UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

CRIMINAL JUSTICE ACT (CJA)
CLAIMS FOR HOURLY COMPENSATION AND EXPENSE REIMBURSEMENT

ADVICE TO CJA COUNSEL REGARDING NON-CAPITAL CASES

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ADVICE TO CJA COUNSEL REGARDING NON-CAPITAL CASES

I. General Statutory Provisions and Procedures. Counsel should be familiar with the Criminal Justice Act (18 U.S.C. § 3006A) ("CJA"), the *Guidelines for Administering the CJA* ("*Guidelines*"), the Court's Criminal Justice Act Plan (Addendum I to the Tenth Circuit Rules), and this *Advice to CJA Counsel* letter. Additional resources are available at http://www.ca10.uscourts.gov/cja.

Counsel appointed to provide appellate representation under the Criminal Justice Act may be compensated for time "reasonably expended" and expenses "reasonably incurred." 18 U.S.C. § 3006A(d)(1). For presumptive compensation maximums CJA section of the court's website (http://www.ca10.uscourts.gov/cja) for the most current rates. However, these presumptive maximums may be exceeded if the representation provided was "extended or complex" and there is a judicial certification that excess payment is necessary to afford fair compensation. Excess payment must also be approved by the chief circuit judge or his delegate. *See* § 3006A(d)(3).

II. When to File. Generally, one electronic voucher must be submitted via eVoucher within 45 days of final disposition of the case, unless good cause is shown for delay. "Final disposition" is the later of: (a) the date a petition for certiorari, if any is filed; (b) the date the decision becomes final or the appeal is otherwise terminated, if no petition for certiorari will be filed; or (c) the date an order is filed granting counsel permission to withdraw if no subsequent CJA counsel will be appointed (i.e., defendant will proceed with retained counsel, with the Federal Public Defender as counsel, or *pro se*). Once any petition for certiorari is filed, counsel need not wait for disposition of the petition and should electronically file their appellate CJA voucher immediately. Should certiorari be granted, the Supreme Court will provide counsel a CJA voucher for work before that court.

III. How to File a CJA 20 Voucher. Effective July 20, 2015 all appellate CJA vouchers must be prepared and submitted electronically via the Tenth Circuit's CJA eVoucher application, which can be accessed at:

https://evsdweb.ev.uscourts.gov/CJA_c10_prod/CJAeVoucher/

Effective July 20, 2015, the Tenth Circuit will no longer require CJA counsel to submit hard copies of CJA vouchers, the time and expense worksheets or the CJA 5 Attorney Data Form that were previously required to be submitted. Instead, all CJA vouchers and supporting documentation must be submitted, and counsel's contact and billing information maintained, electronically via eVoucher.

Important information about eVoucher, including training and reference materials for CJA counsel, can be found at: http://www.ca10.uscourts.gov/cja/evoucher.

IV. Excess Compensation Claims. If hourly compensation is sought in excess of the statutory maximum, counsel must submit – via eVoucher, as an attachment to the electronic CJA 20 voucher – a concise memorandum or a completed CJA 27 form explaining why (1) the representation was extended or complex, (2) excess payment is necessary for fair compensation, and (3) the time and expenses were "reasonable and necessary" to the particular appeal. If the legal or factual issues in a case are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case, the case is "complex." If more time is reasonably required for total processing than the average case, the case is "extended."

The following criteria, among others and as applicable, should be discussed to aid the court in determining if excess payment is necessary to provide fair compensation: the complexity/novelty of the issues and whether any of these issues were briefed at the district court; matters researched but not briefed; responsibilities involved measured by the magnitude and precedential importance of the case; manner in which duties were performed; special skills, knowledge, efficiency, professionalism, judgment and experience required of or used by counsel; the nature of counsel's practice and any injury thereto resulting from the representation; any unusual pressure of time or other factors under which professional services were delivered; and any other circumstance relevant and material to a determination of a fair and reasonable fee.

V. Interim Compensation/Case Budgeting. Interim compensation is unlikely to be authorized by the 10th Circuit unless the appeal is extraordinary. Please also refer to the *Guidelines* § 230.73.10 (interim compensation), § 230.63.50, and § 310.60.10 (interim reimbursement) for more information. The court adheres strictly to the requirements of these sections when evaluating motions for interim payments. In addition to meeting the criteria set out in those sections relative to interim fees, expenses, or both, (1) the appeal must be complex and/or extended, (2) payment over the cap must be necessary to provide fair compensation, and (3) the payment(s) requested must be for time and/or expenses reasonably and necessarily incurred. Counsel is reminded that cases which are complex or extended at the trial level are not necessarily so on appeal.

Case budgeting is appropriate in complex or extended representations that appear likely to become or have become extraordinary in terms of potential cost (ordinarily, a representation in which counsel expects to exceed 300 hours). If the court determines that case budgeting is appropriate (either on its own or upon request of counsel), counsel must submit a proposed initial litigation budget for court approval, subject to modification in light of facts and developments that emerge as the case proceeds.

Counsel should carefully review the case budgeting information found in the *Guidelines*, §§ 230.26, 640. Please use the proposed budget forms found at on the Court's CJA Case Budgeting Webpage. The court will review, modify where necessary, and approve the proposed budget. A case management conference may also be held.

In budgeted, extraordinary cases, counsel may also request interim payments at logical intervals (e.g., after filing the opening brief and/or the reply brief and after oral argument). Counsel should support the final fee request in such cases by completing this form at attaching it to the final electronically submitted voucher. The panel rendering the decision in the appeal will consider the final voucher and supporting documentation. Retainage will no longer be withheld with the implementation of eVoucher.

VI. What to File with CJA 20 Voucher

A. Use eVoucher to Complete and Submit the CJA 20 Voucher. A CJA 20 voucher is created by entering time, expenses and required supporting documentation into the Tenth Circuit's eVoucher database. Effective July 20, 2015, CJA vouchers will no longer be accepted via email, and counsel are no longer required to mail hard copies of vouchers.

B. Pleadings, Supporting Documentation and Other Explanatory Material. An.pdf copy of any petition for certiorari, supporting documentation, and any explanations of unusual circumstances (e.g., voucher filed more than 45 days after final disposition, unusual expenditures, etc.) should be attached to the electronic voucher using the "Documents" tab in eVoucher.

C. Entering Attorney Time in the "Services" Tab of eVoucher. Time must be itemized by date, description of services, amount of time spent in tenths of hours, and must be properly categorized. If more than one attorney worked on the appeal, each attorney's initials *for each task* should be inserted in the line item description. If time is not reported in tenths of an hour, the court will round down the total hours claimed.

Failure to provide sufficient detail to permit meaningful review of a claim may result in delay or denial of approval of the claim.

Note: Records must be retained by counsel for three years after approval of the voucher.

D. Expense Receipts. With certain exceptions (e.g., meals, lodging, CALR, commercial copying), counsel must provide documentation (such as itemized bills, receipts, or invoices) to support claims for reimbursement *only* for single-event expenses that exceed $50.00. Credit card slips and credit card statements may not be sufficient because they lack detail that would permit approval of the expense as reasonable and reimbursable. *See* below for further instructions and information. Expenses not properly documented may be disallowed in their entirety.

E. Excess-Fee Memorandum/Letter or Completed CJA 27 Form. If your compensation

request (excluding expenses) exceeds the applicable statutory maximum, you must submit – using the eVoucher "Documents" tab for your electronic voucher – a concise memorandum/letter or a completed CJA 27 form explaining why (1) the appeal is complex and/or extended, (2) payment over the cap is necessary to provide fair compensation, and (3) the payment(s) requested is for time and/or expenses reasonably and necessarily incurred. A blank CJA 27 and instructions for completing it are available here.

VII. Claims for Hourly Compensation - General Rules

A. Hourly and Mileage Rates. The eVoucher application will automatically use the applicable hourly and mileage rates based on the date of the service/expense entered by counsel during the electronic voucher preparation process.

B. In-Court Time. In-court time is limited to one hour or the actual time of argument. Time spent waiting for oral argument should be claimed as *out*-of- court "other" time.

C. Partners and Associates (Within Firm). Compensation may be claimed for services provided by a partner or associate in the appointed counsel's law firm, but extra tasks or other work inefficiencies resulting from such division of labor (e.g., attorney conferencing) are not compensable. The amount must be within the maximum compensation allowed by the Act. Electronic vouchers must separately identify the provider of *each* service with counsel's initials in the line item description.

D. Compensation of Counsel (Outside Firm). With prior authorization by the court, appointed counsel may claim compensation for services furnished by counsel who works outside of the appointed counsel's law firm. Extra tasks or other work inefficiencies resulting from such division of labor (e.g., attorney conferencing) are not compensable. The amount must be within the maximum compensation allowed by the Act. Electronic vouchers must separately identify the provider of *each* service with counsel's initials in the line item description.

E. Withdrawal of Counsel. A CJA attorney appointed to represent a defendant in the lower court may, with the Court's express approval, either withdraw or continue the representation on appeal. For further information about continuing a district court CJA appointment on appeal, please review the July 8, 2015 changes to the Court's CJA Plan. CJA trial counsel who wish to withdraw may file a motion to withdraw in accordance with 10th Cir. R. 46.4. Prior to filing such a motion, CJA counsel must, at a minimum, file an entry of appearance and a docketing statement. Failure to comply with the requirements of with 10th Cir. R. 46.4 this rule will result in denial of the motion. If substitute CJA counsel is appointed, no vouchers will be considered for payment until after final disposition of the appeal.

F. Substitution of CJA Counsel/Excess Compensation. If a CJA attorney is substituted for a previous CJA attorney appointed in the same case, the total CJA compensation to both attorneys will not exceed the statutory maximum for one attorney, unless the court

determines that the tests for excess compensation are met. Vouchers for both counsel will be considered together after final disposition of the appeal. The final CJA attorney must submit the requisite excess-fee memorandum or CJA 27 form, but prior counsel may supplement such information.

G. Time Spent on District Court Matters or Matters Unrelated to Appeal. Time spent on district court matters, or other matters unrelated to appellate representation, even if incidental to arrest, incarceration, or on remand, is not compensable on an appellate voucher. Compensation for preparation and submission of preliminary appellate pleadings (e.g., notice of appeal, designation of record, transcript order form) may be claimed on the appellate voucher, but not if compensated on the district court voucher.

H. Travel Time. Necessary and reasonable travel time is compensable. Time spent in travel by car over long distances ordinarily traversed by air is not reasonable, unless required by special circumstances. If a trip requires overnight lodging, compensable travel time includes time traveling from counsel's office or home to the place of accommodation, as well as travel time returning directly to counsel's office or home. Ordinarily, professional time spent traveling to the court to file a pleading is not compensable.

I. Petition for Writ of Certiorari. Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari, or responding to a petition for writ of certiorari filed by the government, are considered applicable to the case before the United States Court of Appeals, and should be included on the voucher for services performed in this court.

J. Voucher Preparation. Time spent preparing the voucher is not compensable.

VIII. Expenses Generally. Reimbursement is limited to reasonable actual expenditures. To determine whether travel expenses are reasonable, counsel should be guided by current limitations on travel expenses applicable to federal judiciary employees found at the GSA website, http://www.gsa.gov.

Expenses incurred must be properly documented in the expenses tab of the electronic voucher submitted via eVoucher. With certain exceptions (*see*, meals, lodging, CALR, commercial copying), counsel must provide documentation (such as itemized bills, receipts, or invoices) to support claims for reimbursement *only* for single-event expenses that exceed $50.00. Credit card slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable.

See Sections IX and X below for further instructions and information. Expenses not properly documented may be disallowed.

IX. Travel Expenses - General Rules.

A. Itemization/Proration. Claims for travel expenses must be itemized by date and charge

and reported on the travel expense portion of the electronic voucher. If travel involves time spent on more than one case, then expenses must be prorated by the number of cases to which the travel relates.

B. **Supporting Documentation for General Travel Expenses.** Itemized receipts must always be submitted to support reimbursement of meals and lodging. Counsel need only provide itemized receipts to support other single-event travel expenses that exceed $50.00 (e.g., cab fare from DIA to downtown Denver). Credit card slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable. Expenses not properly documented may be disallowed.

C. **Supporting Documentation for Lodging.** Receipts for lodging must be sufficiently itemized to establish that reimbursement is not being sought for safe deposit boxes, hotel safes, in-room movies, or other expenses that are not reimbursable under the Criminal Justice Act. For this reason, itemized hotel bills must be submitted. Credit card slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable. Expenses not properly documented may be disallowed.

D. **Supporting Documentation for Meals.** Receipts for meals must be sufficiently itemized to establish that reimbursement is not being sought for alcoholic beverages, charges for persons other than appointed counsel or other expenses that are not reimbursable under the Criminal Justice Act. Hotel restaurant, in-room beverages and room-service meals must also be supported by an itemized receipt. Credit card slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable. Expenses not properly documented may be disallowed.

E. **Travel Reservations.** Air travel, lodging and rental car arrangements should be made at government rates through National Travel Service (NTS). Contact NTS at 1-800-445-0668 to request airline tickets. Counsel must provide a credit card number to make reservations. However, airfare will be paid directly by the government. Lodging and rental car charges must be paid directly by counsel, and reimbursed on a voucher request. All reservations needed (airline, hotel, rental car) should be made at the same time. There is a charge for itinerary changes and all itinerary changes *must* be made through NTS. Reimbursement for travel not made through NTS is limited to the government rates.

F. **Travel by Private Automobile.** Mileage is reimbursable at the rate prescribed for federal judiciary employees conducting official business. Claims must be supported by a statement showing the date, distance, origin and destination of travel. Absent an emergency or other unusual circumstance, if travel is by automobile, reimbursement of mileage expense will not exceed the airfare charge had NTS made counsel's travel arrangements. Counsel should contact NTS *before* driving to determine then-current government airfare rates.

G. **Hotel Telephone and Internet.** Hotel telephone charges will be reimbursed up to $5.00 per day. Hotel internet charges will be reimbursed up to $10.00 per day. If any additional charges are sought, counsel must submit a brief statement of how such

charge is incidental to representational duties.

H. Non-Reimbursable Travel Expenses. Personal items (e.g., alcoholic beverages, in-room movies) are not reimbursable. Charges that exceed then- current government rates are not reimbursable.

X. Reimbursement of Other Expenses - General Rules.

A. Itemization. Claims for other expenses incurred must be itemized by date and charge and reported in eVoucher using the "Expenses" tab of the electronic voucher.

B. Prior Approval for Expenses Totaling More Than $800.00. If single-category services (expert counsel, paralegals, law clerks, interpreters, etc.) totaling more than $800.00 are necessary for adequate representation, counsel must obtain prior court approval to incur such costs by filing a sealed, ex parte motion explaining the need and giving the provider's qualifications and the rate to be charged. The Court's order approving such expenses must be emailed to eVoucher@ca10.uscourts.gov.

Time for service providers must be tracked in tenths of hours and described in the same manner as attorney time (i.e., with specificity). If the total services will exceed $2,400.00, counsel must also obtain a court order certifying the expense as "necessary to provide fair compensation for services of an unusual character or duration." When the services are complete, counsel should submit a CJA 21 form accompanied by the provider's itemized invoice and the order approving the services. The provider will be paid directly. Reimbursement for charges related to in-firm providers should be detailed on the "other expenses" portion of counsel's own CJA 20 voucher.

Similarly, if counsel expects to incur other, single-category expenses totaling more than $800.00, such as for computer-assisted legal research (CALR, i.e., Westlaw/Lexis), counsel should obtain prior court approval to incur such charges. The Court's order approving the charges must be emailed to eVoucher@ca10.uscourts.gov, and should be attached to the voucher seeking reimbursement for the charges.

All charges are evaluated under the reasonableness standard. Failure to obtain prior approval may limit reimbursement for such expenses to $800.00.

C. Supporting Documentation for Other Expenses. With certain exceptions (*see* commercial copying and computer-assisted legal research), counsel need only provide itemized receipts or copy logs to support single-event other expense charges exceeding $50.00 (e.g., in-house copying of final opening brief and all attachments). Credit card slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable. Expenses not properly documented may be disallowed.

D. Copying and Binding. Reimbursement for in-house copying is limited to actual per-page cost not to exceed 20¢ per page. If a higher rate is sought, counsel must submit a statement justifying such rate. If counsel incurs single- event in-house copying

expenses exceeding $50.00 (e.g., in-house copying of final opening brief and all attachments), then logs or other information should be provided identifying what was copied, how many copies were made and the rate. Expenses not properly documented may be disallowed.

All claims for commercial copying and binding services must be supported by an itemized invoice. Credit card slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable. Expenses not properly documented may be disallowed.

Commercial copying charges to prepare 40 copies of a petition for certiorari in booklet format will not be reimbursed because this requirement may be waived upon proper filing of a motion to proceed *in forma pauperis, see* S. Ct. Rules 12, 33.2 and 39.

E. **Long-Distance Telephone Calls.** Itemized statements must be submitted to support claims for long-distance telephone calls that total more than $50.00. The supporting documentation must contain the date, cost, and recipient of each call.

F. **Facsimile Transmissions.** In-house facsimile logs must be submitted in support of claims for reimbursement of fax charges that total more than $50.00. Claims for facsimiles transmitted at a commercial establishment must be supported by an itemized receipt. Costs in excess of $1.00 per page will not be reimbursed.

G. **Postage/Expedited Mail/Courier.** Single-event postage, expedited mail, and courier expenses exceeding $50.00 (e.g., FedEx charge for delivery of opening brief and copies) must be supported by itemized receipts. The receipt must include the date, nature of service, and cost. Absent extraordinary circumstances, expedited mail (e.g., FedEx, Priority Mail) and courier charges will be reimbursed only for delivery of principal briefs, a petition for rehearing en banc, or a petition for writ of certiorari.

H. **Legal Research Services by Law Student, Law Clerk, or Paralegal.** Time incurred by these individuals is claimed as an "other expense" on counsel's electronic voucher. Claims for the actual cost of legal research by a qualified law student, law clerk, legal assistant, or paralegal must be itemized. Descriptions of time spent by such personnel must be tracked in tenths of hours and must be sufficiently descriptive to allow the court to apply the "reasonably necessary" standard. Time not properly documented may be disallowed. If the amount claimed for this service will total more than $800.00, prior court approval must be sought, and the order approving the services must be emailed to eVoucher@ca10.uscourts.gov and attached to the voucher seeking payment for the services.

I. **Computer Assisted Legal Research (CALR) (e.g., Westlaw/Lexis).** If charges for computer-assisted legal research total more than $50.00, a .pdf copy of *each* vendor bill itemized *by date* must be included with counsel's electronic voucher. Counsel should include a brief statement of justification. If the amount for such services will total more than $800.00, prior court approval must be sought. Reimbursement for

CALR is sought on counsel's own CJA 20 voucher request as an "other expense."

J. **Interpreter/Translating Services.** Time incurred by these individuals may be claimed as an "other expense" on counsel's electronic CJA 20 voucher, or by separate electronic submission, via eVoucher, of a properly completed CJA 21 form. Descriptions of time spent by such personnel must be tracked in tenths of hours and must be sufficiently descriptive to allow the court to apply the "reasonably necessary" standard. Time not properly documented may be disallowed. If the amount for this service will total more than $800.00, prior court approval must be sought, and the order approving the services must be emailed to eVoucher@ca10.uscourts.gov and attached to the voucher seeking payment for the services.

K. **General Office Overhead and Clerical Work.** General office overhead is not reimbursable. This includes, but is not limited to: supplies; overtime; rent; telephone services; mailers/envelopes; secretarial services; and other administrative/clerical services. Nor is professional time spent on secretarial or clerical tasks compensable as part of counsel's fee.

L. **Other Expenses of a Personal Nature for Individual Represented.** The cost of items of a personal nature purchased for or on behalf of the person represented is not reimbursable.

M. **Expenses Related to District Court Matters or Matters Unrelated to Appeal.** Expenses related to district court matters, or otherwise unrelated to appellate representation, even if incidental to arrest, incarceration, or remand, are not reimbursable on an appellate voucher. Reimbursement for preparation and submission of preliminary appellate pleadings (e.g., notice of appeal, designation of record, transcript order form) may be claimed on the appellate voucher, but not if reimbursed on the district court voucher.

N. **Filing Fees, Court Admission Fees and PACER Charges.** Filing fees and court admission fees are not reimbursable. This includes filing fees related to a petition for certiorari because such fees may be waived upon proper filing of a motion to proceed *in forma pauperis*, *see* S. Ct. Rules 12, 33.2 and 39. PACER charges are not reimbursable because upon proper application, CJA counsel is entitled to a free PACER account for use in CJA cases only.

O. **Transcript Fees.** The cost of court-authorized transcripts should be claimed by the court reporter or reporting service on a properly completed CJA 24 form. If counsel elects to pay for transcripts, counsel should likewise seek reimbursement using a CJA 24 form, not on a CJA 20 form. CJA Counsel should seek guidance from the Clerk's Office regarding the submission of a CJA 24 Authorization and/or Voucher for transcripts.

XI. General Information

A. **Public Disclosure.** CJA 20 vouchers filed by counsel may be subject to public disclosure unless disclosure should be limited based upon: (1) protection of any

person's Fifth Amendment right against self-incrimination; (2) protection of the defendant's Sixth Amendment right to effective assistance of counsel; (3) the defendant's attorney-client privilege; (4) the work-product privilege of defendant's counsel; (5) the safety of any person; or (6) any other interest that justice may require. **If counsel wishes to request redaction or non-disclosure of any portion of the voucher based upon one of these interests, counsel should seek such relief by motion (filed via CM/ECF) at the time the CJA 20 voucher is submitted via eVoucher.** Absent such a motion, the face of the voucher will be made available to the public upon request.

B. Counsel's Responsibility to Keep Contact and Billing Information Up to Date. Counsel must keep their contact and billing information up to date in eVoucher. **IF YOU MOVE, CHANGE FIRMS, OR OTHERWISE CHANGE THE ASSIGNMENT OF TAX CONSEQUENCES FOR CJA PAYMENTS, YOU ARE RESPONSIBLE FOR UPDATING YOUR PROFILE AND BILLING INFORMATION IN eVOUCHER.**

C. Additional Resources. Counsel is encouraged to review the court's website at http://www.ca10.uscourts.gov/cja to obtain current forms, rates, and general CJA information. The CJA portion of the U.S. Courts' website and the CJA Panel Information on the Defender Services website may also provide substantial assistance. You should also carefully review the *Criminal Justice Act Guidelines*, and the Tenth Circuit's Criminal Justice Act Plan, found as Addendum I to the Local Rules.

D. Contacts. For substantive questions regarding the content of a voucher, required documentation, and related issues contact a CJA Case Analyst at CJA_Vouchers@ca10.uscourts.gov or 303.844.5306. For **eVoucher Technical Support** please contact the Clerk's Office at (303) 844-3157 or eVoucher@ca10.uscourts.gov.

XII. Retain CJA Billing Records for Three Years. CJA billing records must be retained by counsel for three years after approval of the voucher.

XIII. Note to Counsel. This letter addresses only subjects of repeated error or frequent inquiry and is not inclusive.