



**POLICIES AND PROCEDURES FOR CLAIMS SUBMITTED
PURSUANT TO THE CRIMINAL JUSTICE ACT**

Effective January 4, 2016

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OVERVIEW

The Supreme Court of the United States unanimously announced in *Gideon v. Wainwright*, 373 U.S. 335 (1963), that the Sixth Amendment guarantees to every criminal defendant in a felony trial the right to a lawyer. “Reason and reflection,” Justice Hugo Black wrote, “require us to recognize that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided to him.” *Id* at 343. By accepting this CJA appointment, you are paying tribute to the legacy of Clarence Earl Gideon, whose handwritten petition to the Supreme Court of the United States resulted in this landmark decision. The Judges of the United States District Court for the Western District of Pennsylvania commend the CJA Panel Attorneys (Panel Attorneys) for their dedication and willingness to accept this appointment. We hope you find these local Policies and Procedures informative and helpful.

The Criminal Justice Act (CJA), 18 U.S.C. § 3006A, authorizes the Court to appoint counsel for indigent individuals and to compensate Panel Attorneys for their representation for time spent in court and “reasonably expended out of court.” 18 U.S.C. § 3006A(d)(1), (5). The maximum amount of compensation for a Panel Attorney representing an indigent person in a matter before the District Court is set forth in the Guide to Judiciary Policy, Vol 7A, § 230.23.20.

The information contained in this manual has been prepared to inform Panel Attorneys of the Court’s Policies and Procedures and provide an understanding of the voucher process. The instructions apply to all Panel Attorneys in all three divisions of the Western District of Pennsylvania - Pittsburgh, Erie, and Johnstown. These local instructions apply to all CJA appointments - whether you are appointed to represent a named defendant, a witness, or *any* other person entitled to representation under the CJA. Answers to questions concerning appointment under the CJA can generally be found in: (1) 18 U.S.C. § 3006A; (2) the Criminal

Justice Plan of the United States District Court for the Western District of Pennsylvania; (3) the Court's website at www.pawd.uscourts.gov; and (4) the Guidelines for the Administration of the Criminal Justice Act, published by the Administrative Office of the United States Courts ("CJA Guidelines").¹ The Administrative Office's Defender Services Office has developed a web site that contains a useful Online Reference Tool, which you may access.² Should these references fail to provide the desired clarification or direction, Panel Attorneys should address their inquiries to the Clerk's Office - CJA Financial Coordinator at 412-208-7532.

Please be advised that your acceptance of appointment and representation of an indigent person commences from the date of appointment until the termination of the direct appeal, including ancillary matters, or until you are relieved from court appointment by Order of Court.

Requested exceptions to these Policies and Procedures are subject to the discretion of the presiding judge, upon motion by the Panel Attorney.

¹ www.uscourts.gov/FederalCourts/AppointmentofCounsel/CJAGuidelinesForms/vol7PartA.

² <http://www.uscourts.gov/uscourts/cjaort/index.html>.

I. Instructions for Completing the CJA Form 20

The following will expedite the processing of your request for payment in Non-Capital representations.³ Panel Attorneys must electronically complete and sign a CJA Form 20 and attach supporting documentation.⁴ Panel Attorneys must make separate claims to district and appellate courts.

A. Attorney Services / Limitations

1. Voucher Preparation

CJA eVoucher is the Judiciary's national electronic vouchering and payment system for the CJA. All Panel Attorneys will have access to eVoucher and will use it to enter time and other claims, as well as to submit vouchers electronically to the Court for review, approval, and payment. Once representation is completed, or in a case where interim vouchers have been authorized, the Panel Attorney must submit a completed, signed, and certified voucher to the Court through eVoucher. The voucher and all attachments shall be submitted through eVoucher to the Clerk's financial office and shall not be filed on the CM/ECF system.

Beginning with the appointment and the first appearance in court, Panel Attorneys should begin to enter claims for all work done in the case. During the case, claims should be entered contemporaneously. Receipts and invoices, when necessary for a claim, should be saved in .pdf format and attached to the electronic voucher when it is submitted to the Court. Proof of payment is required for all single item expenses in excess of \$50.00, with supporting

³ CJA Form 30 is utilized for Capital Case representations.

⁴ Supporting documentation includes: an itemized statement of services provided, including the start and end times for the completion of the services on the voucher; an itemized statement of all expenses; timesheets and worksheets; receipts for single item expenses over \$50.00; and all approved orders (interim, withdrawal, and exceed statutory limits).

documentation (e.g., receipts and/or a copy of a cancelled check or a credit card statement). If including a cancelled check or credit card payment, it is recommended that for security purposes any personal account information be redacted.

eVouchers require an electronic signature. Each Panel Attorney must check the box with the statement “I swear and affirm the truth or correctness of the above statement,” and click “submit” to send the voucher to the Court. The voucher will automatically be timestamped. Vouchers lacking copies of necessary receipts will not be processed until the receipts are provided.

2. Timing of Voucher Submission

Pursuant to the CJA Guidelines, § 230.13, vouchers should be submitted no later than forty-five (45) days after the final disposition of the case. Panel Attorneys must show good cause when submitting a voucher after forty-five (45) days of the final disposition of the case. The presiding judge has the discretion to deny the claim absent good reason for the delay.

Panel Attorneys should note that interim payments are the exception to this rule. Interim payments will not be permitted except when it is considered necessary and appropriate in a specific case by the presiding judge.

3. Actual and Reasonable Work and Expenses

Only actual and reasonable work performed and reasonable out-of-pocket expenses incurred in connection with CJA representation may be claimed and compensated. In claiming compensation, billing judgment must be exercised as to the reasonableness of all compensation claimed. When more time was expended than is claimed for compensation, Panel Attorneys may so indicate on the voucher.

4. Case Compensation Maximums

The current Panel Attorney case compensation maximums are found in CJA Guidelines § 230.23.20. For work previously performed, the case compensation maximums are found in CJA Guidelines § 230.23.30. *See* Attachment 1 - CJA Hourly Rates and Effective Dates.

If a Panel Attorney is substituted for a previously appointed Panel Attorney for the same defendant in a case, the total compensation paid to both Panel Attorneys may not exceed the statutory maximum total for a single defendant, unless the case involves extended or complex representation. In such cases, vouchers for attorney's services will not be approved by a judicial officer until the conclusion of the trial so that the judicial officer may make such apportionment between the Panel Attorneys as may be just. *See* CJA Guidelines § 230.56.

5. Excess Compensation

Panel Attorneys will not receive excess compensation if the presiding judge has not first determined that the case is complex or extended. The presiding judge should make a threshold determination as to whether the case is either complex or extended. The presiding judge will then submit his or her determination to the Chief Judge of the Circuit or his or her delegate for final approval. When final approval has been received, the Panel Attorney should furnish a copy of the CJA 26 order to the CJA Financial Coordinator. A case is considered “complex” if the legal or factual issues are unusual, thus requiring the expenditure of more time, skill, and effort by the Panel Attorney than would normally be required in an average case. “Extended representation” occurs when representation involves more time than what is required in the usual case, including pre-trial and post-trial hearings.⁵

⁵ Pursuant to the practices of the presiding judge, the Panel Attorney should inform the Court as soon as the Panel Attorney anticipates that he or she will be requesting that a case be deemed complex or extended.

If your voucher claim exceeds the statutory maximum, you must file the CJA Form 26 with the voucher claim. The final claim for payment, which is submitted to the Chief Judge of the Circuit or his or her delegate for approval, must also be accompanied by worksheets for the final work period.

6. Interim Payments for Complex Case/Extended Representation

Prior approval of the Chief Judge of the Circuit, or his or her delegate, is required for interim payments pursuant to § 230.73 of the CJA Guidelines. Absent extraordinary circumstances, interim payments will only be authorized for a case deemed by the presiding judge to be either “extended” or “complex” under § 230.23.40 of the CJA Guidelines. Procedures for interim payment requests can be found in Appendix 2C (Non-Capital cases) and Appendix 2D (Capital cases) of Vol. 7A of the CJA Guidelines. In multi-defendant cases, each Panel Attorney requesting interim payments must submit his or her own request through the CJA eVoucher Program. When the presiding judge and Chief Circuit Judge or his or her delegate deems the entire case to be extended or complex for all defendants, every Panel Attorney must submit an interim payment voucher every quarter. All interim payments in excess of the statutory limit must follow the procedure in § 230.23.40 Waiving Case Compensation Maximums.

If interim payments are approved, the Panel Attorney must submit quarterly interim payments through eVoucher. The interim payment schedule for all cases is as follows: For the period from January through March, vouchers must be submitted to the Court by April 15. For the period from April through June, vouchers must be submitted to the Court by July 15. For the period from July through September, vouchers must be submitted to the Court by October 15.

For the period from October through December, vouchers must be submitted to the Court by January 15.

The entire eVoucher procedure for requesting and submitting interim payments is set forth in the Court's eVoucher Attorney Manual, which is available on the Court's website.

7. Record Keeping

Panel Attorneys must maintain contemporaneous time and attendance records, as well as expense records, for all work performed, including work performed by associates, partners, support staff, and all service providers. All file materials and billings records must be retained for three years after approval of the final voucher for an appointment, and both are subject to court audit.⁶ Court-initiated reviews shall honor the attorney-client privilege and the work product doctrine. Any overpayments are subject to recoupment, including deduction of amounts due from future vouchers.

B. Timekeeping

1. General

You must include start and end times for all services performed and you must bill in tenths of an hour (i.e., .1, .2, .3, NOT .25). *See* Attachment 2 - Calculating Compensation for Time Worked. Each time entry shall reflect discrete individual tasks. Do not "bundle" time entries, such as "met with client, reviewed discovery, traveled, discussed case with AUSA - 8 hours." Information shall be provided in detail sufficient to permit meaningful review, without violating the canons of ethics or disclosing work product, strategy, and/or client confidences. Panel Attorneys shall provide the Court sufficient information with enough specificity to permit

⁶ *See* CJA Guidelines § 230.76.

the Court to determine the reasonableness of the work performed and the amount sought for the services rendered.

Multiple tasks on one day of less than a tenth of an hour in duration must be quantified together at no more than the total actual time expended on all, or quantified with another task on the same day. If the activities fall into multiple categories as identified in the Out of Court section of the CJA Form 20 (i.e., interviews; record review; legal research and writing; travel; and investigative / other work), the one-tenth hour entry may be entered in any applicable category. The aggregate time claimed during the total period of representation for single tasks requiring less than six minutes will be evaluated for reasonableness and may be subject to a reduction.

Ordinarily, Panel Attorneys should not bill in excess of 10.0 hours in a single calendar day, unless the time was reasonably expended. The Panel Attorney should provide an adequate explanation for the hours expended in order for the presiding judge to determine the reasonableness of the claim.

2. Overlapping Services in Multiple Cases

Time spent on overlapping services in multiple cases (e.g., research, court appearances, waiting time) must be allocated appropriately among said cases and may not exceed the actual time expended. Panel Attorneys have a duty to mitigate unnecessary expenditures and should be prepared to perform other work (such as review of case file materials and research and the like for other cases) while delayed due to wait time associated with jail⁷/personal/ hospital visits, and

⁷ “Jail” is defined as any county jail, state or federal correctional institution, or any private correctional facility managed for the U.S. Marshals Service or the Federal Bureau of Prisons.

awaiting judicial proceedings.⁸ Panel attorneys are expected to follow all applicable guidelines in preparation for jail visits.

C. Special Compensation Rules

1. Standardized Motions

Consistent with the Sixth Amendment duty to provide vigorous advocacy on behalf of their clients, Panel Attorneys shall make use of form or previously utilized memoranda, motions, jury instructions, and sentencing material, modifying the contents as appropriate for each specific case (e.g. standard motions for discovery, motions to suppress, legal principle discussions in sentencing memoranda, motions for continuance, etc.). Panel Attorneys should only request compensation for the amount of time actually expended in making the necessary case specific modifications to the document. Motions for continuances or extensions should be expediently prepared and require only minimal billable time.

2. Legal Research

Claims for legal research must describe the subject that was researched. Simply writing “research” and billing a number of hours is not acceptable. Each Panel Attorney is expected to have a basic knowledge of federal criminal practice and procedure. Panel attorneys may receive compensation for research time that is reasonably related to issues that are potentially present in the case; research that is tangential to the potential issues in the case may not be compensated.

The cost of computer-assisted legal research (CALR) services by Panel Attorneys may be allowed as a reimbursable out-of-pocket expense, provided that the amount claimed is reasonable and supported by documentation. Whenever the Panel Attorney incurs charges for CALR, the Panel Attorney should attach to the compensation voucher a copy of the bill and receipt for the

⁸ Panel Attorneys will not be compensated for time spent waiting for the return of a verdict.

use of those legal research services and an explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges, or by charges identifiable to the specific research). If the amount claimed is in excess of \$500.00, or if it includes costs for downloading, the Panel Attorney should include a brief statement of justification. It is incumbent upon the Panel Attorney to negotiate the best possible price for these charges.

3. Reviewing Notices of Electronic Filings (NEF)

Claims for reviewing an NEF and any associated document(s) should be limited to only the time spent reading the text of those documents. When compensation is sought under these Policies and Procedures, the document number(s) or title(s) of the NEF(s) and any associated document(s) reviewed should be noted so the Court can assess the reasonableness of the time spent.

4. Compensation of Co-Counsel

a. Co-Counsel Without Separate Appointment – CJA Guidelines § 230.53.10

Unless separately appointed in accordance with § 230.53.20(b) or Guide, Vol 7A § 620.10, a Panel Attorney may not claim compensation for services furnished by a co-counsel, partner or associate attorney without prior approval. With prior authorization by the Court, a Panel Attorney may claim compensation for services furnished by a partner, associate, or co-counsel, who is not a partner or associate, within the case compensation maximum allowed by the CJA, separately identifying the provider of each service. In a non-capital case, if co-counsel is a partner or associate of the Panel Attorney, no prior authorization is required for the first ten

hours of work by the partner or associate. If co-counsel is not a partner or associate of the Panel Attorney, prior authorization is required for all work by co-counsel.

b. Compensation of Co-Counsel with Separate Appointment – CJA Guidelines § 230.53.20

In an extremely difficult case where the Court finds it in the interest of justice to appoint an additional attorney, each attorney is eligible to receive the case compensation maximum allowable under the CJA.

The finding of the Court that the appointment of an additional attorney in a difficult case is necessary and in the interest of justice must appear on the Order of Appointment. *See* Guide, Vol 7A, § 620.10 for appointment of more than one attorney in capital cases.

c. Requests for Appointment or Authorization of Co-Counsel

Requests must specify the tasks, projected number of hours, the hourly rate, and the total anticipated expenditure. The Court expects that Panel Attorneys will develop a division of labor between the Panel Attorney, partners, or associates to minimize billing of time and travel expenses for client visits, meetings, and Court appearances and to avoid duplication of effort. Without prior approval, compensation will not be approved for attendance at Court hearings by additional support staff, including law clerks, paralegals, and investigators. When seeking prior approval, the Panel Attorney must specifically explain why additional staff is required and the Court must find the explanation reasonable.

It is the Panel Attorney's responsibility to monitor and approve all bills submitted for approved partners, associates, etc. Double billing for performance of the same task will not be approved.

To avoid double billing, Panel Attorneys shall use separate worksheets for each attorney or associate. Panel Attorneys shall not bill paralegal time on the attorney worksheets. Paralegals

are treated as “service providers,” subject to a different compensatory maximum, and their time shall be accounted for on a CJA Form 21. *See* Section II(D) of these Policies and Procedures.

5. Discovery and Document Review

It is difficult to accurately project the costs and actual time for the review of voluminous documents and data prior to the completion of the investigation or discovery process. The presiding judge may use discovery status conferences to determine whether case budgeting is necessary and, if so, to make adjustments as circumstances require. Where required, Panel Attorneys should present a preliminary budget detailing an efficient and cost-effective method to review documents and data, such as electronic evidence review platforms, or the use of paralegals and document technicians. *See* Section IV of these Policies and Procedures for additional discussion on budgeting and Chapter 3 - CJA Guidelines § 320.70.40.

If claiming time for discovery or file review, Panel Attorneys shall describe the documents that were reviewed and, if possible, the pages, and/or Bates number, and/or number of discs. “Reviewing discovery” or “Listening to wire taps” is not acceptable.

Rule 16 Materials

The U.S. Attorney's Office, the Federal Public Defender's Office, the F.B.I., and the D.E.A. have developed an improved method for the disclosure of discovery material in wiretap cases. This disclosure method provides additional data in a more searchable and useful format, which should both enhance and make more efficient the discovery process in such cases.

Training on how to best utilize this data will be provided. *See* CJA Guidelines § 320.70.40.⁹

⁹ Increasingly, discovery-related costs have been identified as significant cost drivers. Under CJA Guidelines § 320.70.40, appointed counsel must consult the National Litigation Support Team in the Administrative Office of the United States Courts (AO), Office of Defender Services (ODS) (510-637-3500) before procuring computer hardware or software with a cost exceeding the limitations in CJA Guidelines § 310.20.30 or utilizing computer systems, litigation support products, services, personnel, or experts with an expected combined cost exceeding

6. Copies

Charges for in-house copy work are reimbursable at a rate not to exceed five cents per page. If using a copy service, Panel Attorneys are expected to negotiate the lowest rate possible. The number of pages for copy work must be referenced on the expense worksheet. Panel Attorneys shall submit an itemized invoice for the copy work with the voucher. The invoice shall include a description of the documents copied, the date copied, the case number, and the reasons for the copy work. Panel Attorneys are reminded that reimbursement is allowed only for “copy work.” “Printing” on your own printer is not reimbursable.

7. Long Distance Phone Calls and Document Delivery

Reimbursement may be claimed for the actual cost of case-related long distance phone calls, but not for local calls or surcharges. Your telephone billing record must be attached with the case-related long distance expense(s) highlighted.

The Court strongly encourages the use of electronic transmissions (such as email) of documents by Panel Attorneys to the Court and opposing counsel, rather than transmitting same by hand delivery or special carriers, i.e., FedEx, UPS, etc. The Court may require a Panel Attorney to demonstrate “good cause” for the costs of hand delivery or special carrier service when the documents could have been transmitted via email.

In those limited situations where it is necessary to transmit documents via facsimile or postal service, facsimile reimbursement is limited to the actual cost of any long-distance charge associated with the phone transmission for an outgoing document. Reimbursement is not permitted for receipt of a facsimile. The costs of the machine, supplies, and phone line are considered general office overhead and are not reimbursable.

\$10,000. *See* Section I(E)(2) of these Policies and Procedures.

D. Travel Time and Mileage

1. General

Panel Attorneys and service providers may claim only actual time spent traveling. Unless the starting point of travel is closer to the destination, claims for travel time and mileage should be computed from the attorney's office or the courthouse, whichever distance is shorter. With the exception of travel to the institution referenced on Attachment 3, pre-approval must be sought from the presiding judge for any out-of-district travel.

2. Mileage

Travel by privately-owned automobiles should be claimed at the mileage rate currently prescribed for federal judiciary employees who use a private automobile for the conduct of official business. Receipts are required for expenses over \$50.00. Mileage claims for travel by privately-owned automobiles must be itemized on the expense worksheet and must include date of travel, destination, number of miles, and the amount due. *See* Attachment 4 - Mileage Rate. The actual mileage driven must be recorded for all mileage claims and the origination and destination of the travel must be submitted as part of the supporting documentation. *See* instruction 17 to CJA Form 20 and instruction 16 to CJA Form 30 for other information and documentation that is required for travel expenses.

3. Travel for Multiple Representations

Travel on behalf of more than one client must be prorated. Double billing (e.g., billing the same travel time or expenses to more than one representation) is prohibited. *See* CJA Guidelines § 250.50(e). Proration of travel time among CJA representations must not result in a Panel Attorney billing a larger amount than would have been invoiced if all of the time had been assigned to one representation.

While the travel time spent in common on more than one CJA representation must be prorated, the entire cost of mileage and expenses that is applicable to more than one CJA representation must be billed to one representation. The supporting materials to the voucher on which the expenses are billed must cross-reference the other CJA representations. *See* CJA Guidelines § 230.50(f). For example, when visiting multiple incarcerated CJA-appointed clients at the same location, a Panel Attorney must prorate the travel time among the CJA-appointed clients and bill the travel and mileage expenses to only one of the CJA representations. The travel and mileage should be billed to the CJA-appointed client with the lowest criminal case number. Time spent with each CJA-appointed client should be billed to his/her individual case. The Panel Attorney must disclose on the voucher when travel is for a privately retained client in addition to a CJA-appointed client, so that the Court can determine whether the time (and expenses) should be apportioned and which time (and expenses) are reasonably attributable to the CJA appointment. The Court does not need the name of the privately retained client or information on the matter discussed, but only needs to know that a portion of the travel claim should be paid by the Court and a portion will be paid by the privately retained client.

4. Jail and Prison Visits

Panel Attorneys are strongly advised to ascertain prior to traveling to any facility to visit a CJA-appointed client, that the CJA-appointed client is still being housed at that facility. If Panel Attorneys have not exercised due diligence in so ascertaining, travel is not compensable when a Panel Attorney travels to a facility for a jail or prison visit only to learn upon arrival that the individual has been moved to a different facility.

5. Out of District Travel

a. Travel Expenses

Panel Attorneys must obtain advance authorization from the Court for travel outside the Western District of Pennsylvania, except when travelling to the institution listed on Attachment 3. All travel must be deemed necessary and reasonable and connected to representation under the CJA. Absent such authorization, the Panel Attorney must demonstrate that the travel was necessary and prior authorization could not have been obtained. Ordinarily, compensable time for travel includes only those hours actually spent in or awaiting transit. Accordingly, if a trip necessarily and reasonably requires overnight lodging, compensable travel time to the destination from the Panel Attorney's office terminates upon arrival at the place of accommodation and includes travel time returning directly to the Panel Attorney's office. *See* CJA Guidelines § 230.60(b).

With respect to mileage expenses, the actual mileage driven must be recorded for all mileage claims and the origination and destination of the travel must be submitted as part of the supporting documentation. *See* instruction 17 to CJA Form 20 and instruction 16 to CJA Form 30 for other information and documentation that is required for travel expenses.

b. Non-Mileage Travel Expenses

Receipts must accompany all claims for non-mileage travel expenses, such as daily parking fees, tolls, taxi, approved airfare, hotel, etc.¹⁰

¹⁰ Authorization for meals is allowable only when the traveler has received authorization for overnight travel. Meals obtained must be in accord with existing government travel regulations. Alcoholic beverages are not reimbursable.

6. Air Travel

All air travel must have prior approval of the presiding judge. Once Court approval is received, the Panel Attorney must contact the Court's CJA Financial Coordinator for further information regarding purchase of the air travel ticket. *See* Attachment 5 - Government Travel Rates - § 320.80.20. Panel Attorneys and service providers can receive a government rate on airfare, and are advised to request advance approval to receive government travel rates.¹¹

E. Services and Costs For Which Compensation Cannot be Claimed

1. Tasks For Which Compensation Cannot be Claimed

a. Clerical Work

Clerical work, even if performed by a Panel Attorney, may not be claimed. Clerical work includes work customarily performed by non-professional employees, including, but not limited to, preparing trial binders, marking exhibits, conducting conflict checks, generating a file, and any other work that can be performed by a non-attorney for the Panel Attorney to render directly professional services. *See* CJA Guidelines § 230.66.10(b).

(i) Time spent accessing, storing, printing, and/or forwarding an NEF is considered a clerical function, which falls under the category of “general office expenses” and is not compensable.

(ii) Filing documents on the CM/ECF System constitutes a non-compensable clerical task. Communications about inquiries from Clerk's Office staff, such as quality control clerks alerting the Panel Attorney to improper filing of documents in violation of the Court's CM/ECF Policies and Procedures, and directing the filing of Errata versions of documents, are non-compensable.

¹¹ Panel Attorneys and service providers cannot receive government rates or state tax exemption at hotels because they are not government employees.

(iii) Claims for reviewing an NEF and any associated document(s) should be limited to only the time spent reading the text of those documents. In addition, the document number(s) or title(s) of the NEF(s) and any associated document(s) reviewed should be noted so the Court can assess the reasonableness of the time spent.

(iv) Time claimed for acceptance of appointments is not compensable.

b. Record Keeping and Voucher Preparation

Panel Attorneys may not submit claims for time incurred in connection with record-keeping and preparation of CJA vouchers.

c. Voucher Processing and Review

Time spent communicating with the Court and chambers' staff regarding fee claims, preparing supporting memoranda ordered by the Court, acquiring necessary records to support a fee claim, and attending hearings and/or conferences held by the Court as to a fee claim is not compensable.

d. Retrieving Property

Time spent retrieving or holding property of a CJA-appointed client is generally not compensable, absent extraordinary circumstances. Panel Attorneys may, however, be compensated for time spent or expenses incurred performing tasks related to the return of client property held by law enforcement, or in forfeiture matters when appointed by the court to handle such matters.

e. Services of a Personal Nature

The costs of items of a personal nature purchased for or on behalf of a CJA-appointed client are not reimbursable under the CJA. Such items include: purchasing new clothing or

having clothing cleaned; getting a haircut; furnishing cigarettes, candy, or meals, etc. The costs of services of a personal nature and expenses incidental thereto which cannot be considered legal representation are not compensable under the CJA. Such services include: “assisting the defendant in the disposition of the defendant’s personal property; arranging for the placement of minor children of the defendant; assisting the defendant in executing the conditions of probation; and providing legal assistance in matters unrelated to the litigation of the case, although incidental to the defendant’s arrest.” CJA Guidelines, Items and Services of Personal Nature, § 230.66.20.

2. Purchases of Computer Hardware, Software and Litigation Support Services

Panel Attorneys should not purchase any computer equipment, software or litigation support programs, or services for a specific case without first contacting the National Litigation Support Team. *See* CJA Guidelines, § 320.70.40(a)(2). In addition, Panel Attorneys should contact the Federal Public Defender as the Federal Public Defender may be able to provide Panel Attorneys with hardware and software at no cost to the CJA.

3. Other Costs for Which Compensation May Not Be Claimed

a. Witness fees, travel costs and expenses for service of subpoenas are covered by Federal Rule of Criminal Procedure 17 and 28 U.S.C. § 1825.

b. General office overhead such as secretarial service, office rental, and equipment rental (i.e., photocopier, facsimile), and telephone service are not reimbursable.

c. Travel, housing, or subsistence of a CJA-appointed client not in custody are not payable out of CJA appropriation. *See* 18 U.S.C. § 4285.

d. Panel Attorneys are required to use PACER in connection with their CJA appointments and must obtain an exempt login and password for the CJA account by contacting the PACER Service Center at 1-800-676-6856. Use of a different password is not compensable.¹²

e. The Board of Judges has adopted a policy which allows the Intake Section of the Clerk's office to provide the CJA Panel Attorney with one (1) free copy of the docket sheet in his/her own respective case. Any additional printing of documents at the public terminal without charge is at the discretion and prior approval of the assigned presiding judge.

**II. Instructions for Completing CJA Forms 21 and 24:
The Use of Investigators, Experts, Paralegals, Interpreters, and Other "Service Providers"**

A. General

The Court has no pre-approved service providers nor does it endorse the use of any specific service provider. Panel Attorneys are expected to negotiate reasonable hourly rates with all service providers. Panel Attorneys must seek a reduced government rate for any service provider and the rate of these services must be approved by the presiding judge. Panel Attorneys should utilize paralegals and other cost-effective means to minimize costs where attorney expertise is not required.

B. Approval by the Court

The use of investigators, experts, and other specialized service providers require advance approval by the presiding judge where the cost exceeds \$800.00. In order to obtain court

¹² CJA PACER accounts are not to be accessed for private use. Counsel should be aware that PACER-exempt CJA accounts are monitored by the Clerk of Court, or his/her delegate, on a quarterly basis.

approval, Panel Attorneys should provide a description of the nature and extent of the work to be performed. The request also should include the projected number of hours required, the service provider's hourly rate, and an estimate of the anticipated time needed to complete such work.

This description can be in the form of a cover letter or memorandum.

Costs exceeding \$2,400.00 must have prior authorization from the presiding judge and approval from the Chief Judge of the Circuit or his or her delegate.

Any request seeking *nunc pro tunc* authorization for services rendered must include justification to support a finding that timely procurement of such services practically could not have awaited prior authorization.

Below are the acceptable experience-based rates for certain service providers. Prior to submission, Panel Attorneys are expected to supervise and verify that the work was performed, as well as review invoices provided by the service provider to assure that all charges are consistent with these Policies and Procedures. *See* Attachment 6 – CJA 21 and Appendix 3A Instruction.

Category	Hourly Ranges
Paralegals	\$25.00 - \$50.00
Investigators	\$40.00 - \$100.00
Psychologists	\$125 -\$200
Psychiatrists, neurologists and other medically licensed experts	\$150 -\$250

These hourly rates may not be exceeded without prior authorization of the presiding judge.

Claims for payment in excess of these established hourly rates without prior authorization will be

reduced by the CJA Financial Coordinator prior to submission to the presiding judge.

C. Psychiatrists, Psychologists, and Related Experts

CJA funds are used to pay for psychiatric and related expert services upon a determination that the services are “necessary for an adequate defense.” The CJA Guidelines refer to these services as “defense services” where the Panel Attorney selects the expert and controls the duration of the expert’s services and extent of his or her report. There also are circumstances in which payment for the services is from a source other than the CJA appropriation, usually paid by the Department of Justice (DOJ) funds, such as an examination to determine the mental competence of a defendant to stand trial. These are considered “non-defense” or “Court Ordered” examinations.

D. Use of Paralegals, Legal Assistants, and Other Non-Secretarial Support

Panel Attorneys may use paralegals, legal assistants, and other non-secretarial support when reasonably necessary to provide services efficiently and at the lowest possible cost. Panel Attorneys should endeavor to avoid duplication of efforts and excessive staff conferencing by developing a reasonable division of labor between the Panel Attorney and staff. *See* CJA Guidelines § 320.70.50.

1. Paralegal, legal assistants, and other non-secretarial support are considered “outside services” subject to the \$800.00 limit, even when the paralegal, legal assistant or other non-secretarial support is employed by the Panel Attorney.
2. For services of paralegals, legal assistants, and other non-secretarial professional support personnel employed by a Panel Attorney, the Court will determine a reasonable hourly

compensation rate that may not exceed the lesser of the rate paid to the Panel Attorney under the CJA or the rate typically charged by the Panel Attorney to a fee-paying client for such services.

Authorizing compensation at such rates should result in greater efficiency and lower costs for the CJA program than would occur if the Panel Attorney performed and charged for these services.

3. Panel Attorneys may not submit claims for work performed by law students or interns who are otherwise performing services without compensation.

E. Retention of Experts

Once funding for investigative, expert, or other specialized services has been approved, Panel Attorneys are responsible for communicating with the service provider the specific terms of the approval to ensure that charges do not exceed the amount authorized. Panel Attorneys are required to use written retainer agreements for investigators, experts, and other service providers setting forth details of their engagement, including the hourly rate, the approved number of hours, and contemporaneous time record requirements. The retainer agreement should also include language indicating that the service provider should not exceed the maximum number of authorized hours and/or dollar amount without prior written authorization from the Panel Attorney and approval by the Court. The engagement letter should explain that the service provider's voucher must be based on contemporaneous time records and that the service provider must maintain records for audit purposes. To assist Panel Attorneys, a sample engagement letter is attached. *See Attachment 7.*

An exception to requiring the use of written engagement letters is permissible if the total

compensation for the individual service provider is below the CJA dollar threshold requiring prior authorization for service providers (currently \$800.00, *see* CJA Guidelines § 310.20.30).

To the extent the Panel Attorney wants to utilize an investigator at a client visit, and has exceeded the \$800.00 threshold, prior approval is required and the Panel Attorney shall provide an explanation why said investigator is required to accompany the Panel Attorney on such visit. Double billing for performance of the same task will not be approved.

F. Travel By Experts

Service providers shall be compensated for travel time and expenses. Unless otherwise approved by the presiding judge, investigators, experts, and other service providers should bill travel time at 50 percent of the approved normal billing rate, subject to the exceptions below:

(1) The first six hours traveling by automobile to, and the first six hours traveling by automobile from, a case-related destination (i.e., a destination relevant to the responsibilities or duties assigned to the expert or service provider by the Panel Attorney).

(2) Reasonable travel time at or around the case-related destination in order for the expert or service provider to complete the responsibilities or duties assigned to the expert or service provider by the attorney for the defendant.

Time spent performing case-related work while traveling, by any mode of transportation, is not “travel time” and should be compensated at the full (i.e., not reduced) hourly rate. Case-related work is work relevant to the responsibilities or duties assigned to the expert or service provider by the attorney for the defendant. *See* Attachment 8, February 26, 2014 memorandum from Defender Services.

The presiding judge, upon application by counsel, may authorize payment at the full hourly rate for travel in appropriate circumstances. Examples of such instances may include

when a medical doctor is retained and must leave his or her practice to fly to a prison to examine a defendant, or when service providers have to travel because of the requirements of the government (for example, prosecutors might not release evidence, such as photographs or computer hard drives, to be sent to service providers, instead requiring the service provider to travel to the prosecutor's office or to a laboratory).

Any service provider traveling to testify at a court proceeding shall be paid for the actual number of hours he or she is in attendance at court, in addition to the service provider's travel time and expenses. To minimize travel, Panel Attorneys should select local investigators and experts, when possible.

G. Transcripts

Panel Attorneys must submit a CJA Form 24 to the presiding judge for approval. Production of transcripts must be authorized by the presiding judge. It is the CJA Panel Attorney's responsibility to obtain the required authorizations and to certify that the page rates and delivery schedules referenced on the CJA Form 24 voucher are accurate and in compliance with the national guidelines. Generally, persons proceeding under the CJA may only receive the original or a copy of a transcript. Multiple copies are not permitted. Payment for transcripts is made directly to the Court Reporter identified on the CJA Form 24. Expedited or daily transcripts are discouraged. Any requests for expedited or daily transcripts must have written justification and must have prior Court approval.

III. Voucher Review

A. General

It is your responsibility to comply with the applicable national procedures and these local Policies and Procedures with respect to your fee petition. The members of this Court have an inherent obligation to scrutinize fee requests and make necessary adjustments. “Every time an attorney submits such a [fee request], that attorney is asking the U.S. Treasury to dole out a portion of its limited resources. . . . It is the duty of the Court to determine what is a reasonable expense or a reasonable use of billable time, and to determine exactly what compensation and reimbursement will be paid.” *United States v. Mosley*, 779 F. Supp.2d 398, 400 (D.N.J. 2011) (citing *United States v. Smith*, 76 F. Supp.2d 767, 768 (S.D. Tex. 1999)). The members of this Court are charged with determining whether a fee request is reasonable.

Vouchers under the statutory case compensation maximum are reviewed by the CJA Financial Coordinator for compliance with the CJA Guidelines and mathematical and technical accuracy, and then forwarded to the presiding judge for substantive review and approval.¹³ Panel Attorneys are reminded to review Vol. 7A, Chapter 2, § 230.56 for procedures regarding substitution of counsel.

Excess compensation vouchers, including interim vouchers, are reviewed by the CJA Financial Coordinator for compliance with the CJA Guidelines and mathematical and technical accuracy, and then forwarded to the presiding judge for substantive review and approval. The voucher is then forwarded by the presiding judge to the Chief Judge of the Circuit or his or her

¹³ In accordance with the national guidelines, “[a]bsent extraordinary circumstances, judges should act upon panel attorney compensation claims within 30 days of submission.” See CJA Guidelines § 230.13 – Time Limits.

delegate for certification. Once Circuit approval is obtained, the voucher is returned to the presiding judge and processed for payment by the CJA Financial Coordinator.

B. Reduction and/or Disallowance of Voucher Claims

Each Panel Attorney has a responsibility to comply with the applicable national procedures and these local Policies and Procedures with respect to the submission of a fee petition. Each submission is an affirmation of the truth or correctness of the information contained therein.

Panel Attorneys should be aware that voucher submissions for unreasonable expenditures of time and/or expenses may result in a reduction or denial of the claim. Unless a proposed reduction is based on mathematical or technical errors, prior to the reduction of any voucher or the denial of certification, the presiding judge will notify the submitting Panel Attorney of the proposed reduction with a brief statement of the reason(s) for the denial or reduction, and allow the Panel Attorney an opportunity to submit a revised voucher or written request for reconsideration.

The Court will review a timely submitted request for reconsideration and may grant or deny it, in full or in part, and communicate the decision to the Panel Attorney. Repeated submissions for unreasonable expenditures of time may result in removal from the CJA panel.

IV. Mega Cases and Case Budgeting

A. Mega Cases¹⁴

Once it is determined that a non-capital representation is anticipated to exceed 300

¹⁴ The term “mega case” refers to a representation that qualifies for case budgeting under sections 230.26 and 640 of the CJA Guidelines, Guide to Judiciary Policy, Vol. 7, Part A: (a) all capital representations and (b) non-capital representations that appear likely to become or have become extraordinary in terms of potential cost (i.e., attorney hours are expected to exceed 300 hours or total expenditures are expected to exceed \$30,000 for appointed counsel and services other than counsel).

attorney hours or \$30,000 in fees and costs for appointed counsel and services, the Court may request the development of a complete or staged budget for the defendant's representation. For capital representations, the presiding judge is encouraged to require submission of a case budget. *See* CJA Guidelines §230.26. The Judicial Conference has created a Third Circuit Case Budgeting Attorney position to implement the Guidelines' provisions on case budgeting in capital prosecutions, capital habeas proceedings, and non-capital "mega-cases" of more than 300 hours or \$30,000 per representation. The Case Budgeting Attorney is available to assist the presiding judge and Panel Attorney with the process of developing and reviewing budget proposals, as well as any CJA related matters. Please contact the Federal Defender for the Case Budgeting Attorney's contact information.

In a mega case where a budget is required, the presiding judge will send the budget to the Chief Judge of the Circuit or his or her delegate for approval consistent with the statutory limits or specific court policies.

B. Other Cases Where Case-Budgeting May Be Used

At the beginning of any case, Panel Attorneys shall inform the Court ex parte if it is anticipated that costs will exceed the statutory threshold. At the discretion of the Court, a three-phase case budget may be required, allowing for quarterly interim payments.

C. Changes in Anticipated Costs

In any case where case-budgeting is used, Panel Attorneys must advise the Court of significant changes to the estimates and anticipated cost.

V. Revisions and Changes

These Policies and Procedures are subject to change and/or revision as may be necessary to comply with the Guide to Judiciary Policy, Volume 7: Defender Services - Part A: Guidelines

for Administering the CJA and Related Statutes and/or local policy and procedure. Panel Attorneys shall make every effort to remain current with National Guidelines and local Policies and Procedures.

VI. Forms and Reference Materials

A. Forms

All forms that Panel Attorneys may need to utilize are available at the Court's website.

These forms are:

CJA Form 20 - Appointment of and Authority to Pay Court Appointed Counsel and instructions.

CJA Form 21 - Authorization and Voucher for Expert and Services and instructions.

CJA Form 24 - Authorization and Voucher for Payment of Transcripts and instructions.

CJA Form 26 - Supplemental Information Statement for Compensation Claim in Exceeds of the Statutory Case Compensation Maximum: District Court.

CJA Form 30 - Appointment and Authority to Pay Court Appointed Counsel in Death Penalty proceedings and instructions.

CJA Form 31 - Authorization and Voucher for Expert and Other Services in Death Penalty proceedings and instructions.

B. Court Website

On the Court's website, there is currently a section entitled "Criminal Justice Act- CJA."

There are links to CJA revised worksheets, CJA rates, CJA Form 21 and Appx 3A Procedure, CJA Attorney Training Program, and CJA Calculating Compensation for Time Worked.

C. Other Reference Materials

For additional information regarding authorization and payments, please see the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume 7, Guide to Judiciary Policies and Procedures,¹⁵ specifically;

Chapter 2 - Appointment and Payment of Counsel

Chapter 3 - Authorization and Payment for Investigative, Expert or Other Services

Chapter 6 - Representation in Federal Death Penalty Cases and in Federal Capital Habeas Corpus Proceedings.

¹⁵ Available at <http://www.uscourts.gov/defenderservices/volume7.cfm>.

ATTACHMENT ONE

CJA RATES FOR CAPITAL AND NON CAPITAL CASES AND CURRENT MILEAGE RATES

Updated 02/04/15

CAPITAL CASES

*	to 01/31/05	\$125.00 in and out of court
*	02/01/05 to 12/31/05	\$160.00 in and out of court
*	01/01/06 to 05/19/07	\$163.00 in and out of court
*	05/20/07 to 12/31/07	\$166.00 in and out of court
*	01/01/08 to 03/10/09	\$170.00 in and out of court
*	03/11/09 to 12/31/09	\$175.00 in and out of court
*	01/01/10 to 08/31/13	\$178.00 in and out of court
*	09/01/13 to 02/28/14	\$163.00 in and out of court
*	03/01/14 to 12/31/14	\$180.00 in and out of court
*	01/01/15 to present	\$181.00 in and out of court

NON CAPITAL CASES

- January 1, 1996 rates change from \$60.00 in court & \$40.00 out of court to \$65.00 in court and \$45.00 out of court
- Work performed before 1/1/2000:
\$65.00/hr in court
\$45.00/hr out of court
- Work performed 1/1/2000 to 3/31/2001
\$70.00/hr in court
\$50.00/hr out of court
- Work performed 4/1/2001 to 4/30/2002
\$75.00/hr in court
\$55.00/hr out of court
- Work performed 5/1/2002 to 12/31/2005
\$90.00/hr in court
\$90.00/hr out of court
- Work performed 1/1/2006 to 5/19/2007
\$92.00/hr in court
\$92.00/hr out of court

- **Work performed 5/20/2007 to 12-31-2007** **\$94.00/hr in court**
\$94.00/hr out of court
- **Work performed 1/1/2008 to 03/10/2009** **\$100.00/hr in court**
\$100.00/hr out of court
- **Work performed 3/11/2009 to 12/31/2009** **\$110.00/hr in court**
\$110.00/hr out of court
- **Work performed 1/01/2010 to 8/31/2013** **\$125.00 in court**
\$125.00/hr out of court
- **Work performed 9/1/2013 to 2/28/2014** **\$110.00/hr in court**
\$110.00/hr out of court
- **Work performed 3/1/2014 to 12/31/2014** **\$126.00/hr in court**
\$126.00/hr out of court
- **Work performed 1/1/2015 to present** **\$127.00/hr in court**
\$127.00/hr out of court

CJA STATUTORY LIMITS

- **Work performed 05/20/2007 to 10/12/2008 \$7000.00**
- **Work performed 10/13/2008 to 03/10/2009 \$7800.00**
- **Work performed 03/11/2009 to 12/31/2009 \$8600.00**
- **Work performed 01/01/2010 to 12/31/2013 \$9700.00**
- **Work performed 01/01/2014 to 12/31/2014 \$9800.00**
- **Work performed 01/01/2015 to present \$9900.00**

OTHER WORK

- **Work performed 10/13/2008 to 03/10/2009 \$1700.00**
- **Work performed 03/11/2009 to 12/31/2009 \$1800.00**
- **Work performed 01/01/2010 to present \$2100.00**

SERVICE PROVIDERS

- **Work performed 01/01/2010 to 5/26/2010 \$ 500.00**
(without prior authorization)
- **Work performed 01/01/2010 to 5/26/2010 \$1600.00**
(with prior authorization)
- **Work performed 5/27/2010 to present \$ 800.00**
(without prior authorization)
- **Work performed 5/27/2010 to present \$2400.00**
(with prior authorization)

§ 230.16 Hourly Rates and Effective Dates in Non-Capital Cases

(a) Except in federal capital prosecutions and in death penalty federal habeas corpus proceedings, compensation paid to appointed counsel for time expended in court or out of court or before a U.S. magistrate judge may not exceed the rates in the following table. (For information on compensation of counsel in federal capital cases and death penalty federal habeas corpus proceedings, **see:** Guide, Vol 7A, § 630).

§ 230.16(A) NON-CAPITAL HOURLY RATES	
If services were performed between...	The maximum hourly rate is...
01/01/2015 to present	\$127
03/01/2014 through 12/31/2014	\$126
09/01/2013 through 02/28/2014	\$110
01/01/2010 through 08/31/2013	\$125
03/11/2009 through 12/31/2009	\$110
01/01/2008 through 03/10/2009	\$100
05/20/2007 through 12/31/2007	\$94

§ 230.16(A) NON-CAPITAL HOURLY RATES

If services were performed between...	The maximum hourly rate is...
01/01/2006 through 05/19/2007	\$92
05/01/2002 through 12/31/2005	\$90

§ 630.10.10 Hourly Rates

Under 21 U.S.C. § 848(q)(10)(A), recodified in 18 U.S.C. § 3599(g)(1) ([link is external](#)), the presiding judicial officer will set the hourly compensation at a rate not to exceed the following amounts, for appointed counsel in federal death penalty cases and federal capital habeas corpus proceedings commenced, and appellate proceedings in which an appeal was perfected, on or after April 24, 1996:

§ 630.10.10(A) CAPITAL HOURLY RATES

If services were performed between...	The hourly rate maximum is...
01/01/2015 to present	\$181
03/01/2014 through 12/31/2014	\$180
09/01/2013 through 02/28/2014	\$163
01/01/2010 through 08/31/2013	\$178
03/11/2009 through 12/31/2009	\$175

§ 630.10.10(A) CAPITAL HOURLY RATES

If services were performed between...	The hourly rate maximum is...
01/01/2008 through 03/10/2009	\$170
05/20/2007 through 12/31/2007	\$166
01/01/2006 through 05/19/2007	\$163
02/01/2005 through 12/31/2005	\$160

§ 230.23.20 Current Attorney Case Compensation Maximums

For work performed on or after January 1, 2015, the case compensation maximums are as follows:

§ 230.23.20 CURRENT ATTORNEY CASE COMPENSATION MAXIMUMS

If the case is a...	the case maximum is...
(a) Felony (except federal capital prosecutions)	\$9,900 for trial court level \$7,100 for appeal
(b) Misdemeanors (including petty offenses (class B or C misdemeanors or infractions) as set forth in) 18 U.S.C. § 3006A(a)(2)(A))) (link is external)	\$2,800 for trial court level \$7,100 for appeal
(c) Proceedings under 18 U.S.C. § 4106A (link	\$2,100 for representation before the U.S. Parole

§ 230.23.20 CURRENT ATTORNEY CASE COMPENSATION MAXIMUMS

If the case is a...	the case maximum is...
is external) (in connection with paroled prisoners transferred to the United States)	Commission \$7,100 for appeal
(d) Proceedings under 18 U.S.C. § 4107 (link is external) or § 4108 (link is external) (for counsel and guardians ad litem providing services in connection with prisoner transfer proceedings). Note: For information on appointment of counsel or guardians ad litem under 18 U.S.C. § 4109 (link is external), see: Guide, Vol 7B (International Prisoner Transfer Proceedings).	\$2,800 for each consent verification proceeding
(e) Pre-Trial Diversion	\$9,900 if offense alleged by the U.S. attorney is a felony \$2,800 if offense alleged by the U.S. attorney is a misdemeanor
(f) Proceedings under 18 U.S.C. § 983 (link is external) (for services provided by counsel appointed under 18 U.S.C. § 983(b)(1) (link is external) in connection with certain judicial civil forfeiture proceedings)	\$9,900 for trial court level \$7,100 for appeal
(g) Non-Capital Post-Conviction Proceedings under 28 U.S.C. § 2241 (link is external), § 2254 (link is external) or § 2255 (link is external)	\$9,900 for trial court level \$7,100 for appeal

§ 230.23.20 CURRENT ATTORNEY CASE COMPENSATION MAXIMUMS

If the case is a...	the case maximum is...
(h) Proceedings to Protect Federal Jurors Employment under 28 U.S.C. § 1875 (link is external)	\$9,900 for trial court level \$7,100 for appeal
<p>(i) Other Representations Required or Authorized by the CJA</p> <p>Note: This category includes but is not limited to the following representations:</p> <p>(1) probation violation;</p> <p>(2) supervised release hearing (for persons charged with a violation of supervised release or facing modification, reduction, or enlargement of a condition or extension or revocation of a term of supervised release);</p> <p>(3) parole proceedings under 18 U.S.C. chapter 311 (repealed) (link is external) (but see: note at Guide, Vol 7A, § 210.20.10(a)(5)).</p> <p>(4) material witness in custody;</p> <p>(5) mental condition hearings under 18 U.S.C. chapter 313 (link is external) (except for hearings under 18 U.S.C. § 4241 (link is external) and § 4244 (link is external), which are considered part of the case in chief with no</p>	\$2,100 for trial court level \$2,100 for each level of appeal

§ 230.23.20 CURRENT ATTORNEY CASE COMPENSATION MAXIMUMS

If the case is a...

the case maximum is...

separate compensation maximums applying.
(For a chart detailing the treatment for the purpose of compensation of representation at each hearing under 18 U.S.C. chapter 313 (link is external), **see:** Guide, Vol7A, § 220.30(f));

(6) civil or criminal contempt (where the person faces loss of liberty);

(7) witness (before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, where there is a reason to believe either before or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty); and

(8) international extradition (under 18 U.S.C. chapter 209 (link is external)).

§ 230.23.30 History of Case Compensation Maximums

For work performed prior to January 1, 2015, the case compensation maximums are as follows:

§ 230.23.30 HISTORY OF CASE COMPENSATION MAXIMUMS					
The case maximum if a case is a...	And services were completed...				
	12/8/2004 - 10/12/2008	10/13/2008 - 3/10/2009	3/11/2009 - 12/31/2009	1/1/2010 - 2/28/2014	3/1/2014 - 12/31/2014
Felony (including pre-trial diversion of alleged felony)	\$7,000	\$7,800	\$8,600	\$9,700	\$9,800
Misdemeanor (including pre-trial diversion of alleged misdemeanor)	\$2,000	\$2,200	\$2,400	\$2,800	\$2,800
Proceeding under 18 U.S.C. § 4106A (link is external)	\$1,500	\$1,700	\$1,800	\$2,100	\$2,100
Proceeding under 18 U.S.C. § 4107 (link is external) or § 4108 (link is external) (for each verification proceeding)	\$2,000	\$2,200	\$2,400	\$2,800	\$2,800

§ 230.23.30 HISTORY OF CASE COMPENSATION MAXIMUMS

The case
maximum if a
case is a... And services were completed...

Proceeding under 18 U.S.C. § 983 (link is external)	\$7,000	\$7,800	\$8,600	\$9,700	\$9,800
Post-conviction proceeding under under 28 U.S.C. § 2241 (link is external), § 2254 (link is external) or § 2255 (link is external)	\$7,000	\$7,800	\$8,600	\$9,700	\$9,800
Proceeding under 28 U.S.C. § 1875 (link is external)	\$7,000	\$7,800	\$8,600	\$9,700	\$9,800
Appeal from felony, misdemeanor, proceeding under 18 U.S.C. § 4106A (link is external), 18 U.S.C. § 983 (link is external), post- conviction proceeding under 28 U.S.C. § 2241 (link is external),	\$5,000	\$5,600	\$6,100	\$6,900	\$7,000

§ 230.23.30 HISTORY OF CASE COMPENSATION MAXIMUMS

The case
maximum if a
case is a... And services were completed...

§ 2254 (link is external) or § 2255 (link is external), and 28 U.S.C. § 1875 (link is external)					
Other representation required or authorized by the CJA (including, but not limited to probation, supervised release hearing, material witness, grand jury witness)	\$1,500	\$1,700	\$1,800	\$2,100	\$2,100
Appeal of other representation	\$1,500	\$1,700	\$1,800	\$2,100	\$2,100

ATTACHMENT TWO

CALCULATING COMPENSATION FOR TIME WORKED

Time for work spent performing a service should be reported in tenths of an hour. Compensation is calculated by multiplying the applicable rate per hour by the total number of hours. Calculate totals for each service category separately, and enter the category and grand totals on the appropriate lines on the voucher form.

TENTHS (.10) OF AN HOUR

<u>MINUTES</u>	=	<u>TENTHS</u>
1-6		.1
7-12		.2
13-18		.3
19-24		.4
25-30		.5
31-36		.6
37-42		.7
43-48		.8
49-54		.9
55-60		1.0

ATTACHMENT THREE

Northeast Ohio Correctional Center

With limited exceptions, federal detainees for the U.S. Marshals Service are housed at the Northeast Ohio Correctional Center (NEOCC) in Youngstown, Ohio, under a contract with Corrections Corp. of America that expires December 31, 2018.

Travel to NEOCC need not be pre-approved. Only actual time spent traveling may be claimed. Unless the starting point of the actual travel is closer to the destination, claims for travel time and mileage should be computed from the Panel Attorney's office or the courthouse, whichever distance is shorter. In either instance, round trip travel time and mileage to NEOCC may not exceed the following:

- (i) for Pittsburgh-division based attorneys: 2.5 hours round trip; 140 miles round trip;
- (ii) for Erie-division based attorneys: 3.5 hours round trip, 194 miles round trip; and
- (iii) for Johnstown-division based attorneys: 5 hours round trip, 280 miles round trip.

If it is necessary to exceed this limitation for effective representation by the attorney, Court pre-authorization is required.

Compensable amount of travel time to and from NEOCC is only for necessary visits. Appointed counsel is encouraged to meet with more than one CJA client on a visit to NEOCC in order to curtail unnecessary travel costs.

General Guidelines Applicable to NEOCC

The Court encourages full communication between panel counsel and CJA clients incarcerated at the NEOCC and understands that travel to NEOCC for in-person meetings is necessary during the representation. However, other methods of communication are available and should be utilized when appropriate for routine communications about the status of the case,

for instance.

Due to numerous complaints about unnecessary wait times at NEOCC, at the Court's request, and with the assistance of the U.S. Marshals Service, NEOCC set up these procedures. It is expected that the procedures for visitation be followed; if not, then compensation for "wait time" will not be approved.

A. Visitation

Counsel should travel to NEOCC when the tasks necessary for effective representation cannot appropriately be achieved through teleconferencing and video conferencing. All attorneys seeking visitation with their client(s) are to notify the NEOCC via fax two (2) hours in advance of the requested visit(s).

Either of the following fax numbers may be used: 330-746-8103 or 330-746-3318. The fax cover page should be addressed to the NEOCC Video Conference Center as the office designated by the NEOCC to receive such notification and should include the inmate's name and the Panel Attorney's anticipated time of arrival. Panel Attorneys should maintain for their records a copy of the fax cover page and transmission receipt as proof that the fax had been sent in the event that attorneys seek reimbursement for any wait time.

On rare occasions, a brief delay may occur, e.g., when the institution goes into lockdown due to a security matter. Unannounced visits, especially those occurring during prisoner count, will result in a delay.

A Panel Attorney seeking compensation for time spent waiting at NEOCC must attach a copy of the fax cover page along with a fax-generated transmission receipt with his or her CJA 20 voucher. The fax cover page alone will not be accepted. Failure to follow this

guideline may result in the wait time claim not being approved.

Panel Attorneys who experience excessive wait times after following the above procedure should contact the Court's CJA Financial Coordinator, who will bring the issue to the attention of the Chief Judge.

B. NEOCC-Provided Computers for Reviewing Evidence

NEOCC purchased laptop computers for inmate use in reviewing evidence. Therefore, the institution does not permit outside computers, laptops, software, hard drives, etc., to be brought into the institution.

All computers and defense material stored in electronic format is secured in the video conferencing room under the supervision of NEOCC officials. Inmates are not authorized to bring the computers, or electronic evidence, back to their pods or living quarters.

The process for scheduling and reserving time for inmates to review their defense material in the video conferencing room is flexible and accommodating. Inmates first make their request to the NEOCC officials in their pods. At that time they will be directed to the video conferencing room where they can schedule a time to review their material.

NEOCC offers tech support to inmates who are having trouble reviewing their material. Additionally, the NEOCC Computer Services Manager will be happy to speak with attorneys regarding tech or software issues. Panel Attorneys can send electronic defense material to NEOCC and to the attention of the Video Conference Officer. The letter must also contain the inmate's name and USMS prisoner number.

Attorneys are always welcome to call the NEOCC prior to sending material to address any issue or software concerns. The direct number for such requests is (330) 884-6754 and

the email address is neoccvideocourt@cca.com.

ATTACHMENT FOUR

MILEAGE RATES

The mileage rates for use of a privately owned vehicle to conduct CJA business recently increased. Please verify that you are using the correct mileage rate:

•	Travel performed before 01/22/2001:	.325 cents per mile
•	Travel performed as of 01/22/2001:	.345 cents per mile
•	Travel performed as of 01/21/2002:	.365 cents per mile
•	Travel performed as of 01/01/2003:	.36 cents per mile
•	Travel performed as of 01/01/2004:	.375 cents per mile
•	Travel performed as of 02/04/2005:	.405 cents per mile
•	Travel performed as of 09/01/2005:	.485 cents per mile
•	Travel performed as of 01/01/2006:	.445 cents per mile
•	Travel performed as of 02/01/2007:	.485 cents per mile
•	Travel performed as of 03/19/2008:	.505 cents per mile
•	Travel performed as of 08/01/2008:	.585 cents per mile
•	Travel performed as of 02/01/2009:	.55 cents per mile
•	Travel performed as of 01/01/2010:	.50 cents per mile
•	Travel performed as of 01/01/2011:	.51 cents per mile
•	Travel performed as of 04/17/2012:	.555 cents per mile
•	Travel performed as of 01/01/2013:	.565 cents per mile
•	Travel performed as of 01/01/2014:	.56 cents per mile
•	Travel performed as of 01/01/2015:	.575 cents per mile

ATTACHMENT FIVE

§ 320.80.20 Government Travel Rates

Government travel rates at substantial reductions from ordinary commercial rates may be available from common carriers for travel authorized by the court in connection with representation under the CJA. To obtain such rates, investigators and other service providers must contact the clerk of court and obtain prior approval from the presiding judicial officer.

Note: Lodging taxes are reimbursed separately and should be claimed on the travel voucher as a miscellaneous expense. Travelers should take advantage of exemption from the sales tax, whenever legally entitled. The governing state, county, and/or city tax statute controls this entitlement. Travelers should reference the [GSA SmartPay website](#) to determine a location's current handling of lodging taxes. When a state and/or local government offers tax exemption for lodging taxes, the traveler should, if appropriate, present a completed state tax exemption form to the hotel upon arrival, to ensure that such taxes are not charged.

*CJA Attorneys and service providers can receive a government rate on airfare only. They also cannot receive state tax exemption on hotel expenses because they are not government employees. Hotel lodging requires you to show your government identification to receive the rate, in which they would not have one.

ATTACHMENT SIX

**UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
WESTERN DISTRICT OF PENNSYLVANIA
700 GRANT STREET, SUITE 3110
PITTSBURGH, PA 15219
WWW.PAWD.USCOURTS.GOV**

**ROBERT V. BARTH, JR.
CLERK OF COURT
412-208-7500**

**IN REPLYING, GIVE NUMBER
OF CASE AND NAMES OF PARTIES**

**Authorization and Payment for Investigative,
Expert and Other Services
CJA 21 and Appendix 3A(formerly Appendix C) Instructions**

When making your request to the Judge or Magistrate Judge to obtain a service provider the following policy and procedure must be followed for prior approval. You can find these policies and procedures on the National CJA Voucher Reference Tool under roles for Expert/Other Service Provider.

<http://www.uscourts.gov/uscourts/cjaort/index.html>

The request should include:

- the reason the services and the named provider are being requested,
- the relevant experience and qualifications of the expert/service provider,
- the hourly rate requested,
- the fee arrangement, as applicable,
- the specific services and expenses to be included,
- if additional services/funding may be requested from/for this provider (as applicable), and
- other relevant information.

Once funding for investigative, expert and other services has been approved, counsel is responsible for communicating the specific terms of the court order to the service provider to ensure that changes do not exceed the amount authorized.

If it can be anticipated that the compensation will exceed the statutory maximum, advance approval should be obtained from the court and the chief judge of the circuit (or judge delegate).

[Guide, Vol 7. § 310.20.10]

The Guide, Appendix 3A (formerly Appendix C) provides a sample format for requesting advance authorization to obtain investigative, expert, or other services in an amount that exceeds the statutory maximum.

An IRS audit of the Courts has forced the need for the collection of W-9 forms from vendors, including CJA panel attorneys, experts and other service providers paid under the CJA. Please make sure when hiring a vendor they provide a W-9 form with their invoice for payment.

CJA 21 AUTHORIZATION AND VOUCHER FOR EXPERT AND OTHER SERVICES (Rev. 05/12)

1. CIR./DIST./DIV. CODE		2. PERSON REPRESENTED		VOUCHER NUMBER	
3. MAG. DKT./DEF. NUMBER		4. DIST. DKT./DEF. NUMBER		5. APPEALS DKT./DEF. NUMBER	
6. OTHER DKT. NUMBER					
7. IN CASE/MATTER OF (Case Name)		8. PAYMENT CATEGORY <input type="checkbox"/> Felony <input type="checkbox"/> Petty Offense <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Other <input type="checkbox"/> Appeal		9. TYPE PERSON REPRESENTED <input type="checkbox"/> Adult Defendant <input type="checkbox"/> Appellant <input type="checkbox"/> Juvenile Defendant <input type="checkbox"/> Appellee <input type="checkbox"/> Other	
10. REPRESENTATION TYPE (See Instructions)					
11. OFFENSE(S) CHARGED (Cite U.S. Code, Title & Section) <i>If more than one offense, list (up to five) major offenses charged, according to severity of offense.</i>					
REQUEST AND AUTHORIZATION FOR EXPERT SERVICES					
12. ATTORNEY'S STATEMENT As the attorney for the person represented, who is named above, I hereby affirm that the services requested are necessary for adequate representation. I hereby request: <input type="checkbox"/> Authorization to obtain the service. Estimated Compensation and Expenses: \$ _____ OR <input type="checkbox"/> Approval of services already obtained to be paid for by the United States pursuant to the Criminal Justice Act. (Note: Prior authorization should be obtained for services in excess of \$800, excluding expenses) Signature of Attorney _____ Date _____ <input type="checkbox"/> Panel Attorney <input type="checkbox"/> Retained Attorney <input type="checkbox"/> Pro-Se <input type="checkbox"/> Legal Organization ATTORNEY'S NAME (First Name, M.I., Last Name, including any suffix), AND MAILING ADDRESS _____ Telephone Number: _____					
13. DESCRIPTION OF AND JUSTIFICATION FOR SERVICES (See Instructions)			14. TYPE OF SERVICE PROVIDER (See Instructions)		
15. COURT ORDER Financial eligibility of the person represented having been established to the Court's satisfaction, the authorization requested in Item 12 is hereby granted. Signature of Presiding Judge or By Order of the Court _____ Date of Order _____ Nunc Pro Tunc Date _____ Repayment or partial repayment ordered from the person represented for this service at time of authorization <input type="checkbox"/> YES <input type="checkbox"/> NO			01 <input type="checkbox"/> Investigator 17 <input type="checkbox"/> Hair/Fiber Expert 02 <input type="checkbox"/> Interpreter/Translator 18 <input type="checkbox"/> Computer (Hardware/Software/Systems) 03 <input type="checkbox"/> Psychologist 19 <input type="checkbox"/> Paralegal Services 04 <input type="checkbox"/> Psychiatrist 20 <input type="checkbox"/> Legal Analyst/Consultant 05 <input type="checkbox"/> Polygraph 21 <input type="checkbox"/> Jury Consultant 06 <input type="checkbox"/> Documents Examiner 22 <input type="checkbox"/> Mitigation Specialist 07 <input type="checkbox"/> Fingerprint Analyst 23 <input type="checkbox"/> Duplication Services 08 <input type="checkbox"/> Accountant 24 <input type="checkbox"/> Other (Specify) _____ 09 <input type="checkbox"/> CALR (Westlaw/Lexis, etc.) 25 <input type="checkbox"/> Litigation Support Services 10 <input type="checkbox"/> Chemist/Toxicologist 26 <input type="checkbox"/> Computer Forensics Expert 11 <input type="checkbox"/> Ballistics 12 <input type="checkbox"/> Weapons/Firearms/Explosive Expert 13 <input type="checkbox"/> Pathologist/Medical Examiner 14 <input type="checkbox"/> Other Medical 15 <input type="checkbox"/> Voice/Audio Analyst 16 <input type="checkbox"/>		
CLAIM FOR SERVICES AND EXPENSES			FOR COURT USE ONLY		
16. SERVICES AND EXPENSES (Attach itemization of services with dates)		AMOUNT CLAIMED		MATH/TECHNICAL ADJUSTED AMOUNT	
a. Compensation					
b. Travel Expenses (lodging, parking, meals, mileage, etc.)					
c. Other Expenses					
GRAND TOTALS (CLAIMED AND ADJUSTED):		\$0.00		\$0.00	
17. PAYEE'S NAME AND MAILING ADDRESS _____ TIN: _____ Telephone Number: _____ CLAIMANT'S CERTIFICATION FOR PERIOD OF SERVICE FROM _____ TO _____ CLAIM STATUS <input type="checkbox"/> Final Payment <input type="checkbox"/> Interim Payment Number _____ <input type="checkbox"/> Supplemental Payment I hereby certify that the above claim is for services rendered and is correct, and that I have not sought or received payment (compensation or anything of value) from any other source for these services. Signature of Claimant/Payee _____ Date _____					
18. CERTIFICATION OF ATTORNEY I hereby certify that the services were rendered for this case. Signature of Attorney _____ Date _____					
APPROVED FOR PAYMENT — COURT USE ONLY					
19. TOTAL COMPENSATION		20. TRAVEL EXPENSES		21. OTHER EXPENSES	
22. TOTAL AMOUNT APPROVED/CERTIFIED		\$0.00			
23. <input type="checkbox"/> Either the total cost (excluding expenses) of all services combined does not exceed \$800, or prior authorization was obtained. <input type="checkbox"/> Prior authorization was not obtained, but in the interest of justice the Court finds that timely procurement of these necessary services could not await prior authorization, even though the cost (excluding expenses) exceeds \$800. Signature of Presiding Judge _____ Date _____ Judge Code _____					
24. TOTAL COMPENSATION		25. TRAVEL EXPENSES		26. OTHER EXPENSES	
27. TOTAL AMOUNT APPROVED		\$0.00			
28. PAYMENT APPROVED IN EXCESS OF THE STATUTORY THRESHOLD UNDER 18 U.S.C. § 3006A(e)(3) Signature of Chief Judge, Court of Appeals (or Delegate) _____ Date _____ Judge Code _____					

Guide to Judiciary Policy

Vol 7: Defender Services

Pt A: Guidelines for Administering the CJA and Related Statutes

Appx 3A: Request for Advance Authorization for Investigative, Expert or Other Services

TO: Chief Judge (or Delegate) _____
United States Court of Appeals For the _____ Circuit

DATE: _____

FROM: _____

SUBJECT: Advance Authorization for Investigative, Expert, or Other Services

It is requested that advance authorization be granted to obtain services in an amount in excess of the maximum allowed under the provisions of subsection (e)(3) of the Criminal Justice Act, 18 U.S.C. § 3006A, [or, for capital cases commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996, under 18 U.S.C. § 3599(g),] as follows:

Case Name & Designation

Name of Expert or Investigator or Service Provider

Address _____

Type of Service _____

Reasons for Application

Estimated Compensation (Non-Capital Case) \$ _____

Estimated Compensation and Expenses (Capital Case) \$ _____

Estimated Compensation and Expenses of All Investigative, Expert, and Other Services
(Capital Case) \$ _____

I certify that the estimated compensation in excess of the maximum set forth in
18 U.S.C. § 3006A(e)(3) [or, if applicable, the estimated compensation and expenses in
excess of the maximum set forth in 18 U.S.C. § 3599(g),] appears necessary to provide
fair compensation for services of an unusual character or duration and therefore
recommend approval of this advance authorization in the amount of

\$ _____.

United States District Judge
or United States Magistrate Judge

Date

Advance authorization is hereby approved in the amount of

\$ _____.

Chief Judge, United States Court of Appeals
(or Delegate)

Date

ATTACHMENT SEVEN

Sample Engagement Letter: Contents of Financial Arrangements

Case name: _____

Case number: _____

The engagement of your services for this case is subject to the following:

- (1) You will be compensated at a rate of \$ _____ per hour [or specify some other fee arrangement], and [\$ _____ per hour for long-distance travel-related time that will be explained in correspondence to you]. The maximum payment amount authorized by the court as of this date for your services is \$ _____, which includes any expenses incurred by you.
- (2) You will submit your voucher(s) (CJA Form 21 in a non-capital representation and CJA Form 31 in a capital representation) to me, and it is my responsibility as counsel to certify to the court that the services were rendered. Payment for your services is subject to approval by the presiding judge and, in certain circumstances, the chief judge of the court of appeals. Approved payments are made by the Department of the Treasury out of the federal judiciary's Defender Services account, not by me or my law firm.
- (3) The presiding judge (and the circuit chief judge, if applicable) has discretion to reduce a voucher. Specific reasons include: (a) a mathematical error; (b) non-compliance with the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), *Guide to Judiciary Policy*, Volume 7, Part A, or court policies; and (c) a determination that the services claimed are unreasonable either in terms of the work performed or the amount of time and expenses submitted. Accordingly, this Engagement Letter is not a guarantee of payment for all services rendered or expenses incurred.
- (4) **Do not perform services or incur expenses that would result in an invoice in excess of the maximum payment amount authorized by the court** (as set forth in paragraph (1)). Doing so creates a risk that the court will not authorize the payment for the work done or expenses incurred in excess of the maximum authorized amount, even if the services performed or expenses incurred are necessary. You must advise me **before** you exceed the court's maximum authorized payment amount, and if I determine such additional work and/or expenses are necessary for the representation, I will seek approval from the court for a new maximum authorization level, before such work is performed or expenses incurred.
- (5) Travel expenses will be reimbursed on the basis of actual expenses incurred. Please consult with me regarding the maximum reimbursement amounts for travel expenses. Airline travel must be authorized by the court by my application. If airline travel is authorized, I will provide guidance to you regarding the purchase of a ticket.

- (6) Record Keeping – Consistent with CJA Guidelines § 320.90, you are required to maintain contemporaneous time and attendance records for all work/services billed, including work performed by associates, partners, and support staff, as well as expense records. These records should be submitted with your CJA voucher for payment, and must be retained for three years after approval of the appointed counsel's or the service provider's final voucher, whichever is later.

- (7) Unless otherwise authorized by the court, a voucher for services performed and expenses incurred for the representation will be submitted at the conclusion of your services. While the court attempts to process invoices as quickly as possible, there may be delays in payment due to workload and other factors.

- (8) Scope of Work – You are authorized to do the following work:

Accepted by: _____

Date: _____

ATTACHMENT EIGHT

**Judicial Conference of the United States
Committee on Defender Services
United States Courthouse
101 West Lombard Street, Room 7310
Baltimore, Maryland 21201-2605**

Chair
Catherine C. Blake

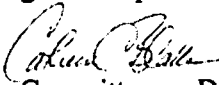
Telephone:
(410) 962-3220
Fax:
(410) 962-6836

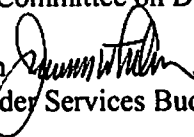
Members
Deborah A. Batts
Sharon Lovelace Blackburn
Kathleen Cardone
Raner C. Collins
Jonathan W. Feldman
Katharine Sweeney Hayden
Gladys Kessler
Harry S. Mattice, Jr.
Eric F. Melgren
F. Dennis Saylor, IV
Bobby E. Shepherd
John D. Tinder

February 26, 2014

MEMORANDUM

To: Judges, United States Courts of Appeals
Judges, United States District Courts
United States Magistrate Judges
Circuit Executives
Federal Public/Community Defenders
District Court Executives
Clerks, United States Courts of Appeals
Clerks, United States District Courts
Senior Staff Attorneys
Circuit CJA Case-Budgeting/CJA Supervising Attorneys

From: Judge Catherine C. Blake 
Chair, Judicial Conference Committee on Defender Services

Judge Jonathan W. Feldman 
Chair, Committee on Defender Services Budget Subcommittee

RE: COST-CONTAINMENT INITIATIVES REGARDING CJA INVESTIGATORS, EXPERTS,
AND OTHER SERVICE PROVIDERS (INFORMATION)

In an effort to address costs in Criminal Justice Act (CJA) "mega cases,"¹ the Committee on Defender Services (Committee), at its December 2013 meeting, identified several areas for potential savings associated with the hourly rates, retention, and billing practices of investigators,

¹ A CJA panel attorney mega case refers to a representation that qualifies for case budgeting under sections 640 and 230.26 of the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), *Guide to Judiciary Policy*, Vol. 7, Part A: (a) all capital representations and (b) non-capital representations that appear likely to become or have become extraordinary in terms of potential cost (i.e., attorney hours are expected to exceed 300 or total expenditures are expected to exceed \$30,000 for appointed counsel and services other than counsel).

experts, and other service providers (service providers). The Committee developed three service provider cost-containment initiatives which it strongly urges courts to adopt (unless such practices are already in place) in CJA panel attorney mega cases, recognizing that cost-containment and efficiency efforts can be made while maintaining the quality of representation.

The following three initiatives are further explained in the attachments:

1. **Require the use of experience-based ranges (reasonable hourly rate ranges) for commonly used service providers and require further justification and the permission of the presiding judicial officer to exceed the ranges. (See Attachment 1)**
2. **Require counsel to use written retainer agreements for investigators, experts, and other service providers, setting forth details of their engagement, including the hourly rate, the approved number of hours, and contemporaneous time record requirements. A sample engagement letter (contents of financial arrangements) and recommended time sheet are included with the attachment. (See Attachment 2)**
3. **Require that privately retained investigators, experts, and other service providers bill travel time at 50 percent of the approved normal billing rate, subject to described exceptions. (See Attachment 3)**

These initiatives will be required in federal defender mega cases as well. A separate memorandum will be sent to federal defenders to explain how these initiatives apply to them in relation to the Committee's oversight of their budgets and grants.

To enable the Committee to identify and fashion well-informed decisions regarding issues involved with each initiative, it solicited the input from an expert panel of federal defenders, CJA panel attorneys, circuit CJA case-budgeting attorneys, the national mitigation coordinator, as well as the Administrative Office's Defender Services Office. Recognizing that each case is unique, a key component of the Committee's recommendations is that the presiding judge always retains the authority to exceed the recommended experience-based hourly rates or permit full compensation for travel time if the individual case warrants the exception.

To ensure proper notification and education about the initiatives to all interested stakeholders, a multi-step process has been designed to inform, explain, and reinforce the initiatives through a combination of in-person discussions, webinars, and trainings. This memorandum and one to be sent to federal defenders regarding their mega cases are among the early steps. Information about the initiatives has been provided during case-budgeting webinars held earlier this year (to be posted soon on the JNet) for judges and court staff and at the annual

Federal Defender Conference at the end of January 2014, and will be provided at the CJA Panel Attorney District Representatives Conference in early March 2014. Additional training will be provided through the creation of materials, presentations, and webinars (especially for CJA voucher reviewers). The federal defenders have been encouraged to conduct local panel attorney training on the initiatives.

If you have any questions or concerns regarding the initiatives, please feel free to contact either of us, or the Defender Services Office by telephone at (202) 502-3030 (ask for the Legal and Policy Division duty day attorney) or by email (ods_lpb@ao.uscourts.gov).

Attachments

cc: CJA Panel Attorney District Representatives

Experience-Based Compensation Ranges for Certain Service Providers

Require the use of experience-based ranges (reasonable hourly rate ranges) for commonly used service providers in CJA mega cases¹ and require permission of the presiding judicial officer to exceed the ranges.

Experience-Based Ranges

Category	Experience-Based Hourly Ranges
Law Students	\$15-\$25
Paralegals	\$25-\$55
Investigators	\$55-\$100
Mitigation Specialists	\$75-\$100
Jury Consultants	\$150-\$225

To develop these experience-based hourly rate ranges, the Committee on Defender Services (Committee) received input from an expert panel of federal defenders, CJA panel attorneys, circuit CJA case-budgeting attorneys, the national mitigation coordinator, as well as Defender Services Office staff. These national ranges are intended to help contain costs, and still enable appointed counsel to find a qualified service provider within the experience-based ranges without diminishing the quality of representation.

The Committee recognizes that a critical component of establishing national experience-based hourly rate ranges is that the presiding judge has the authority to approve rates outside of the recommended ranges for demonstrated good cause. Factors that a court may wish to consider in determining whether to exceed an experience-based range include the uniqueness of the service or the service provider; the education, training, reputation, or specialization of the service provider; the availability, or lack of availability, of this or similar service providers; the seriousness of the case; any time limitations on the case that may affect how quickly the service needs to be completed; and any other factors relevant to the circuit or district.

¹ A CJA panel attorney mega case refers to a representation that qualifies for case budgeting under sections 640 and 230.26 of the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), *Guide to Judiciary Policy*, Vol. 7, Part A: (a) all capital representations and (b) non-capital representations that appear likely to become or have become extraordinary in terms of potential cost (i.e., attorney hours are expected to exceed 300 or total expenditures are expected to exceed \$30,000 for appointed counsel and services other than counsel).

Established hourly rate ranges for certain service providers have been utilized by some circuit and district courts, including those with CJA circuit case-budgeting attorneys and CJA supervising attorneys, for a number of years. Recognizing that there are regional and geographic differences that influence the costs of a case, the Committee determined that trying to set national ranges for most or all categories of service providers would prove burdensome and result in ranges too large to account for the national variances. Instead, the Committee focused on the five categories of commonly used service providers, listed in the chart, that account for more than half of the CJA subsection (e) service provider expenditures each year. The Committee understands that a district or circuit may choose to use ranges already developed based on its particular geographic area. The chart should be utilized where no current experience-based ranges exist and can serve as a basis to evaluate existing ranges or to develop district or circuit specific ranges.

Engagement Letter for Service Providers

Require counsel in CJA mega cases¹ to use written retainer agreements for investigators, experts, and other service providers setting forth details of their engagement, including the hourly rate, the approved number of hours, and contemporaneous time record requirements.

Federal defender organizations are required by procurement regulations to use written engagement letters when retaining experts and service providers. Likewise, panel attorneys in mega cases should use written engagement letters/agreements² when they engage an investigator, expert, or other service provider (service provider) who will be compensated with CJA funds.³ This initiative would ensure that service providers have a clear understanding of: (1) their hourly rate of compensation, (2) the maximum number of hours or amount of compensation approved by the court, (3) the scope of the work for which they are engaged, and (4) other appropriate billing practices. Specifically, the engagement letter should include language pertaining to the possible reduced hourly rate for travel, as provided in Attachment 3.

In an effort to decrease instances when service providers, without prior approval, exceed an authorized limit (total hours or total compensation) established by the court, the engagement letter should also include language indicating that the service provider should not exceed the maximum number of authorized hours or dollar amount without prior written authorization from counsel and the approval of the court. The letter should explain that the service provider's voucher must be based on contemporaneous time records.

An exception to requiring the use of written engagement letters in CJA panel attorney mega cases would be permissible if the total compensation for the individual service provider is below the CJA dollar threshold requiring prior authorization for service providers (currently \$800, see CJA Guidelines § 310.20.30).

¹ A CJA panel attorney mega case refers to a representation that qualifies for case budgeting under sections 640 and 230.26 of the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), *Guide to Judiciary Policy*, Vol. 7, Part A: (a) all capital representations and (b) non-capital representations that appear likely to become or have become extraordinary in terms of potential cost (i.e., attorney hours are expected to exceed 300 or total expenditures are expected to exceed \$30,000 for appointed counsel and services other than counsel).

² The terms of the engagement may be set forth in a letter, memorandum, or other form of writing.

³ Written engagement letters should also be utilized by retained counsel when they seek to use CJA funds to engage a service provider. See CJA Guidelines § 310.10.20.

To assist counsel, sample engagement letter language is included as part of this attachment. In an effort to assist judges and CJA voucher reviewers, an Expert and Service Provider Time Worksheet, which could be used by service providers when submitting compensation vouchers, is also included. The worksheet sets forth an itemized description of the work completed, categories to enter the number of hours for that work, and subtotals and totals for each column. The worksheet will be posted soon on the JNet and www.fd.org in automated formats.

Sample Engagement Letter: Contents of Financial Arrangements

Case name: _____

Case number: _____

The engagement of your services for this case is subject to the following:

- (1) You will be compensated at a rate of \$_____ per hour [or specify some other fee arrangement], and [\$_____ per hour for long-distance travel-related time that will be explained in correspondence to you]. The maximum payment amount authorized by the court as of this date for your services is \$_____, which includes any expenses incurred by you.
- (2) You will submit your voucher(s) (CJA Form 21 in a non-capital representation and CJA Form 31 in a capital representation) to me, and it is my responsibility as counsel to certify to the court that the services were rendered. Payment for your services is subject to approval by the presiding judge and, in certain circumstances, the chief judge of the court of appeals. Approved payments are made by the Department of the Treasury out of the federal judiciary's Defender Services account, not by me or my law firm.
- (3) The presiding judge (and the circuit chief judge, if applicable) has discretion to reduce a voucher. Specific reasons include: (a) a mathematical error; (b) non-compliance with the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), *Guide to Judiciary Policy*, Volume 7, Part A, or court policies; and (c) a determination that the services claimed are unreasonable either in terms of the work performed or the amount of time and expenses submitted. Accordingly, this Engagement Letter is not a guarantee of payment for all services rendered or expenses incurred.
- (4) **Do not perform services or incur expenses that would result in an invoice in excess of the maximum payment amount authorized by the court** (as set forth in paragraph (1)). Doing so creates a risk that the court will not authorize the payment for the work done or expenses incurred in excess of the maximum authorized amount, even if the services performed or expenses incurred are necessary. You must advise me **before** you exceed the court's maximum authorized payment amount, and if I determine such additional work and/or expenses are necessary for the representation, I will seek approval from the court for a new maximum authorization level, before such work is performed or expenses incurred.
- (5) Travel expenses will be reimbursed on the basis of actual expenses incurred. Please consult with me regarding the maximum reimbursement amounts for travel expenses. Airline travel must be authorized by the court by my application. If airline travel is authorized, I will provide guidance to you regarding the purchase of a ticket.

- (6) **Record Keeping** – Consistent with CJA Guidelines § 320.90, you are required to maintain contemporaneous time and attendance records for all work/services billed, including work performed by associates, partners, and support staff, as well as expense records. These records should be submitted with your CJA voucher for payment, and must be retained for three years after approval of the appointed counsel's or the service provider's final voucher, whichever is later.
- (7) Unless otherwise authorized by the court, a voucher for services performed and expenses incurred for the representation will be submitted at the conclusion of your services. While the court attempts to process invoices as quickly as possible, there may be delays in payment due to workload and other factors.
- (8) **Scope of Work** – You are authorized to do the following work:

Accepted by: _____

Date: _____

Expert and Service Provider Time Worksheet in Mega Cases (02/14)

Case Name: _____

Case Number: _____

DESCRIPTION OF WORK		HOURS						
Date	Brief Description of Services	Confer with Counsel, Client, Team Members, or Other (please specify in previous column)	Obtaining Records and Reports	Reading File, Records, and Reports	Investigative Work and Interviews	Research, Writing, & Records Analysis	Travel Time	Other
PAGE TOTAL (HOURS)	0	0	0	0	0	0	0	0
GRAND TOTAL (HOURS)								

I hereby certify that this worksheet is for services rendered and is correct.

Name _____

Date Submitted _____

Page ____ of ____

Travel by Service Providers

Unless otherwise approved by the presiding judge, require that privately retained investigators, experts, and other service providers in CJA mega cases¹ bill travel time at 50 percent of the approved normal billing rate, subject to exceptions (A) and (B) below.

- (A) The first six hours traveling by automobile to, and the first six hours traveling by automobile from, a case-related destination (i.e., a destination relevant to the responsibilities or duties assigned to the expert or service provider by the attorney for the defendant).**
- (B) Reasonable travel time at or around the case-related destination in order for the expert or service provider to complete the responsibilities or duties assigned to the expert or service provider by the attorney for the defendant.**

Time spent performing case-related work while traveling, by any mode of transportation, is not “travel time” and should be compensated at the full (i.e., not reduced) hourly rate. Case-related work is work relevant to the responsibilities or duties assigned to the expert or service provider by the attorney for the defendant.

The Committee on Defender Services (Committee) is concerned that investigators, experts, and other service providers (service providers) should not be compensated at their full hourly rate for unlimited travel time, particularly if the service provider can work on a case while traveling but chooses not to work. Conversely, the Committee recognizes that for certain service providers, driving is an essential part of their primary duties, during which they are unable to actively work on a case.

A critical component of this initiative is that the presiding judge, upon application by counsel, may authorize payment at the full hourly rate for travel in appropriate circumstances. Examples of such instances may include when a medical doctor is retained and must leave his or her practice to fly to a prison to examine a defendant, or when service providers have to travel because of the requirements of the government (for example, prosecutors might not release evidence, such as photos and hard drives, to be sent to service providers, instead requiring the service provider to travel to the prosecutor’s office or a lab).

¹ A CJA panel attorney mega case refers to a representation that qualifies for case budgeting under sections 640 and 230.26 of the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), *Guide to Judiciary Policy*, Vol. 7, Part A: (a) all capital representations, and (b) non-capital representations that appear likely to become or have become extraordinary in terms of potential cost (i.e., attorney hours are expected to exceed 300 or total expenditures are expected to exceed \$30,000 for appointed counsel and services other than counsel).

The Committee does not recommend that courts utilize a blanket rule requiring a reduced travel rate for service providers in all situations. The Committee feels that its recommended exception for the first six hours traveling by automobile to, and the first six hours traveling by automobile from, a destination addresses many of the issues surrounding this initiative.² Additionally, once a service provider arrives at a distant location, driving around that area, or driving around the geographic area of the case, should be considered a core job responsibility and, therefore, not subject to a reduced hourly rate.

Notification of the reduced travel rate should be included in counsel's engagement letter with the service provider.

² As noted previously, service providers cannot work on a case while driving. Additionally, a blanket rule requiring a reduced hourly travel rate for all driving may cause service providers to travel less and rely on less effective means of accomplishing their duties, resulting in lower quality of representation (e.g., rather than arranging lengthy roundtrip travel to interview witnesses, the investigator or mitigation specialist may instead conduct a telephone interview of a witness when it would be important to evaluate the witness in person).