

2009

# CJA MANUAL

FEDERAL DEFENDERS OF WESTERN NORTH CAROLINA

THIS MANUAL HAS BEEN PROVIDED AS A GUIDE TO PROCEDURES FOR CJA PANEL ATTORNEYS IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA. THIS MANUAL IS WRITTEN IN ACCORDANCE WITH THE CJA GUIDELINES AS WELL AS THE CJA PLAN ADOPTED BY THIS COURT.





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### GENERAL CJA VOUCHER INSTRUCTIONS

This manual has been provided as a guide to procedures for CJA panel attorneys in the United States District Court for the Western District of North Carolina. This manual is written in accordance with the CJA Guidelines as well as the CJA Plan, [See Exhibit O](#), adopted by this Court.

Attorneys wishing to become a member of this panel may obtain information about the application process by calling the office of the Federal Defenders of Western North Carolina.(FDWNC) at 704-374-0720.



### CJA PROCESSING IN NON-DEATH PENALTY CASES

#### **APPOINTMENTS**

Appointments to represent indigent criminal defendants are offered to CJA panel attorneys by FDWNC. A rotating list of panel attorney names is used to make the necessary appointments. Upon acceptance of appointment, a CJA20 form, “Appointment of and Authority to Pay Court Appointed Counsel”, is generated from the CJA Payment system to be signed by the appropriate court officer, and then the approved voucher is mailed to the newly appointed attorney along with worksheets. This form is the only authorized voucher that may be submitted for payment.

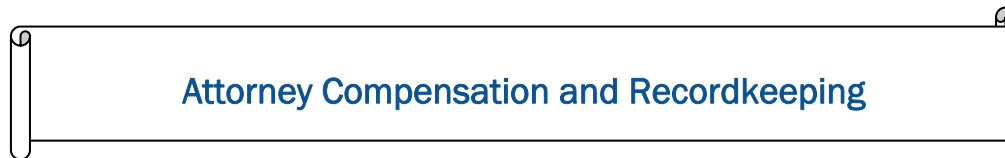
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### TYPES OF REPRESENTATION

There are various types of representation.

Each type of representation has a maximum allowable billing rate which is set by the Federal Judicial Conference. The hourly rate and types of representation for CJA Panel attorneys is shown on the chart attached . [Exhibit A.](#)



### TIME RECORDATION

All time must be reported in tenths of an hour. Vouchers not complying with that format will be returned for corrections. [Exhibit B.](#)

Appointed counsel will not be compensated for work performed by attorneys that could or should be performed by other less expensive authorized staff. For example, lawyers should not expend time for court filings, service of papers, file organization, photocopying, mailing, faxing. If an appointed attorney associates another attorney within the same firm on an appointed case, the attorneys will be compensated only for billable tasks, but not for inter-office conferencing.

### RECORDS

Attorneys must maintain detailed time and attendance records for all work performed. Work performed by associates, partners and support staff must be documented in detail and the person doing the task identified. Excessive research or copying by associates will not be reimbursed.

Expense records must also be documented in detail and receipts submitted in accordance with CJA guidelines. All records, which may be subject to audit, should be retained for at least three years after approval of the final voucher for an appointment.



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### **WORKSHEETS**

In support of CJA Forms 20 and 30, [See Exhibit C-CJA 20, Instructions](#), [CJA 30, Instructions](#), counsel shall submit a worksheet [See Exhibit D-CJA 20 Worksheets, CJA30 worksheet](#). The same format as the worksheets provided by the CJA office. Counsel must provide supporting documentation from an attorney's timekeeping system in a format which provides 1) itemization of tasks in chronological order; and 2) itemization of tasks sorted by voucher category in chronological order. Worksheets that do not meet the outlined criteria will be returned for correction and resubmission.

### **TASK-DESCRIPTIONS ON WORKSHEETS**

Each individual task must be listed and should not merely list multiple tasks performed in a specified block of time. Information should be as detailed and descriptive as possible without violating ethics or disclosure of attorney work product. Descriptions should include a simple description of the general topics discussed, but not specific details of conversations, specific topics researched, documents reviewed or prepared, to include pleadings drafted or reviewed, transcripts reviewed (title and page numbers), and any other explanations that will explain the relevance of the task billed to the federal proceeding. When appropriate or necessary, attorneys will be asked to submit additional information to clarify or support requested compensation.

### **MULTIPLE CASES AND OVERLAPPING CASES**

Attorneys may claim only for work and time that is directly related to the case for which the voucher is prepared and submitted. If the attorney is submitting vouchers for multiple cases that require overlapping services (e.g., jail visits, travel to visit clients, research, etc.) then the time should be allocated among the cases and not fully charged to each case voucher, the attorney certifies that the bill submitted contains hours claimed for original work prepared in the current case and does not claim hours for previously-prepared "recycled" documents from this case or other cases.

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### MAXIMUM AMOUNTS

[Exhibit A](#), shows the statutory CJA compensation maximums. If compensation requested exceeds those maximum amounts then a request must be made with the Court to authorize amounts above the statutory maximum. Requests for waving of the statutory maximum in cases which are complex or extended should be submitted on a [CJA 26](#), [Exhibit E](#), Certification by the trial judge authorizing the payment and approval by the Chief Judge of the U.S. Court of Appeals for the Circuit, or a circuit judge delegated that responsibility are required.



### TIME LIMITS

Vouchers should not be submitted later than 45 days after the final disposition of the case. If a voucher is submitted after the 45 day limit a letter, addressed to the assigned Judge must be attached to the voucher explaining why the voucher is being submitted late. Vouchers that are filed significantly late are subject to reduction.

### INTERIM PAYMENTS

#### CJA 20: NON CAPITAL CASES

U.S. Court of Appeals for the Circuit. Funds are not withheld from the interim payments, however, all vouchers exceeding the statutory maximum, either singularly or cumulatively, will be forwarded to the Circuit Court of Appeals for approval.

In Permission to submit interim payments must be approved prior to any voucher submission in a case. This approval is obtained by submission of a motion and order to the Judge assigned to the case. The order must be approved by the presiding Judge and by the Chief Judge of all multi-defendant cases involving more than one CJA appointed attorney, it is recommended that one joint motion and order requesting interim payments should be submitted to the Court for approval.

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**CJA 30: CAPITAL CASES**

The procedure is the same as for the CJA 30, however, it is not necessary that the order approving interim payments be signed by the Circuit judge.

**VOUCHER REVIEW AND PREPARATION OF VOUCHERS FOR SUBMISSION OF APPROVAL**

All vouchers will be reviewed by the FDWNC, CJA office. This is to ensure that all services rendered and expenses claimed are in accordance with CJA Guidelines set forth by the judiciary. Vouchers will be reviewed, audited and processed by the CJA office at the FDWNC. Any vouchers that are incomplete, illegible, or do not comply with the guidelines will be returned to the attorney for corrections. Attached are checklists to assist in preparation of vouchers, see [Exhibit F](#), [CJA 20](#), [CJA 30](#), [CJA 21](#), [CJA 24](#).

**APPROVAL AND PAYMENT OF VOUCHERS**

After each voucher is audited by the CJA office at FDWNC for compliance with guidelines, mathematical accuracy, and reasonableness of the claim the voucher will be forwarded to the applicable Judge for review and approval. If the amount requested, and the amount approved is in excess of the statutory maximum, then a CJA 26 form must accompany the voucher and the voucher will also be sent to the Chief Judge of the U.S. Court of Appeals for the Circuit for review and final approval. Amounts approved are at the total discretion of the Judge. Once final approval is received, the voucher is returned to the CJA office of the FDWNC for processing for payment. A second certification is placed on each approved voucher before a check is generated by the Administrative Offices of the U.S. Courts.

**CHANGE OF ADDRESS FOR PAYMENTS**

It is the attorney's responsibility to advise the CJA office at FDWNC of any change of address. Failure to do so could result in checks being sent to the wrong location and a delay in payment.

Attorneys must notify the Court too.

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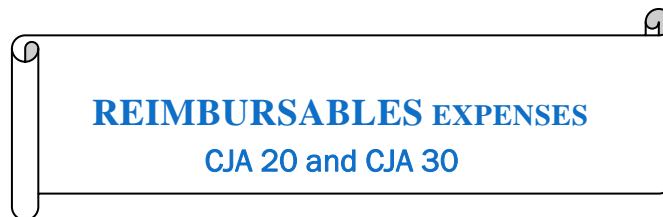
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### **VOUCHER STATUS INQUIRIES**

The CJA office of the FDWNC will make effort to expedite the processing of vouchers. Occasionally, there are unanticipated delays. After 30 business days, please feel free to call the CJA office to check the status of a submitted voucher.

### **1099**

The Court is required to track and report to the IRS all payments made to CJA panel attorneys. This information is maintained and kept secure and private in the CJA Payment system database. Questions about 1099's should be directed to the Finance office of the U.S. Courts.



Expenses should be thoroughly itemized and supporting documentation in the form of original receipts, invoices and any other records which verify costs should be attached. Receipts are required for all expenses over \$50.00 (either singular charge or cumulative charges.)

### **COMMERCIAL COPYING REGARDLESS OF AMOUNT**

Counsel is encouraged to use the most fiscally responsible method for duplication of discovery. In large cases coordination among co-counsel may be necessary.

### **TRAVEL EXPENSES (LODGING, MEALS, ETC.)**

All travel requires prior approval of the Court and must be booked through Omega Travel unless otherwise approved. A travel authorization letter is also required.

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### **CAR RENTAL**

Rental car requires preauthorization by the Court.

### **MESSENGER SERVICES**

Federal Express, UPS, etc.

### **PHONE CHARGES OVER \$50.00 (CUMULATIVE)**

Billing record must be attached with case related long distance expense highlighted.

### **POSTAGE OVER \$50.00 (CUMULATIVE)**

Receipt must be attached.

### **FACSIMILE REIMBURSEMENT**

Limited to the actual cost of any long distance phone charge associated with the out-going document.

Facsimiles received are reimbursed at .15 per page.

Receipts should be taped to white 8-1/2" x 11" paper in chronological order as itemized on the worksheet. Failure to submit receipts in the fashion will result in voucher being returned to the attorney.

### **ASSOCIATES IN THE SAME FIRM**

Prior approval is not needed to use an associate counsel to assist in a CJA case. CJA appointed counsel is responsible for ensuring that time, services and expenses of the associate are reasonable and meet CJA guidelines. Separate worksheets should be submitted for each attorney or associate. Associates may not bill for time in court.

The coordination of efforts, such as inter-office conferencing, between firm members is the responsibility of the firm and not a reimbursable cost.

### **INDEPENDENT COUNSEL**

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Any request for assistance to counsel which is to be paid out of CJA funds by CJA appointed counsel should be in writing to the Court, and should include a description of the tasks and functions that will be performed by co-counsel. These types of request require prior judicial approval before any work is done. The only exception to this rule is if the Judge has already indicated second counsel is to be appointed, or has been appointed per hour rate, unless instructed otherwise by a judicial order. The appointed attorney is responsible for ensuring that all time, services and expenses incurred by co-counsel is reasonable and necessary.

### **PARALEGALS AND LAW STUDENTS**

Use of Paralegals and law students must be pre-approved. After prior approval of the Court, paralegals and law students, whether independent or employed in the same firm as appointed counsel, may perform case preparation services which are distinct from normal clerical support services. Paralegal services must be billed on a CJA 21. Law Clerks can be billed on the CJA 20, however, a separate worksheet must be attached to the voucher for each law clerk, and a copy of the canceled check or a receipt for services paid.

### **LEGAL RESEARCH-COMPUTERIZED**

CJA should subscribe to a flat-fee research plan. Only research associated with the CJA defendant's case can be claimed. Claimed time must be prorated. Please contact FDWNC about the formula for proration of research expenses. Attorneys who utilize research plans that list each defendants name on the bill, must submit the applicable bill.

### **PHOTOCOPYING**

All in-house copying done in the attorney's office, regardless of the number of copies made per copy job or per case, will be reimbursed at \$.15 per page. Number of pages copied must be listed on the "Other Expenses" worksheet, [Exhibit G](#), next to the applicable date. This applies to CJA 20 or CJA 30.

All commercial copy jobs require a receipt for reimbursement.

If the commercial copy job is **going** to be over \$500, approval from the Court should be obtained.

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**Counsel is expected to use the most fiscally responsible method for discovery duplication. In some instances, this will require coordination among co-counsel and use of a commercial duplication firm.**

### **CJA 21 or CJA 31**

All copying jobs will be reimbursed with the invoice, and with receipts when applicable.

Requests for interim reimbursement can be made in writing when counsel's reasonably-incurred, out-of-pocket expenses for duplication of discoverable materials made available by

### **TELEPHONE**

Toll and long-distance call charges for out-going case-related telephone calls are reimbursable, but local charges are not. For all Telephone long distance charges totaling over \$50.00, a copy of the bill with applicable calls highlighted should be attached to the "Other Expenses" worksheet.

Fax charges are not reimbursable.

### **POSTAGE**

Only actual cost of case-related regular U.S. postage will be reimbursed. Receipts are required if postage costs exceeds \$50.00 cumulatively.

### **DELIVERY SERVICE**

The use of delivery services such as Federal Express, UPS, etc., is to be used only when there is a necessity for this service. Receipts are required.

### **FACT WITNESSES**

Service of subpoenas, transportation and other expenses, are governed by Rules 15 and 17, Federal Rules of Criminal Procedure and 28 United States Code § 1825. Such expenses are paid by the U.S. Marshal's Office. (See [Exhibit H](#), Public Defender's Handbook, USS Pub. No. 74, September 1977.)

A court order for arranging the transportation of a fact witness is required, and then all travel arrangements are made with the U.S. Marshal's Office, reimbursement of the expenses is also through the U.S. Marshal's Office.

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### STATE COURT/OTHER ANCILLARY MATTERS

Work related to state court proceedings or other ancillary matters will not be compensated unless the attorney obtains prior authorization from the court. If no prior authorization is obtained, a letter explaining the services must be submitted in support of the voucher and the payment will require approval by the judge presiding in the case. See Judiciary Policies and Procedures, section 2.01F.



### REIMBURSABLE FEES FOR EXPERTS AND OTHER SERVICE PROVIDERS

### SERVICES EXCEEDING \$500.00

18 USC §3006A(2) provides that, in the absence of a subsequent finding by the judge that the services could not await prior authorization, no payment over \$500.00 may be made without prior authorization by the judge. Additionally, 18 USC §3006A(e)(3) provides that compensation to any person providing expert services cannot exceed \$1,600.00 unless authorized as a necessary payment.

The request for such services shall be submitted in writing to the Supervising Judge in the form of a motion and proposed Order.

### SPECIFICITY IN FUNDING REQUEST

18 USC §3006A (e)(3) provides for payments above the maximum where necessary to provide for fair compensation for services of an unusual character or duration. Any excess payment to an expert requires: (1) A declaration from the appointed attorney justifying the payment; (2) a certification by the trial judge authorizing payment; and (3) approval by the Chief Judge of the U.S. Court of Appeals for the Fourth Circuit (or a circuit judge delegated that responsibility). The justification declaration from the appointed attorney must set forth

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the reasons for the expert service requested, including the basis for excess payment if the amount requested for any expert exceeds \$1,600; the name and address of the expert and the expert's specialty, e.g., investigator, forensic pathologist; the hourly rate and the projected total hours expended with a justification for that total. Appointed counsel will negotiate the lowest reasonable compensation rate and total time required with the expert.

### **No PAYMENTS IN EXCESS OF AMOUNT AUTHORIZED**

As a practical matter, virtually all expert expenditures require pre-authorization by the judge. The judge should approve the appropriate rate of compensation and set a cap for the total expenditure authorized. Upon approval of funds for investigative services, experts or other services, counsel is responsible for providing a copy of the authorization order to the service provider and communicating with the service provider to ensure that services comply with specific terms of the court order and do not exceed the amount authorized. Claims in excess of the \$500 limit or exceeding the amount authorized by the judge will not be paid. The attorney will be advised of the amount which cannot be reimbursed and instructed to request additional funding authorization.

### **EXPERT VOUCHERS**

As outlined above, all expenses over \$500.00, for investigators, experts, and paralegals, must be pre-approved before payment will be authorized. The funding order must be attached to the voucher requesting payment for such services. Without a funding order, the voucher will be returned to the attorney and will not be paid.

Appointed counsel are responsible for requiring experts to submit invoices which are sufficiently detailed to permit review in a similar matter to that described for appointed counsel. Appointed counsel must review the expert's invoice and voucher to ensure the service provider's claim is consistent with the appointed attorney's instructions and accurately reflects the services actually rendered. By signing the attorney certification on the CJA 21 or CJA 31, the attorney certifies the validity and appropriateness of the services

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provided by the expert. Counsel is not authorized to pre-pay experts and request later reimbursement. All expert expenses must be submitted on a separate CJA 21 or 31.



### **1. GENERAL OFFICE OVERHEAD**

This includes expenses which would normally be reflected in the fee charged to the client. Therefore expenses such as personnel costs, rent, telephone service, and secretarial help (whether regularly or specially employed, performing normal, overtime, or supplemental work, and even if counsel has no regularly employed secretary) are not reimbursable.

### **2. ITEMS AND SERVICES OF A PERSONAL NATURE**

The cost of items of a personal nature purchased for or on behalf of the person represented, such as purchasing new clothing, or having clothing cleaned, getting a haircut, furnishing cigarettes, candy or meals is not reimbursable. The cost of services such as assisting the defendant in the disposition of his or her personal property, arranging for the placement of minor children of the defendant, or assisting the defendant in executing the conditions of probation is not reimbursable.

### **3. FILING FEES**

Attorneys should not be required to pay a filing fee in a Criminal Justice Act case inasmuch as such payment and reimbursement thereof is tantamount to the Government billing itself to accomplish a transfer of appropriated funds into the General Fund of the Treasury. If a

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filing fee is paid by an attorney who is subsequently appointed in the case he or she should petition the District Court for a refund of that fee.

### 4. PRINTING OF BRIEFS

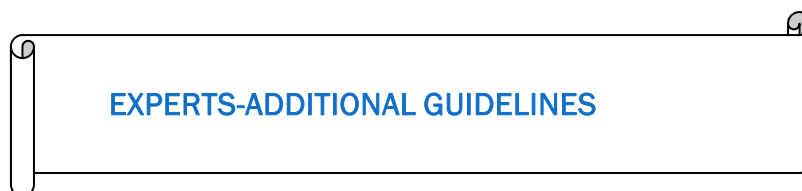
The expense of commercially **printing** briefs, regardless of the printing method utilized, is not reimbursable; however, the cost of mimeographing, photocopying, or similar **copying** service is reimbursable.

### 5. TRAVEL RELATED EXPENSES

Alcoholic beverages are not reimbursable expenses. Car rental is not reimbursable unless preauthorized by the Court, (the court will reimburse expenses for public transit, airport shuttle services, and taxi.)

### 6. VOUCHER PREPARATION

Time spent preparing the voucher and worksheets.



### PSYCHIATRISTS, PSYCHOLOGISTS.

Type of Examinations. Chapter 313 of title 18, as amended by the Insanity Defense Reform Act of 1984 (Chapter IV of the Comprehensive Crime Control Act of 1984), provides for court-directed psychiatric or psychological examination of individuals in connection with the various proceedings to determine mental condition which are authorized under that chapter. The functions of these separate proceedings are to determine: (1) the mental competency of a defendant to stand trial (18 U.S.C. §4241); (2) insanity at the time of the offense (§4242); (3) the mental condition of an acquitted person hospitalized following a finding of not guilty

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only by reason of insanity (§4243); (4) the present mental condition of a convicted defendant (§4244); (5) the present mental condition of an imprisoned person who objects to transfer to a treatment facility (§4245); and (6) the present mental condition of a hospitalized person due for release (§4246).

In addition, mental condition examinations may be conducted for purposes other than those specified in chapter 313, e.g., to aid the defendant in preparing his defense.

**SOURCE OF PAYMENT**

CJA funds are used to pay for psychiatric and related services obtained in accordance with subsection (e) of the CJA upon a determination that the services are "necessary for an adequate defense." These are "defense" services, where the defendant selects the expert and controls the disclosure of the expert's report. It is important to note that psychiatrists and related experts may be used in many circumstances in which payment is made from a source other than the CJA appropriation. In these situations the court or the government selects the expert and persons other than the defendant also have access to the expert's report. The Department of Justice (DOJ) generally pays for these "non-defense" services. The chart that follows summarizes payment responsibility for the various circumstances in which psychiatric and related services are utilized.

**LIMITATION OF AMOUNT**

The limitations of \$1,600 and \$500 apply to compensation claims submitted by "defense" psychiatrists and related experts, to be paid out of the CJA appropriation.

**SUMMARY CHART-RESPONSIBILITY FOR PAYMENT OF PSYCHIATRIC AND RELATED SERVICES**

[SEE EXHIBIT I.](#)

**EXPERT VOUCHERS**

Appointed counsel must explain to the experts that are being used in a case, that they must submit invoices which are detailed, neat and legible, and in chronological order. Appointed counsel must review the expert's invoice and voucher to ensure the service provider's claim accurately reflects the time expended and the services rendered. Once the attorney signs the certification on the CJA 21 or CJA 31, See [Exhibit J,CJA 21, CJA 31](#), the attorney is

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attesting to the accuracy of the voucher and services provided by the expert. Counsel is not authorized to pre-pay experts and request later reimbursement. All expert expenses must be submitted on a separate CJA 21 or CJA 31.

**EXPERT RETAINED ON A ONE-TIME BASIS**

If the expert has been retained on a one-time, non-recurring basis, the attorney may submit the CJA 21 for payment in full before the end of the case.

**EXPERT IN COMPLEX OR EXTENDED CASES**

In cases that have been deemed complex or extended and the services of an expert is required, the appointed attorney may request interim payments be approved for the expert through a motion with attached order. Approval will be required of both the trial judge and Chief Judge of the Court of Appeals.

**DUAL PURPOSE EXAMINATIONS**

On occasion, a psychiatrist or related expert will be asked to examine an individual for both a "defense" purpose and a "non-defense" purpose.

- (1) who requested the examination;
- (2) the specific purpose(s) of the examination;
- (3) to whom the examination is directed; and
- (4) to whom copies of the report are to be given.

The limitation above applies to 50% of the claim for a dual purpose examination in which a portion of the examination is for "defense" purposes.

There also may be "dual purpose" examinations wherein both portions of the examination are chargeable to the same payment source; e.g., evaluation of competency to stand trial under 18 U.S.C. §4241 and evaluation of sanity at the time of the offense under 18 U.S.C. §4242. In this example, since the DOJ would be responsible for both portions of the examination, the entire compensation claim should be submitted to the U.S. Attorney or Assistant U.S. Attorney.

**PROCEDURES FOR PAYMENT**

**CJA APPROPRIATION.**

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A CJA Form 21 (Authorization and Voucher for Expert and Other Services) should be submitted to the AO for all payments for "defense" services. In a death penalty case, CJA Form 31, "Death Penalty Proceedings: **Ex Parte** Request for Authorization and Voucher for Expert and Other Services" should be used. The CJA Form 21 or Form 31 should clearly describe the purpose of the expert's service. If separate vouchers are submitted for examination and testimony, they should be cross-referenced by voucher number.

### **DEPARTMENT OF JUSTICE**

Compensation claims for psychiatric and related services to be paid for by the DOJ should be referred to the U.S. Attorney or Assistant U.S. Attorney.

### **CJA 31-INTERIMS**

Interim payments must be approved by the Judge and by the Chief Judge of the U.S. Court of Appeals.

Services are limited to \$7,500 for all services in any case unless payment in excess of that amount is certified by the trial judge. Expert Presumptive Rates. CJA funds are used to pay for psychiatric and related services obtained in accordance with Subsection (e) of the CJA upon a determination that the services are "necessary for an adequate defense." These are "defense" services, where the defendant selects the expert and controls the disclosure of the expert's report. It is important to note that psychiatrists and related experts may be used in many circumstances in which payment is made from a source other than the CJA appropriation. In these situations the court or the government selects the expert, and persons other than the defendant also have access to the expert's report. The Department of Justice (DOJ) generally pays for these "non-defense" services.

### **DEPOSITIONS**

Depositions are now covered by the Federal Rules of Criminal Procedure, Rule 15, rather than 18 U.S.C. § 3503. Expenses incurred in the taking of fact witness depositions (notarial fees, interpreters, transcripts, etc.) are paid by the Department of Justice, regardless of which party requested the deposition. The costs of attendance of fact witnesses at the deposition are paid by the Department of Justice under Rule 17 (b); of expert witnesses for

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the defense, under the Criminal Justice Act. Expenses incident to attendance of counsel and the defendant at the deposition are paid by the Department of Justice if the Government is the requesting party; CJA if the depositions are at the instance of the defense. However, it should be noted that the presence of the defendant is not essential to defense depositions since the confrontation clause only requires the defendant's presence if the depositions are intended to be used against him.

In habeas corpus and 28 U.S.C. § 2255 cases, the Court may order the state or the Government to pay the "expenses of travel and subsistence and fees of counsel" to attend the taking of a deposition at the request of the state or government. Rules governing Sections 2254 and 2255 cases in U.S. District Courts, Rule 6.

**GUARDIAN AD LITEM.**

**IN PROCEEDINGS INVOLVING JUVENILES**

A guardian ad litem appointed under 18 U.S.C. § 5034 is not eligible for compensation under the Criminal Justice Act or any other authority. Any person who is appointed as both counsel and guardian ad litem in one case under § 5034 should prorate time spent fulfilling the duties of these two offices. Only time spent as counsel on a case is compensable and should be reflected on the CJA claim.

**IN PRISONER TRANSFER PROCEEDINGS**

A guardian ad litem appointed in proceedings to verify consent of a minor or incompetent prisoner to transfer from the United States to a foreign country is eligible for compensation under the Criminal Justice Act pursuant to 18 U.S.C. § 4109(b). (See paragraph 2.22 B(2)(iv) regarding compensation limits and **Regulations for the Appointment of Counsel Pursuant to a Prisoner Transfer Treaty**, which appears at Section B of this Volume.)

**TRANSCRIPTS**

**AUTHORIZATION AND PAYMENT**

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For panel attorneys, the preferred method for payment of transcripts is for the court reporter or reporting service to claim compensation directly for transcripts authorized by the court on a CJA 24, [See Exhibit K](#), "Authorization and Voucher for Payment of Transcript." However, if assigned counsel elects to pay for the court authorized transcript, the attorney may seek reimbursement as an "out-of-pocket expense," and should use the CJA Form 24 for this purpose. Regardless of which method is used, the limitations of \$1,600 and \$500 mentioned are inapplicable with regard to the cost of transcripts.

In order to obtain necessary parts of transcripts, or, if required, the entire transcript, in a direct appeal in a case in which counsel is assigned pursuant to the Criminal Justice Act, neither the Act nor Section 753 (f) of title 28, United States Code, as amended by Public Law 91-545, requires the signing of a pauper's oath or certification by the Court that the appeal is not frivolous.

When a transcript is paid for by the United States, the court reporter may not require any party requesting the transcript to prepay an estimated fee in advance. The court reporter must prepare such transcript in the format prescribed by the U.S. Judicial Conference and may not exceed the rates for transcripts established by the Judicial Conference in effect at the time the authorization was made. The court reporter will not commence transcription services until the CJA 24 has been duly approved by the judge.

### **APPORTIONMENT OF COSTS**

Routine apportionment of accelerated transcript costs among parties in CJA cases is prohibited. The following resolution was adopted by the Judicial Conference in March of 1980, and modified in September of 1986:

That the furnishing of accelerated transcript services in criminal proceedings should be discouraged; however, recognizing that there are some circumstances in which such transcript services are necessary and required by either the prosecution or the defense, or both, accelerated transcript services may be provided.

That in those cases where accelerated transcript services are provided, the party from whom the request or order emanates shall pay for the original, and if the requesting or ordering

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party is other than defense counsel appointed under the Criminal Justice Act, the CJA counsel shall be entitled to a copy at the copy rate.

That the present practice, in some districts, of routinely apportioning the total cost of accelerated transcript services equally among the parties should be abandoned.

### **COMMERCIAL DUPLICATION IN MULTI-DEFENDANT CASES**

In multi-defendant cases involving CJA defendants, no more than one transcript should be purchased from the court reporter on behalf of CJA defendants. One of the appointed counsel or the clerk of court should arrange for the duplication, at commercially competitive rates, of enough copies of the transcript for each of the CJA defendants for whom a transcript has been approved. The cost of such duplication will be charged to the CJA appropriation. This policy would not preclude the furnishing of duplication services by the court reporter at the commercially competitive rate.

In individual cases involving requests for accelerated transcripts, the court may grant an exception to the policy set forth in part (1) of this subparagraph based upon a finding that application of the policy will unreasonably impede the delivery of accelerated transcripts to persons proceeding under the CJA. Such finding should be reflected on the transcript voucher.

### **STANDARDS FOR TRANSCRIPTS OF OTHER THAN FEDERAL COURT PROCEEDINGS**

In negotiating agreements and contracts with regard to the provision of transcripts of other than federal court proceedings, including, for example, transcription or translation of wiretap recordings, it is recommended that the standards with respect to the size and format of a page should be the same as those used for transcripts of federal court proceedings, which are contained in the Court Reporters' Manual, Vol. VI, Guide to Judiciary **Policies and Procedures**, Chapter XVIII.

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### **PROCEDURE FOR REQUESTING A TRANSCRIPT**

Refer to, [Exhibit K1](#), entitled “Instructions for Completing CJA Form 24, Authorization and Voucher for Payment of Transcript.” Follow the detailed instructions for completing Items 1-14. If special authorizations are requested in Item 14, attach a detailed justification. Sign, date and complete Item 15 and forward the voucher to the Clerk’s Office, CJA Unit.

The Clerk’s Office, CJA Unit will record the request and forward it to the judge for approval in Item 16 and Item 14 if special authorizations were requested in Item 13. Following approval, the CJA Unit will forward the voucher to the court reporter. The court reporter will prepare the transcript, fill out Items 17-21 on the voucher, and send the transcript and the voucher to the attorney. The attorney should sign Item 22 signifying receipt of the transcript and forward the completed voucher to the CJA Unit for final approval, processing and payment.

Ordinarily, the court reporter should bill the court directly for transcript services. In the rare circumstance that counsel has paid for the transcript, reimbursement may be sought by listing the attorney’s name as the payee in Item 18 of the CJA 24. A copy of both the front and back of the canceled check should be attached showing payment was made to the court reporter.

### **TRANSCRIPTS FOR APPEALS**

Judicial Conference policy states: “It is the sense of the Conference that a substantial number of criminal appeals can be fairly conducted without a full transcript of all testimony and proceedings. All counsel should be required to exhaust all efforts to perfect appeals without full trial transcripts, by use of such traditional devices as preparation of limited transcripts, and preparation of an agreed statement or other summary of the evidence.” (Report of the Proceedings of the Judicial Conference of the United States, October 1971, pages 61-62.)


Counsel should refer to the Local Rules of the U.S. Court of Appeals for the Circuit which requires that within 10 days after filing the notice of appeal, the appellant shall order from

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the reporter a transcript of such parts of the proceeding as he or she deems necessary, subject to the local rules of the Court of Appeals.

The completed CJA 24 should be submitted to the Clerk's Office, which will record the request and forward it to the judge for approval.



**PROCEDURE FOR APPROVAL OF COMPENSATION OF  
INVESTIGATIVE AND EXPERTS EXPENSES.**

Appointed counsel should forward the CJA 21 to the expert investigator with instructions not to exceed the amount approved for compensation without additional approval of the court.

Once the expert/investigator has completed his/her service the CJA 21 should be forwarded to appointed counsel for certification along with an itemized bill.

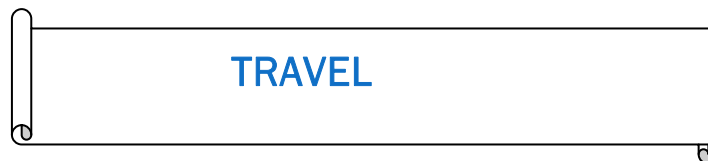
Experts must attach to each voucher submitted a billing sheet which breaks down the work as follows:

- Date work was performed
- Brief description of what was done
- Time Spent in tenths of an hour

After review of the expert/investigator itemized bill and voucher for accuracy, appointed counsel should certify the voucher in box 19. The CJA 21 and itemized bill should be mailed to the Clerk's Office for processing.

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### ATTORNEY AND EXPERTS

#### TRAVEL TIME.

Compensation shall be approved for time spent in necessary and reasonable travel. Ordinarily, allowable 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 claimant's office would terminate upon arrival and check-in at the hotel or other place of accommodation plus travel time returning directly to the claimant's office from said destination. Compensation for travel time shall be at a rate not to exceed the rate provided in subsection (d) of the Act for "time reasonably expended out of court."

If such travel is made for purposes in addition to representing the person whom the attorney has been appointed to represent under the Act, the court shall determine whether, in fairness to the appointed attorney, the travel time should be apportioned, and the appointed attorney compensated for that portion of the travel time reasonably attributable to the performance of the attorney's duties under the Act. In determining whether such travel time should be so apportioned, the court may consider the time reasonably expended in the performance of the attorney's duties under the Act, in relation to the time expended furthering other purposes of the trip, the significance to the representation of the duties

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performed, and the likelihood that the attorney would have made the trip to perform the duties under the Act in the absence of the other purposes for making the trip.

**TRAVEL EXPENSES.**

Travel by privately owned automobile should be claimed at the rate currently prescribed for federal judiciary employees who use a private automobile for conduct of official business, plus parking fees, ferry fares, and bridge, road, and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis.

Per diem in lieu of subsistence is not allowable, since the Act provides for reimbursement of expenses actually incurred. Therefore, counsel's expenses for meals and lodging incurred in the representation of the defendant would constitute reimbursable "out-of-pocket" expenses. In determining whether actual expenses incurred are "reasonable," counsel should be guided by the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations.

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, attorneys must contact the clerk of the court and obtain prior approval from the presiding judicial officer.

**CLAIMING EXPENSES**

Submission for travel expenses should be detailed on the "Other Expense" worksheet. Expenses must be listed under the appropriate categories on the worksheet, chronologically, and must be accompanied by applicable receipts.

**MILEAGE AND PARKING**

For Rates- See [Exhibit L](#).

Travel by privately owned vehicle in connection with conduct of official business.

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Any other travel related cost such as parking fees (a cumulative total over \$50.00 receipts are required) and tolls are compensated on an actual expense basis. Receipts are required.

*Airfare* should be booked through the government travel agents at Omega Travel, unless a lower government rate can be found through the private sector. All travel must be pre-approved and requires the submission of an Ex Parte travel request and order, or travel authorization letter.

The Ex Parte Travel Request and Order must state the purpose, duration and estimated expenses for the trip. Travelers must travel the least expensive mode available, such as coach class. Any exceptions to this rule must have prior approval of the Court.

Omega World Travel (OWT) will direct bill the government for the authorized airfare. OWT may be contacted at any time at 1-866-450-0401. If air travel expenditures cannot be made at government rates, reimbursement to the attorney or expert for the travel costs will be limited to the amount of the government rate. Government tickets are refundable due to loss, change or cancellation. If the traveler uses a non-government rate and loses the tickets or needs to change or cancel the reservations, he or she is liable for the cost which is not reimbursable under CJA.

**MEAL & LODGING**

**MEALS**

If travel exceeds eight (8) hours then meals are reimbursable. Receipts are required and reimbursement is for the meals of the appointed attorney only. If additional explanation of any submitted receipt is necessary the attorney will be contacted.

Actual expenses incurred for meals and lodging while on overnight travel outside of the city or county of your residence in the course of a cja representation must conform to the prevailing limitations governing travel and subsistence expenses of federal judiciary employees. Other expenses, such as taxi fares, rental car charges, etc. May be claimed separately if receipts are provided.

If the travel authorized is to a foreign country then the amounts of all expenses being claimed must be converted to U.S. Currency, and the rate of conversion used provided.

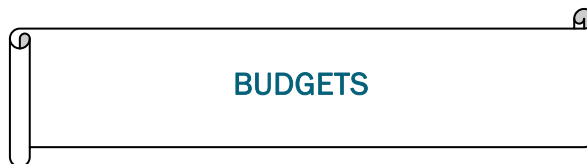
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Meals are generally only reimbursable when overnight travel is authorized. You must provide detailed restaurant bills and not just credit card slips. Alcoholic beverages, in-room movies, and other non-essential items are not reimbursable.

### THE TRAVELER'S RESPONSIBILITIES

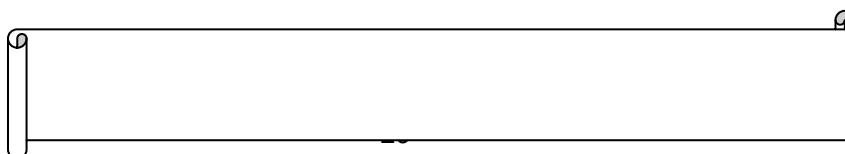
Upon submission of the CJA 20, 21, 30 or 31 voucher for reimbursement for the period of the authorized trip, all expenses (except airfare) should be documented in the form of original receipts which verify costs incurred. The expenses should be submitted, itemized and in chronological order.



### CASE BUDGETING

Courts are encouraged to use case budgeting techniques in representations that appear likely to become or have become extraordinary in terms of potential cost (ordinarily, a representation in which 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 on behalf of an individual CJA defendant). If a court determines that case budgeting is appropriate (either on its own or upon request of counsel), counsel should submit a proposed initial litigation budget for court approval, subject to modification in light of facts and developments that emerge as the case proceeds. Case budgets should be submitted **ex parte** and filed and maintained under seal. Case budgeting is required in all capital prosecutions.

**BUDGET FORMS** These forms for preparing a budget can also be found at [www.fd.org/cja](http://www.fd.org/cja).



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### CAPITAL PROSECUTION

Every effort is made to fairly manage the costs of capital litigation. Appointed counsel is expected to prepare a budget for tasks to be performed by attorneys and paralegals and expenses to be incurred for investigators, expert witnesses and other costs. While a budget request is pending, counsel may proceed with necessary tasks until notification by the Court order as to resolution of the budget. Any amendment to an approved budget must be approved by the Court and the request for additional funds must be explained in detail. Any proposed amendments to the budget must be filed far enough in advance to give the court adequate time to consider the request and issue a ruling.

#### DUPLICATION OF LABOR

When two counsel are appointed as co-counsel and are both compensated at an equal hourly rate, it is expected that a division of labor will be developed to ensure that each counsel will perform tasks in a relatively independent manner, minimizing duplication.

#### DEPOSITIONS

Depositions are now covered by the Federal Rules of Criminal Procedure, Rule 15, rather than 18 U.S.C. § 3503. Expenses incurred in the taking of fact witness depositions (notary fees, interpreters, transcripts, etc.) are paid by the Department of Justice, regardless of which party requested the deposition. The costs of attendance of fact witnesses at the deposition are paid by the Department of Justice under Rule 17 (b); of expert witnesses for the defense, under the Criminal Justice Act. Expenses incident to attendance of counsel and the defendant at the deposition are paid by the Department of Justice if the Government is the requesting party; CJA if the depositions are at the instance of the defense. However, it should be noted that the presence of the defendant is not essential to defense depositions since the confrontation clause only requires the defendant's presence if the depositions are intended to be used against him.

In habeas corpus and 28 U.S.C. § 2255 cases, the Court may order the state or the Government to pay the "expenses of travel and subsistence and fees of counsel" to attend

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the taking of a deposition at the request of the state or Government. Rules governing Sections 2254 and 2255 cases in U.S. District Courts, Rule 6.