Eastern District of Wisconsin (hereinafter the "Judges") as provided herein, and other limitations of these Bylaws, the affairs of the Corporation shall be managed by the Board of Directors.

(b) An action by the Judges shall be evidenced by a writing addressed to an Officer of the Corporation from the Chief Judge acknowledging that action by the Judges has occurred and setting forth the nature of that action.

(c) Without limiting the generality of the foregoing, the Board of Directors shall have the following powers:

A. To select and remove all Officers as set forth in Article IV of these Bylaws and, in their discretion, to select and remove such agents and employees of the Corporation, including, without limitation, the Executive Director, as they may deem appropriate;

B. To conduct, manage and control the affairs and business of the Corporation, and to make such rules and regulations therefore not inconsistent with law, with the Articles of Incorporation or these Bylaws, as they may deem best;

C. To conduct meetings as set forth in Section 7 of this Article;

D. To authorize financial transactions as set forth in Article V of these Bylaws; and

E. To indemnify a Director, Officer or employee of the Corporation as set forth in Article VII of these Bylaws, and to purchase insurance for such purposes as the Board of Directors deems appropriate, including but not limited to attorney malpractice, corporate director liability, employee defalcation, or general liability.

Section 2. Number; Quorum and Action of Directors. The number of Directors of this Corporation shall be nine (9) until a different number is determined from time to time by the Judges, but which number shall not be less than seven (7) or more than eleven (11). A majority of the Directors in office immediately before a meeting begins shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act or decision of the Board of Directors, unless the act of a greater proportion is required by law, the Articles of Incorporation or these Bylaws.

Section 3. Term of Office. Directors shall be appointed to serve three (3) year terms, except that the initial Board of Directors shall be divided into three (3) groups. One group shall serve an initial one (1) year term and shall be composed of three (3) Directors. A second group shall serve an initial two (2) year term and shall be composed of three (3) Directors. A third group shall serve a full three (3) year term and shall be composed of three (3) Directors. Directors elected thereafter shall hold office for a term of three years or until such Director's successor shall have been duly elected or until such Director's death, resignation or removal.

Section 4. Successors and Vacancies. Successors and vacancies in the Board of Directors resulting from the death, incapacity, resignation, expiration of term of office, removal or otherwise, shall be filled by the Judges. Unless the vacancy occurs by reason of the expiration of a term, the person appointed shall serve for the remainder of the term vacated.

Section 5. Resignation. A Director may resign at any time by giving written notice to the Secretary of the Corporation, who shall advise the Board of Directors of such resignation. Such resignation shall take effect at the time specified therein or, if no time is specified, upon receipt of the resignation by the Secretary of the Corporation. Unless otherwise specified therein, acceptance of a resignation shall not be necessary to make it effective.

Section 6. Removal. Any individual Director may be removed from office, with or without cause, by the Judges. Prior to taking such action, the Judges may consider the recommendation of the Board of Directors.

Section 7. Meetings.

(a) Annual Meetings. A regular annual meeting of the Board of Directors shall be held on such date and at the time and place within or without the State of Wisconsin during the month of October as may be designated by the Board of Directors or the Chairperson of the Board of Directors, for the purpose of electing Directors and Officers and the transaction of such other business as may properly come before the meeting. In the event of failure, through oversight or otherwise, to hold the annual meeting of Directors in any year during the month herein provided, the meeting, upon waiver of notice or upon due notice, may be held at a later date, and any election held or business transacted at such later meeting shall be as valid and effectual as if such election was held and business transacted at the annual meeting during the month herein provided.

(b) Other Regular Meetings. Other regular meetings of the Board of Directors may be held at such regularly recurring time and place as the Board of Directors may designate.

(c) Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called by or at the request of the Chairperson, the Vice Chairperson, or any three (3) Directors at any time. The person or persons authorized to call special meetings of the Board of Directors shall designate the time and place, either within or without the State of Wisconsin, which shall then be the time and place for holding such special meeting.

Section 8. Notices. With the exception of regular meetings as set forth in Sections 7(a) and 7(b) of this Article, notice of any meeting of the Board of Directors, in each case specifying the place, date and hour of the meeting, shall be given to each Director by written notice delivered in person, by telegraph, teletype, facsimile or other form of wire or wireless communication, or by mail or private carrier, not more than thirty (30) days prior to the date of the meeting, but at least forty-eight (48) hours before the time set for such meeting or, if notification is by mail, by mailing such notice at least five (5) days before the date set for such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage prepaid, addressed to the Director at the Director's address as it appears on the records of the Corporation. Neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 9. Waiver of Notice. A Director of the Corporation may waive any notice required by the Articles of Incorporation, these Bylaws, or any statute before or after the meeting. The waiver shall be in writing and signed by the Director entitled to the notice, and contain the same information that would have been required to be included in a proper notice of the meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting and objects thereto to the transaction of any business because the meeting is not lawfully called or convened. All such waivers shall be filed with and made a part of the minutes of the meeting.

Section 10. Action Without Meeting.

(a) An action required or permitted to be taken at a Board meeting may be taken without a meeting if a consent in writing setting forth the action is signed by at least two-thirds of the Directors then in office. A consent under this Section has the same force and effect as a vote of the Board of Directors taken at a meeting. The written action is effective when signed by the required number of Directors, unless a different effective date and time are specified in the written consent.

(b) If a written action is taken by less than all Directors, all Directors must be noticed immediately of the text of the written consent and of its effective date and time. When a written action is taken by less than all Directors, the written action shall be effective on the date specified in the written consent or on the 10th day after the date on which a written notice provided herein is given, whichever is later. A Director will not be liable for any action if such Director did not sign the written consent.

Section 11. Adjournment. Any meeting of the Board of Directors, whether regular or special, and whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the Directors present. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting adjourned.

Section 12. Organization of Meetings. The Chairperson of the Board of Directors, and in his absence, a Vice Chairperson in the order provided under Section 7 of Article IV of these Bylaws, and in their absence, any Director chosen by the Directors present, shall call meetings of the Board of Directors to order and shall act as chairperson of the meeting. The Secretary of the Corporation, or in the absence of the Secretary, any person appointed by the chairperson of the meeting, shall act as secretary of the meeting.

Section 13. Methods of Conducting Meetings. Directors may participate in any regular or special meeting or in any meeting of a committee created under Section 15 of this Article by any means of communication by which either (1) all participating Directors may simultaneously hear each other during the meeting, such as by conference telephone, or (2) all communication during the meeting is immediately transmitted to each participating Director and each participating Director is able to immediately send messages to all other participating Directors. If a meeting is conducted through the use of one of the foregoing means, all participating Directors must be informed that a meeting is taking place at which official business may be transacted. A Director participating in such a meeting is deemed to be present in person at the meeting. If requested by any Director, minutes of the meeting shall be prepared and distributed to each Director.

Section 14. Compensation. Directors shall receive no compensation for their services as Directors of the Corporation, but shall not be precluded from receiving compensation as employees of the Corporation serving in a capacity other than a Director or Officer of the Corporation. Directors shall be reimbursed for any expenses incurred in

attending any meeting of the Board of Directors or committee created under Section 15 of this Article or in otherwise fulfilling their duties as Directors hereunder.

Section 15. Committees.

(a) Standing or Temporary Advisory Committees Without Board Authority.

The Chairperson or the Board of Directors may authorize, and appoint or remove members of (whether or not members of the Board of Directors), standing and/or temporary committees to consider appropriate matters, make reports to the Chairperson and/or the Board of Directors, and fulfill such other advisory functions as may be designated. The designation of such standing and/or temporary committees, and the members thereof, shall be recorded in the minutes of the meetings of the Board of Directors.

(b) Executive or Other Committees with Limited Board Authority.

The Board of Directors may by appropriate resolution designate one (1) or more committees, each of which shall consist of three (3) or more Directors elected by the Board of Directors, which to the extent provided in said resolution or in these Bylaws, shall have and may exercise, when the Board of Directors is not in session, the powers of the Board of Directors in the management of the affairs of the Corporation, except action with respect to election of Officers, the filling of vacancies in the Board of Directors, and the formation of and the filling of vacancies in committees with limited board authority pursuant to this subsection. The Board of Directors may elect one (1) or more Directors as alternate members of any such committee, who may take the place of any absent committee member or members at any meeting of such committee. The designation of such committee or committees and the delegation thereto of authority shall not operate to relieve the Board of Directors or any individual Director of any responsibility imposed upon the Board of Directors or any individual Director by law.

Section 16. Director Conflicts of Interest. No contract or other transaction between the Corporation and one (1) or more of its Directors or any other corporation, firm, association, or entity in which one (1) or more of its Directors are directors or officers or has a material financial interest, shall be either void or voidable because of such relationship or interest or because such Director or Directors are present at the meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if (1) the fact of such relationship or interest is disclosed or known to the Board of Directors or the committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested Director or Directors; or (2) the contract or transaction is fair and reasonable to the Corporation. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

Section 17. Presumption of Assent. A Director of the Corporation who is present at a meeting of the Board of Directors, or a committee created under Section 15(b) of this Article, at which action on any corporate matter is taken, shall be presumed to have

assented to the action taken unless such Director's dissent shall be entered in the minutes of the meeting or unless such Director shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of the action taken.

ARTICLE IV **OFFICERS**

Section 1. **Officers.** The Corporation shall have a Chairperson, one or more Vice Chairpersons, a Secretary, a Treasurer and such other Officers or assistant Officers as the Directors may from time to time elect. Any two (2) or more of said offices may be held by the same person, except that the offices of Chairperson and Vice Chairperson and the offices of Chairperson and Secretary may not be held by the same person.

Section 2. **Election.** The Officers of the Corporation shall be chosen annually by the Board of Directors at its annual meeting. Each Officer shall hold office until such Officer's successor shall have been duly elected and qualified, or until such Officer's death, resignation or removal. Election or appointment as an Officer shall not of itself create contract rights.

Section 3. **Resignation.** Any Officer may resign at any time by giving written notice to the Board of Directors or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein or, if no time is specified, upon receipt of the resignation by the Secretary or the Board of Directors as the case may be, and, unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

Section 4. **Removal.** Any Officer may be removed from office by the action of the Board of Directors, whenever in its judgment the best interests of the Corporation will be served thereby, without prejudice to the contract rights, if any, of the Officer so removed.

Section 5. **Vacancies.** A vacancy occurring in any office, for any reason, may be filled for the unexpired portion of the term of said office by the affirmative vote of a majority of the Board of Directors then in office, even though less than a quorum.

Section 6. **Chairperson.** The Chairperson shall be a member of the Board of Directors and shall preside at all meetings of the Board of Directors. The Chairperson shall perform the duties of the President and shall have such duties, responsibilities and powers as may be necessary to direct the regular business of the Corporation and to carry out the directions and policies of the Board of Directors or as are prescribed in these Bylaws or otherwise delegated by the Board of Directors, and shall at all times be subject to the policies, control and direction of the Board of Directors. The Chairperson may sign and execute, in the name of the Corporation, any instrument or document consistent with the foregoing general delegation of authority or any other instrument or document specifically authorized by the

Board of Directors, except when the signing and execution thereof shall have been expressly delegated by the Board of Directors or by these Bylaws to some other Officer or agent of the Corporation; provided, however, that neither the Chairperson nor any other Officer may sign any deed or instrument of conveyance or endorse any security or execute any checks, drafts, or other orders for payment of money, notes, acceptances, or other evidence of indebtedness without the specific authority of the Board of Directors pursuant to Article V of these Bylaws dealing with such matters. The Chairperson shall, whenever it may in the Chairperson's opinion be necessary, prescribe the duties of other Officers and employees of the Corporation, in a manner not inconsistent with the provisions of these Bylaws and the directions of the Board of Directors.

Section 7. Vice Chairpersons. The Vice Chairpersons shall be members of the Board of Directors and shall perform the duties of the Vice Presidents. In the absence of the Chairperson, or in the event of the Chairperson's death or inability to act, the Vice Chairpersons shall perform the duties of the Chairperson, and when so acting shall have all the powers of, and be subject to all the restrictions on, the Chairperson. If at any such time the Corporation has more than one Vice Chairperson, the duties and powers of the Chairperson shall pass to the Vice Chairpersons in the order determined by the Board of Directors. The Vice Chairpersons shall have such other powers and perform such other duties as may be prescribed for them from time to time by the Board of Directors, or these Bylaws.

Section 8. Secretary. The Secretary shall:

(a) Certify and keep at the principal office of the Corporation the original or a copy of its Articles of Incorporation and Bylaws, as amended or otherwise altered to date.

(b) Keep at the principal office of the Corporation or such other place as the Board of Directors may direct, a book of minutes of all meetings of the Board of Directors and committees thereof, with the time and place of meeting, whether regular or special and, if special, how authorized, the notice thereof given, and the names of those present at the meetings.

(c) See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.

(d) Be custodian of the records and of the seal of the Corporation, if any, and see that it is engraved, lithographed, printed, stamped, impressed upon, or affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws.

(e) See that the books, reports, statements and all other documents and records required by law are properly kept and filed.

(f) In general, perform all duties incident to the office of Secretary, and such other duties as from time to time may be assigned by the Board of Directors.

Section 9. Treasurer. The Treasurer shall perform, or have performed under the Treasurer's direction, the following functions:

(a) Have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such banks, trust companies or other depositaries as shall be selected by the Board of Directors.

(b) Keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus.

(c) Render interim statements of the condition of the finances of the Corporation to the Board of Directors upon request, and render a full financial report at the annual meeting of the Board of Directors.

(d) Receive, and give receipt for, moneys due and payable to the Corporation from any source whatsoever.

(e) In general, perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to the Treasurer by the Board of Directors.

Section 10. Compensation. Officers shall receive no compensation for their services as Officers of the Corporation, but shall not be precluded from receiving compensation as employees of the Corporation serving in a capacity other than a Director or Officer of the Corporation. Officers shall be reimbursed for any expenses incurred in attending any meeting of the Corporation or in otherwise fulfilling their duties as Officers hereunder.

Section 11. Bonds of Surety. The Board of Directors may, by resolution, require any and all of the Officers to give bonds to the Corporation, with sufficient surety or sureties, conditioned for the faithful performance of the duties of their respective offices, and to comply with such other conditions as may from time to time be required by the Board of Directors.

ARTICLE V

Instruments; Bank Accounts; Checks and Drafts; Loans; Securities

Section 1. Execution of Instruments. Except as otherwise provided in these Bylaws, the Board of Directors may authorize any Officer or Officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authorization may be general or confined to specific instances. Except as so authorized, or as in these Bylaws otherwise expressly provided, no Officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose in any amount.

Section 2. Bank Accounts. The Board of Directors from time to time may authorize the opening and keeping of general and/or special bank accounts with such banks, trust companies or other depositaries as may be selected by the Board or by any Officer or Officers, agent or agents of the Corporation to whom such power may be delegated from time to time by the Board of Directors. The Board of Directors may make such rules and regulations with respect to said bank accounts, not inconsistent with the provisions of these Bylaws, as the Board may deem expedient.

Section 3. Checks and Drafts. All checks, drafts or other orders for the payment of money, notes, acceptances, or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such Officer or Officers, agent or agents, of the Corporation, and in such manner, as shall be determined from time to time by resolution of the Board of Directors. Endorsements for deposit to the credit of the Corporation in any of its duly authorized depositaries may be made without counter-signature by the Chairperson or any Vice Chairperson or the Treasurer or any Assistant Treasurer, or by any other Officer or agent of the Corporation to whom the Board of Directors, by resolution, shall have delegated such power, or by hand-stamped impression in the name of the Corporation.

Section 4. Loans. No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by or under the authority of a resolution of the Board of Directors. Such authority may be general or confined to specific instances. No loans may be made to any Officer or Director of the Corporation, directly or indirectly, except that reasonable advances of reimbursable expenses may be made in the discretion of the Chairperson or, in the case of advances of reimbursable expenses to the Chairperson, as determined by the Board of Directors.

Section 5. Sale of Securities. The Board of Directors may authorize and empower any Officer or Officers to sell, assign, pledge or hypothecate any and all shares of stocks, bonds or securities, or interest in stocks, bonds or securities, owned or held by the Corporation at any time, including without limitation because of enumeration, deposit certificates for stock and warrants or rights which entitle the holder thereof to subscribe for shares of stock, and to make and execute to the purchaser or purchasers, pledgee or pledgees, on behalf of and in the name of the Corporation, any assignment of bonds or stock certificates representing shares of stock owned or held by the Corporation, and any deposit certificates for stock, and any certificates representing any rights to subscribe for shares of stock. However, the Corporation shall not sell or offer to sell any securities in violation of any State or Federal law relating to securities registration or other requirements.

ARTICLE VI

Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Corporation shall begin on October 1 and end on September 30.

Section 2. Corporate Seal. The seal of the Corporation, if one is adopted by the Board of Directors of the Corporation, shall be circular in form and shall have inscribed thereon "Federal Defender Services of Eastern Wisconsin, Inc."

ARTICLE VII

Indemnification

Section 1. Provision of Indemnification. Subject to the limitations referenced in Section 2 of this Article, the Corporation shall, to the fullest extent permitted or required by the Statute, indemnify each Director and Officer against any and all Liabilities, and advance any and all reasonable Expenses incurred thereby in any Proceeding to which any such Director or Officer is a Party because he or she is or was a Director or Officer of the Corporation. The Corporation may also indemnify an employee who is not a Director or Officer for all reasonable Expenses incurred in a Proceeding to which the employee is a Party because he or she is or was an employee of the Corporation. The rights to indemnification granted hereunder shall not be deemed exclusive of any other rights to indemnification against Liabilities or the advancement of Expenses to which a Director, Officer or employee may be entitled under any written agreement, board resolution, the Statute or otherwise. The Corporation may, but shall not be required to, supplement the foregoing rights to indemnification against Liabilities and advancement of Expenses under this Section 1 by the purchase of insurance on behalf of any one or more of such Directors, Officers or employees, whether or not the Corporation would be obligated to indemnify or advance Expenses to such Director, Officer or employee under this Section 1. The term "Statute," as used in this Section, shall mean Sections 181.0871 through 181.0883 of the Wisconsin Nonstock Corporation Law and any amendment thereto, but only to the extent such amendment permits or requires the Corporation to provide broader indemnification rights than prior to such amendment. All other capitalized terms used in this Section and not otherwise defined herein shall have the meaning set forth in Section 181.0871 of the Statute.

Section 2. Limitations on Indemnification. Notwithstanding the foregoing, no indemnification will be permitted to the extent such indemnification would constitute an "excess benefit" to any "disqualified person" as those terms are defined in Section 4958 of the United States Internal Revenue Code of 1986, as amended, or any similar successor provision thereto, and the regulations thereunder.

Section 3. Limited Liability of Volunteers. Each individual (other than an employee of the Corporation) who provides services to or on behalf of the Corporation without compensation (hereinafter "Volunteer") shall be immune from liability to any person for damages, settlements, fees, fines, penalties or other monetary liabilities arising from any act or omission as a Volunteer, to the fullest extent provided by Section 181.0670 of the Wisconsin Nonstock Corporation Law or any similar successor provision thereto. For purposes of this section, it shall be conclusively presumed that any Volunteer who is licensed, certified, permitted or registered under state law and who is performing services to or on behalf of the Corporation without compensation is not acting within the scope of his or her professional

practice under such license, certificate, permit or registration, unless otherwise expressly indicated to the Corporation in writing.

ARTICLE VIII

Amendment

These Bylaws may be amended or repealed and new bylaws may be adopted by the Board of Directors at any annual, regular or special meeting of the Board of Directors; provided, however, that such amendment is not effective unless approved by the Judges. The Corporation shall provide notice of any meeting of the Board of Directors at which an amendment is to be approved. The notice shall be in accordance with Section 7 of Article III of these Bylaws, and shall state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to these Bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment.

United States District Court

Eastern District of Wisconsin
517 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

FEDERAL DEFENDER SERVICES
OF EASTERN WISCONSIN

2003 JUL -9 AM 10:30

Chambers of
Rudolph T. Randa
Chief Judge

Telephone
(414) 297-3071
Fax (414) 297-3069

July 7, 2003

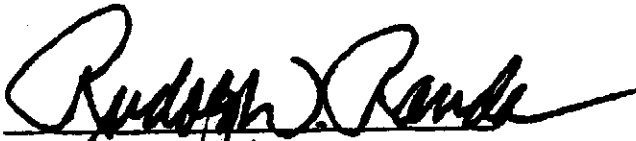
Francis R. Croak, President
c/o Dean A. Strang
Federal Defender Services of Eastern Wisconsin, Inc.
517 East Wisconsin Avenue - Suite 182
Milwaukee, Wisconsin 53202

RE: Judicial Approval of Amendments to Articles of Incorporation and Bylaws

Dear Mr. Croak:

Pursuant to Article VII of the articles of incorporation of Federal Defender Services of Eastern Wisconsin, Inc., and Articles III.1(b) and VIII of the bylaws of that corporation, I now advise you that the Judges of the Eastern District of Wisconsin have approved the proposed amendments to Articles I, II, VI(2), VII and VIII(2) of the articles of incorporation of the corporation. I also advise you that the judges of the Eastern District of Wisconsin have approved the proposed amendments to Articles III, Sections 1(a), 1(b), 2, 3, and 7(a), of the bylaws of the corporation. For clarity, I enclose copies of all proposed amendments approved by the judges.

Sincerely,



Rudolph T. Randa
Chief Judge

CONSENT ACTION OF THE BOARD OF DIRECTORS
OF
FEDERAL DEFENDER SERVICES OF EASTERN WISCONSIN, INC.

The undersigned, being all of the Directors of Federal Defender Services of Eastern Wisconsin, Inc. (the "Corporation"), a Wisconsin nonstock, not-for-profit corporation, hereby consent to the adoption of, and herewith adopt, the following resolutions:

1. Amendments to the Articles of Incorporation of the Corporation.

RESOLVED, that Article 1 of the Articles of Incorporation be amended to read:

The name of the Corporation is Federal Defender Services of Wisconsin, Inc.

RESOLVED, that the second paragraph of Article II of the Articles of Incorporation be amended to read:

In pursuance of the foregoing, the Corporation shall administer in and for the United States District Courts for the Eastern and Western Districts of Wisconsin (hereinafter the "Courts") a federal defender program for indigents in accordance with the Criminal Justice Act of 1964, as amended (hereinafter the "CJA"), and the Courts' Plans implementing the CJA. In administering the CJA and the Courts' Plans implementing the CJA, the Corporation shall, in its capacity as a community non-profit defender organization, be specifically responsible for providing and administering appointed private counsel and staff attorneys.

RESOLVED, that Article VI(2) of the Articles of Incorporation be amended to read:

(2) Remaining assets shall be distributed to one or more organizations described in Section 501(c)(3) of the Internal Revenue Code as determined in the plan to dissolve adopted in the manner set forth above in this Article VI. Any assets not disposed of pursuant to the foregoing provisions shall be distributed by the district judges and the magistrate judges of the Courts (hereinafter the "Judges") to one or more organizations described in Section 501(c)(3) of the Internal Revenue Code, or to a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code to be used exclusively for public purposes.

RESOLVED, that Article VII of the Articles of Incorporation be amended to read:

These Articles may be amended by the Board of Directors in the manner currently or hereafter provided in the Wisconsin Statutes, but no amendment shall be effective unless approved by the Judges. An approval by the Judges shall be evidenced by a writing addressed to an Officer of the Corporation from one or both of the Chief Judges of the Courts acknowledging that the Judges have approved the amendment.

RESOLVED, that Section 2 of Article VIII of the Articles of Incorporation be amended to read:

Section 2. The mailing address in Wisconsin of the principal office of the Corporation is Federal Defender Services of Wisconsin, Inc., 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

2. Amendments to the Bylaws of the Corporation.

RESOLVED, that Sections 1(a) and 1(b) of Article III of the Bylaws be amended to read:

(a) Subject to the limitations of the Articles of Incorporation of the Corporation and the laws of the State of Wisconsin, the approval or other action of the district judges and the magistrate judges (hereinafter the "Judges") of the United States District Courts for the Eastern and Western Districts of Wisconsin (hereinafter the "Courts") as provided herein, and other limitations of these Bylaws, the affairs of the Corporation shall be managed by the Board of Directors.

(b) An action by the Judges shall be evidenced by a writing addressed to an Officer of the Corporation from one or both of the Chief Judges of the Courts acknowledging that action by the Judges has occurred and setting forth the nature of that action.

RESOLVED, that Section 2 of Article III of the Bylaws be amended to read:

Section 2. Number; Quorum and Action of Directors. The number of Directors of the Corporation shall be nine (9) until a different number is determined from time to time by the Judges, but which number shall not be less than seven (7) or more than thirteen (13). A majority of the Directors in office immediately before a meeting begins shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act or decision of the Board of Directors, unless the act of a greater proportion is required by law, the Articles of Incorporation or these Bylaws.

RESOLVED, that Section 3 of Article III of the Bylaws be amended to read:

Section 3. Term of Office.

(1) The initial Board of Directors shall be divided into three (3) groups. One group shall serve an initial one (1) year term and shall be composed of three (3) Directors. A second group shall serve an initial two (2) year term and shall be composed of three (3) Directors. A third group shall serve a three (3) year term and shall be composed of three (3) Directors.

(2) Unless otherwise specified by the Judges, Directors other than the initial Board of Directors shall be appointed to serve three (3) year terms. These Directors shall hold office for a full term to which they are appointed or until such Director's successor shall have been duly elected or until such Director's death, resignation or removal.

RESOLVED, that Section 7(a) of Article III of the Bylaws be amended to read:

(a) Annual Meetings. A regular annual meeting of the Board of Directors shall be held on such date and at the time and place within or without the State of Wisconsin during the month of October as may be designated by the Board of Directors or the Chairperson of the Board of Directors, for the purpose of electing Officers and the transaction of such other business as may properly come before the meeting. In the event of failure, through oversight or otherwise, to hold the annual meeting of Directors in any year during the month herein provided, the meeting, upon waiver of notice or upon due notice, may be held at a later date, and any election held or business transacted at

such later meeting shall be as valid and effectual as if such election was held and business transacted at the annual meeting during the month herein provided.

Dated as this ____ day of _____, 2003.

David J. Cannon

Gregory B. Conway

Francis R. Croak

Franklyn M. Gimbel

F. Patrick Matthews

Stephen P. Hurley

Pamela Pepper

James M. Shellow

Gregory J. O'Meara

V. B. 10

A. B. 10

Appendix II

Model Plan for the Composition, Administration and Management of the CJA Panel

I. Composition Of Panel Of Private Attorneys

A. CJA Panel

1. *Approval.* The court will 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 will approve attorneys for membership on the panel after receiving recommendations from the "Panel Selection Committee," established under paragraph B of this Plan. Members of the CJA Panel will serve at the pleasure of the court.
2. *Size.* The court will 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 the 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 United States Sentencing Guidelines.
4. *Equal Opportunity.* All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.
5. *Application.* Application forms for membership on the CJA Panel will be made available, upon request, by the clerk of the

court. Completed applications will be submitted to the clerk community defender's office.

B. Panel Selection Committee

1. *Membership.* A Panel Selection Committee will be established by the court. The Committee will consist of one United States magistrate judge, the community defender or his/her designee and the CJA Panel Representative.

2. *Duties.*

a. The Panel Selection Committee will meet at least once a year to consider applications for membership on the CJA Panel. The Committee will review the qualifications of applicants and recommend, for approval by the court, those applicants best qualified to fill the vacancies.

At its annual meeting, the Committee will also review the operation and administration of the panel over the preceding year, and recommend to the court any changes deemed necessary or appropriate by the Committee on the appointment process and panel management. The Committee will also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

II. Selection For Appointment

A. Maintenance Of List And Distribution Of Appointments

The community defender will maintain a current list of all attorney's included on the CJA Panel, with current office addresses, email address, and telephone numbers, as well as a statement of qualifications and experience. The community defender will furnish a copy of this list to each judge and United States magistrate judge. The community defender will also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys

from the community defender office and private attorneys, according to the formula described in the CJA Plan for the district.

B. Method Of Selection

Appointments from the list of private attorneys should be made on with consideration given to the nature and complexity of the case, an attorney's experience, and geographical considerations. It is not intended that appointments necessarily will be distributed evenly among members of the CJA Panel. Rather, the goal will be to appoint the best available attorney in each case.

Upon the determination of a need for the appointment of counsel, the judge or United States magistrate judge will notify the community defender of the need for counsel and the nature of the case. The community defender will determine whether the case should be assigned to an attorney within the community defender's office or whether to assign it to a member of the CJA Panel. In making this determination, the community defender will strive to assure that at least 25% of appointments annually be made to members of the CJA Panel.