

# CJA VOUCHER AND FUNDING REQUESTS: POLICIES AND BEST PRACTICES

**CJA Panel Attorney Discussion**

**Northern District of Mississippi**

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# VOUCHER REVIEW

- Are the services compensable under the CJA?
  - e.g. personal services, general office overhead tasks **not** compensable
- Were the services actually performed?
- Is the time claimed **reasonable** for the work performed?
- Mathematical and recording accuracy
- Expenses
  - Are they reimbursable (e.g. client personal expenses – not reimbursable)
  - Are they reasonable (e.g., travel costs consistent with GSA per diem)
  - Receipts provided
  - Travel authorizations for extended or overnight travel

# STANDARDS FOR VOUCHER REVIEW

## § 230.33.10 Standard for Voucher Review

Voucher cuts should be limited to:

- (1) Mathematical errors;
- (2) Instances in which work billed was not compensable;**
- (3) Instances in which work was not undertaken or completed; and
- (4) Instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.**

# NOTICE OF PROPOSED REDUCTIONS

## § 230.33.30 Notification of Proposed Reduction of CJA Compensation Vouchers

(a) The CJA provides that the reviewing judge must fix the compensation and reimbursement to be paid to appointed counsel. If the court determines that a claim should be reduced, appointed counsel should be provided: **prior notice of the proposed reduction with a brief statement of the reason(s) for it, and an opportunity to address the matter.**

(b) Notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.

(c) Nothing contained in this guideline should be construed as requiring a hearing or as discouraging the court from communicating informally with counsel about questions or concerns in person, telephonically, or electronically, as deemed appropriate or necessary.

## CJA Plan, XIII 6

Counsel will be notified and given the opportunity to provide additional information or documentation to address concerns raised by the court.

# NON-COMPENSABLE – ADMIN/OVERHEAD

- General office overhead

- **§ 230.66.10 General Office Overhead**

(a) General office overhead includes general office expenses that would normally be reflected in the fee charged to the client. The statutory fee is intended to include compensation for these general office expenses.

(b) Except in extraordinary circumstances (**see**: Guide, Vol. 7A, § 320.70.30), **whether work is performed by counsel or other personnel**, the following expenses associated with CJA representation are not reimbursable:

- personnel;
- rent;
- telephone service; and
- secretarial.

- CJA Plan, XI C, 1

- CJA panel attorneys must have facilities, resources, and technological capability to effectively and efficiently manage assigned cases.



# ADMIN/OVERHEAD - Examples

- Filing
- Scanning
- Downloading
- Calendaring
- Trips to copy center / post office / USAO to copy, scan, mail, pick up discovery etc.
- *Not compensable* clerical / administrative services

# VOUCHER RECORDING – BEST PRACTICES

- **Services:**

- Avoid block billing
- Avoid clumping multiple tasks in one service entry (impossible to assess reasonableness)
- Discovery breakdown review in detail (e.g. wiretaps, video, medical records)
- Legal research and writing – identify motions or areas of research
- Plea – extended negotiations or unique issues / proffer sessions / cooperation
- In court time is limited to actual time spent in the court as reflected on the minute entry
- Travel time should be separated out
- Multiple CM/ECF .1s – aggregate them. Include CM/ECF doc. #

# DETAIL TASK DESCRIPTIONS

## DETAILED TASK DESCRIPTIONS

### Do this...

Date	Service	Time	Description
2/5/15	Travel Time	5.8	Drove to Jackson, MS (Round trip travel and travel in Jackson to meet with two potential witnesses; (2.5 hours each way)
2/5/15	Interviews and Conferences	3.0	Interviewed two witnesses in Jackson, MS
2/8/15	Obtain/Review Rcds	4.0	Reviewed 200 pages of wiretap transcripts (Bates Nos. 220-420)
2/17/15	Legal Research	5.2	Researched whether the search of client's car without a warrant was unlawful; began drafting motion to suppress (Dkt. No. 112)

### Not this...

Date	Service	Time	Description
2/5/15	Travel Time	5.6	Travel for interviews
2/5/15	Interviews and Conferences	3.0	Interviews
2/8/15	Obtain/Review Rcds	6.0	Reviewed discovery
2/17/15	Legal Research	5.2	Legal research and writing

# BREAK OUT TASKS

## Do This....

Date	Service	Time	Description
1/5/15	Interviews and Conferences	1.6	Met with client's mother (.4); phone call with client (.4); met with client at jail (.8)
1/5/15	Obtain/Review Rclds	4.0	Reviewed 200 pages of wiretap transcripts (Bates Nos. 220-420)
1/5/15	Legal Research	5.2	Researched whether the search of client's car without a warrant was unlawful; began draft of motion to suppress (Dkt. No. 112)

## Not this...

Date	Service	Time	Description
1/5/15	Interviews and Conferences	10.8	Met with client's mother (.4); phone call with client (.4); reviewed discovery (4.0); met with client at jail (.8); researched whether the search of client's car without a warrant was unlawful; began draft of motion to suppress (Dkt. No. 112) (5.2)



# EXCEEDING THE CASE COMPENSATION Maximum

**\$11,800 – district court / \$8,400 – appeals**

## **§ 230.30 Supporting Memorandum Justifying Compensation Claimed**

(b) Claim for More than the Case Compensation Maximum

(1) In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel will submit with the voucher **a detailed memorandum supporting and justifying** counsel's claim that:

- the representation given was in an **extended or complex** case (**see:** § 230.23.40(b)), and
- the excess payment is **necessary to provide fair compensation** (**see:** § 230.23.40(c)).

# LETTER IN SUPPORT OF EXCESS VOUCHER

- INTRODUCTION / BACKGROUND OF THE CASE
  - Summarize the charges, unique or complex challenges, outcome.
- COST DRIVERS
  - Discovery (describe amount and challenges);
  - Client (detained in remote location, mental health issues, demanding)
  - Witnesses or evidence in remote areas
  - Suppression, evidentiary or issues requiring expert evaluation
- TRAVEL
  - Travel distances office/court/client/USAO
  - Pro rate when possible
- PLEA & SENTENCE
  - Extended negotiations, eve of trial, cooperation, sentencing hearings
- TRIAL
  - Length, verdict, post-verdict litigation

# CJA DOES NOT PAY

- Witness fees and expenses
  - DOJ – Rule 17 Subpoenas, Rule 6 of rules governing § 2254 proceedings; 28 U.S.C. § 1825
- Competency Exam– DOJ pays CJA Guidelines § 320.20
- Travel for non-custodial defendant
  - 18 U.S.C. § 4285: US Marshals
  - 3006A: *may be* interpreted as “other services necessary to the defense”
- Filing Fees / PACER Fees (CJA account)
- Defendant clothing, personal items CJA Guidelines § 230.66.20

# ASSOCIATE COUNSEL

- ❑ Overall Cost Effectiveness
- ❑ District CJA Plan
- ❑ CJA Guidelines
- ❑ Voucher / Audit Issues
  - Identify tasks performed by associate on voucher
  - eVoucher now puts both on the same voucher
  - Separate CJA 20 or 30 if appointed
  - TO BE AVOIDED: Appointed counsel delegating most of the work to associate

# INTERIM VOUCHERS

## Budgeted Cases

- District court authorization to submit interim vouchers
- Payments within budget approved and paid by district court; circuit approval not required
- 20% withheld until final
- Expenses paid in full

## No Case Budget

- District court authorization to submit interim vouchers
- District court may approve and pay up to case compensation maximum
- Circuit review once case compensation maximum exceeded
  - 100% payment

## Audit of Interim Vouchers by District Court

- Services – verify court time, duplicate entries, mathematical errors
- Expenses – reimbursable and reasonable

# Travel Policies

- ❑ Per District / Division
- ❑ Need for prior authorization per district CJA Plans or rules
- ❑ Prior authorization advisable, e.g., long trial away from home
- ❑ National Travel authorizations and payment
- ❑ Audit Issues and Red Flags
  - Within GSA per diem rates
  - Alcohol, more than one person on a bill
  - Change of flight – necessity or convenience

# FUNDING AND BUDGETING

- ATTORNEY FEES
- SERVICE PROVIDERS
- EXPERTS

# EVALUATE THE NEED

- INVESTIGATE THE CHARGES
- CHALLENGE THE GOVERNMENT'S EXPERT
  - SUPPORT THE DEFENSE
- SENTENCING ISSUES / MITIGATION

# WHEN TO APPLY FOR FUNDS

- Once the need becomes apparent
- The sooner the better
- Monitor expenditures
- **Ask for additional funds BEFORE you authorize more work**

# AUTHORITY

- 18 U.S.C § 3006A
- 18 U.S.C § 3599 (CAPITAL CASES)
- CJA GUIDELINES
- CJA MODEL PLAN FOR THE DISTRICT

## 18 U.S.C § 3006A (e)

Counsel for a person who is financially unable to obtain investigative, expert, or other services **necessary for adequate representation** may request them in an ***ex parte*** application.

Upon finding, after appropriate inquiry in an ***ex parte*** proceeding, that **the services are necessary** and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.

# 18 U.S.C § 3006A (e) – No Approval Necessary

**Total costs** for investigative, expert, or other services obtained without prior request:

**\$900**  
plus expenses

## 18 U.S.C § 3006A (e) – District Court Approval Needed

For **each** service provider or expert:

**\$2,600 per provider  
plus expenses**

pre-approval may be waived in the **interests of justice** where judge finds that timely procurement of services could not wait

\*CJA Guidelines § 310.20.10(a) – Compensation Maximums

## 18 U.S.C § 3006A (e) - Circuit Court Approval Needed

- Any service provider or expert whose services are expected to **exceed \$2,600**
- Must be certified by the district court as “**necessary** to provide fair compensation for services of an unusual character or duration”
- **Must be approved by the Chief Judge of the Circuit or his/her designee**

# CAPITAL CASES – DIFFERENT RULES

- 18 U.S.C § 3005 – Federal Capital Prosecutions
- 18 U.S.C § 3599 – Capital Cases and §§ 2254, 2255
- CJA Guidelines Chapter 6
- Model Plans
- All capital cases *should be* budgeted; work with the Circuit CBA. Guidelines § 640.10

# 18 U.S.C § 3599(f) - CAPITAL CASES

- Must demonstrate that investigative, expert or other services are “**reasonably necessary**”
- **Proper showing** of need for confidentiality must be made in order to proceed *ex parte*.
- “Any proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.”
- Payment for **all services combined** limited to **\$7,500** unless district court certifies as necessary
- Anything over \$7,500 requires **Circuit** approval

# CJA GUIDELINES

- <http://www.uscourts.gov/rules-policies/judiciary-policies/criminal-justice-act-cja-guidelines>
- Chapter 2: Appointment of Counsel
- Chapter 3: Authorization for Experts and Service Providers
- Chapter 6: Death Penalty Cases



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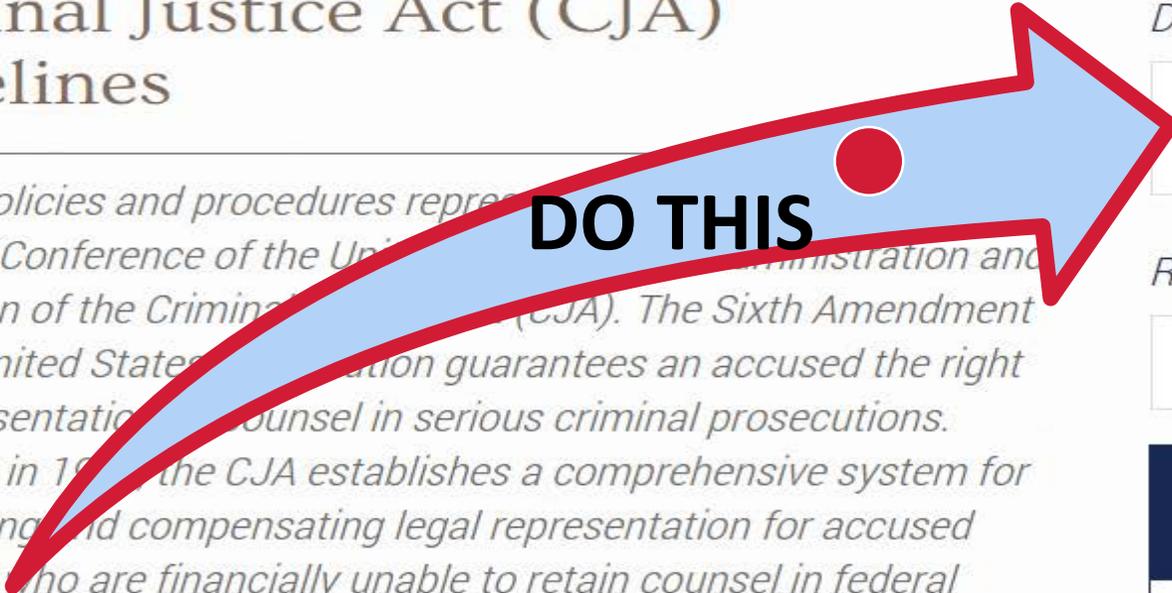
Garnishment Regulations

Judiciary Staff Travel Regulations

Portable Communication

# Criminal Justice Act (CJA) Guidelines

*These policies and procedures represent the current policies of the Judicial Conference of the United States for the administration and operation of the Criminal Justice Act (CJA). The Sixth Amendment to the United States Constitution guarantees an accused the right to representation by counsel in serious criminal prosecutions. Enacted in 1964, the CJA establishes a comprehensive system for appointing and compensating legal representation for accused persons who are financially unable to retain counsel in federal criminal proceedings.*



## Download the Policy

Download All Volume 7 Chapters  
(PDF, 651.12 KB)

## Related Links

CJA Forms and Instructions

## Defender Services Policy Updates

Subscribe to be notified when we update this policy.

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## Guide to Judiciary Policy, Vol. 7 - Defender Services

### Part A: Guidelines for Administering the CJA and Related Statutes

Part A (pdf)

## Related Content

Defender Services

The Sixth Amendment to the United States Constitution guarantees an accused the right

# Chapter 3, § 320: Authorization of Investigative, Expert, and Other Services

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*Guide to Judiciary Policy, Vol 7 Defender Services, Part A Guidelines for Administering the CJA and Related Statutes, Chapter 3: Authorization and Payment for Investigative, Expert, or Other Services*

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- § 320.10 Investigators
- § 320.15 Interpreters
- § 320.20 Psychiatrists, Psychologists
- § 320.30 Transcripts
- § 320.40 Fact Witnesses and Depositions
- § 320.50 Guardian Ad Litem
- § 320.60 Commercial Computer-Assisted Legal Research Services
- § 320.70 Other Services and Computer Hardware and Software
- § 320.80 Reimbursement of Expenses
- § 320.90 Record Keeping

# Funds Available to non-CJA appointments

- Retained counsel may seek funding
- Pro Se defendants / standby counsel

# RETAINED COUNSEL

## § 310.10.10

Defendant with retained counsel may seek funding where the defendant's resources are in excess of the amount needed to provide the defendant and his/her dependents with the necessities of life, defendant's release on bond, and **pay a reasonable fee to retained counsel, but are insufficient to pay for the necessary services.**

## § 310.10.20

- (a) the court should inquire into counsel's fee arrangement
- (b) If the court finds the **fee arrangement unreasonable** in relation to fees customarily paid to qualified practitioners in the community for services in criminal matters of similar duration and complexity, or that it was made with **a gross disregard of the defendant's trial expenses**, the court may order the retained attorney to pay out of such fees all or such part of the costs and expenses as the court may direct.

# Experts and Service Providers - Examples

- EXPERTS:
  - Computer expert // Cell phone / tower expert
  - DNA // Ballistics // Forensics
  - Mental health experts – guilt / sentence mitigation / competency
- SERVICE PROVIDERS
  - Investigators
  - Paralegals
  - Mitigation specialists
  - Assistance to catalogue and review numerous jail calls

# Rate Ranges

## CIRCUIT HAS NOT ADOPTED PRESUMPTIVE RATE RANGES

- Point of reference

## EXPERIENCE BASED HOURLY RATES

- Training, experience, specialized skills
- Specific skills for specific case needs, e.g. paralegal with training in medical billing in health care fraud cases; paralegal/nurse who can read medical records; investigator who worked in a crime lab and can read/analyze DNA reports
- Need for the specialized skill that justifies higher rate must be present in the case
- Provide CV or resume and fee schedule where available

# Competency – Dual Purpose Examinations

## DOJ May Pay Expert

### § 320.20.50

- who requested the examination
- the specific purpose(s) of the examination
- to whom the examination is directed
- to whom copies of the report are to be given

### § 320.20.60 - Chart

# FUNDING MOTION REQUIREMENTS

- Factual support for the need for assistance
- Description of services to be performed / time required
- Resume or CV
- Hourly rate or fee schedule
- Vet the expert
- Shop around for competitive rates
- Travel issues
- *CBA available to discuss / review draft*

# CALCULATING THE EXPERT'S TIME

- Document review
- Interviews
  - Client
  - Witness
- Evidence examination and testing
- Preparation of reports
- Consultation with counsel
- Preparation to testify
- Testimony
- Travel

# CIRCUIT ORDER

- Order shall be **filed under seal** unless otherwise ordered by the district court.
- Subject to the district court's approval, **counsel may allocate** the total amount approved among experts as needed.
- Counsel **shall monitor** the work performed by the foregoing experts to ensure compliance with the funding order. Requests for an increase in the overall budgeted amounts must again be submitted for circuit approval and should be filed as soon as it becomes apparent that additional funds are likely to be required and **before the work is performed.**

# MEGA DISCOVERY

- Technological resources to manage ESI
  - Processing and hosting ESI
  - Training in accessing, organizing, searching multi-terabytes of discovery
- Request appointment of a Coordinating Discovery Attorney

# COORDINATING DISCOVERY ATTORNEYS

- Coordinating Discovery Attorneys (CDAs): available in multi-defendant cases with voluminous or complicated ESI issues
  - Appointed by the court
  - Manage discovery for multiple defendants
  - Contracts with third party vendor for hosting
- Alternatively, designate an appointed attorney to act as the discovery liaison attorney for multiple defendants

## LITIGATION SUPPORT – DSO



Costs for computer systems, litigation support products, experts expected to exceed \$10,000: CJA Guidelines require that National Litigation Support be contacted § 320.70.40

## Litigation Support

### Litigation Support

#### [What is Litigation Support?](#)

#### [The Language of Litigation Support](#)

#### [I Have Electronic Data... Now What?](#)

#### [Who is the National Litigation Support Team?](#)

#### [Coordinating Discovery Attorneys](#)

#### [Direct Assistance for CJA Panel](#)

#### [CJA Panel Attorney Software Discounts](#)

#### [Joint Electronic Technology Working Group \(JETWG\)](#)

#### [Resource Materials](#)

#### [Litigation Support Blog](#)

## What is Litigation Support?

The essential goal of litigation support is to organize, analyze, and present case materials through computer systems. In federal criminal defense cases, there are three primary ways that litigation support is used by Federal Defender Office (FDO) staff and Criminal Justice Act (CJA) panel attorneys. One is in conducting electronic courtroom presentations. Another is management and analysis of paper documents and their electronic equivalents. The third is the identification, collection, preservation, processing, review, analysis and production of electronically stored information (ESI).

Litigation support is the marriage of project management and technology. We believe that while every district is different and every case is unique, there are certain standards to follow in order to ensure that the data involved in a case is handled in a cost effective and time efficient manner allowing for good organization, easy retrieval and effective client representation.

Both federal defender offices and CJA panel attorneys are often faced with the challenge of limited resources and staffing. Litigation support technology can help to make up that deficit by allowing data to be intelligently collected, processed, organized, reviewed, analyzed and presented.

While there may not be a single piece of technology to address all the challenges you face, the National Litigation Support Team can help you to navigate through the process of evaluating your choices and in deciding what solutions best meet the needs of your case.

# LITIGATION SUPPORT SERVICES

- Litigation support vendor services available (CJA funded for case)
  - Processing and hosting
  - Training and support
- Software discounts available (licenses for purchase)
  - secure cloud storage (box.com)
  - document and case information tools (Casemap / Docmanager)
  - document review platform (Casepoint)
  - document search programs (dtSearch)



# NLST Resource Materials

- [Common Litigation Support Terms](#)
- [Initial Discovery and 3rd Party Data Assessment Checklist](#)
- [Recommended E-Discovery Practices for FPD/CJA Attorneys](#)
- [CJA Panel Attorney Resources: A Guide to Litigation Support Software & How to Obtain Resources in the CJA System](#)
- [Federal Indigent Defense: How to Stop Worrying and Love the Digital Age](#)

# NATIONAL LITIGATION SUPPORT TEAM

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