

## CAPITAL BUDGETING AND PAYMENT MEMORANDUM

### 1. BUDGETING OF CAPITAL CASES

#### a. When Required

- i. In an effort to assist both attorneys and the court in determining what compensation will be available to a lawyer in a given case, the chief judge has implemented a few basic guidelines which, in some cases, will require the submission of a proposed budget.
- ii. Our research shows that CJA attorneys in capital habeas cases average approximately 300 hours per appeal and 100 additional hours per petition for certiorari (if filed). These averages reflect the total for the case, with hours for multiple attorneys being combined if more than one attorney has been appointed in the case.
- iii. If counsel anticipates, from the outset or at a later stage of the case, that the time needed to properly represent the client requires the expenditure of more than 300 hours for the appeal or 100 additional hours for the petition for certiorari, submission of a proposed budget is required.
- iv. If the attorneys in the case intend to stay within 300 hours for the appeal and 100 hours for the certiorari representation, a letter to that effect is required.

#### b. Filing Proposed Budget or Statement that No Budget is Required

- i. Counsel must file a proposed budget within 21 days after appointment if the representation is anticipated to exceed the average hours of work for any stage of the representation. The proposed budget should be filed using the SEALED DOCUMENT event in CM/ECF, with the filing identified as ex parte.
- ii. The proposed budget should include a detailed explanation of why the estimated hours are reasonably necessary for representation in the case and should identify the estimated number of hours required for each category of payment: (a) in-court hearings; (b) interviews and conferences with client; (c) witness interviews; (d) consultation with investigators and experts; (e) obtaining and reviewing the court record; (f) obtaining and reviewing documents and evidence; (g) consulting with expert counsel; (h) legal research and writing; (i) travel time; and (j) other work.
- iii. If counsel intends to stay within the average hours for each stage of the case, counsel must file a letter to this effect, within 21 days after appointment. The letter should be filed using the SEALED DOCUMENT event in CM/ECF, with the filing identified as ex parte.
- iv. If during the representation, whether there is a budget or not, an attorney believes that the time needed to properly represent the client requires the expenditure of more time than that allotted, counsel must promptly submit a request for approval of a specific number of additional hours, together with a detailed explanation of why the need was not foreseen and why the additional hours are reasonably necessary for the representation.

The request should be filed using the SEALED DOCUMENT event in CM/ECF, with the filing identified as ex parte.

- v. Upon receipt of a proposed budget or request for additional time, the chief judge or his designee will direct entry of a sealed, ex parte order informing the attorney of the number of hours approved for the case. When CJA 30 vouchers are submitted at the close of the case, counsel must upload the budgeting order to CJA eVoucher for submission as a supporting document.

## **2. ATTORNEY COMPENSATION CLAIMED ON CJA 30 VOUCHER**

### **a. No Case Compensation Maximum**

- i. Due to the complex and extended nature of capital cases, the CJA does not set a ceiling on total compensation.
- ii. Counsel is required to submit a memorandum with their voucher providing sufficient detail regarding counsel's services in the case to demonstrate that counsel's claim for compensation is reasonable.

### **b. Hourly Rates**

- i. The hourly rate paid in CJA 30 cases depends on whether the death penalty is still at issue in the case. If the appellant is no longer eligible for the death penalty, the hourly rates for non-capital cases are used. If the appellant remains eligible for the death penalty, the hourly rates for capital cases will be used.
- ii. Hourly rates paid in capital cases to appointed counsel are up to \$188 per hour for both in-court and out-of-court time on or after March 23, 2018.
- iii. Hourly rates for work between May 5, 2017, and March 22, 2018, were up to \$185.
- iv. Hourly rates for work between January 1, 2016, and May 4, 2017, were up to \$183.
- v. Hourly rates for work between January 1, 2015, and December 31, 2015, were up to \$181.
- vi. Hourly rates for earlier periods are available in the [Guidelines for Administering the CJA and Related Statutes](#).

### **c. Scope of Representation**

- i. In capital cases, representation from filing of the notice of appeal through completion of representation in the court of appeals is claimed on a final voucher, and representation at the petition for certiorari stage is claimed on a supplemental voucher.
- ii. Counsel's obligation on appeal extends through advising the client of the right to file a petition for writ of certiorari and filing such a petition if requested. If counsel believes

that a petition for writ of certiorari would be frivolous, counsel may, in lieu of filing the petition, file a motion to withdraw in this court.

- iii. If counsel provides representation at the clemency stage, counsel should create and submit a voucher to the district court, not to the court of appeals, for that representation. To ensure circuit-wide uniformity, the district court will forward clemency vouchers to the chief circuit judge for final approval after the district judge has acted on the voucher.
- iv. The start and end dates for counsel's services must be entered in the Claim Status tab of CJA eVoucher before the voucher is submitted. The start date is the earliest date entered for any services or expenses, and the end date is the latest date entered for services or expenses.

#### **d. Description of Services**

- i. Attorney time must be recorded by date in hours and tenths of an hour for in-court service and each type of out-of-court service: (a) in-court hearings; (b) interviews and conferences with client; (c) witness interviews; (d) consultation with investigators and experts; (e) obtaining and reviewing the court record; (f) obtaining and reviewing documents and evidence; (g) consulting with expert counsel; (h) legal research and writing; (i) travel time; and (j) other work.
- ii. Individual narrative entries should provide a precise description of each service and its relevance to the proceeding, i.e., specific topics researched or transcript pages reviewed. Services must be described with enough specificity for the court to determine whether the time billed is reasonable and necessary to the representation. Entries such as "record review-6 hours," "research-4 hours," or "brief preparation-5 hours" do not provide sufficient detail for the court to determine the reasonableness of the time billed.

#### **e. Associate Time**

- i. Counsel appointed in capital cases may use the services of co-counsel or associated attorneys only with prior court authorization.
- ii. Counsel should file a motion in CM/ECF to approve the use of associate counsel. The motion should provide the name and email address for associate counsel and address whether the associate's services will assist in meeting time limits or reducing representation costs.
- iii. If the court approves the use of associate counsel, the CJA Deputy will create an associate payment record and add associate counsel to the case at the hourly rate paid in non-capital cases.
- iv. Upon completion of the representation, appointed counsel and associate counsel should submit their vouchers at the same time and include a reference to each other's vouchers in Public/Attorney Notes under the Confirmation Tab of the vouchers. The order approving the use of associate counsel should be uploaded to the vouchers. This will

facilitate the court's association and review of the combined vouchers under an existing budget.

- v. Associate time spent learning the case or the law should not be billed if it duplicates or exceeds the time required for appointed counsel to perform the same work.

**f. Secretarial and Clerical Services**

- i. Secretarial and clerical services are considered non-reimbursable office overhead.
- ii. Clerical functions include saving and printing documents from CM/ECF. Time spent reading the documents should be aggregated each day to avoid over-billing for document review.

**3. ATTORNEY EXPENSES CLAIMED ON CJA 30 VOUCHER**

**a. Travel Expenses**

- i. The only travel expenses subject to reimbursement are those incurred by appointed counsel. The court will not pay travel expenses for non-appointed co-counsel absent a prior order specifically authorizing the travel.
- ii. Reimbursement for travel in excess of 200 miles roundtrip, other than for oral argument, will be made only if counsel obtained leave of court before incurring the expense. Counsel should file a motion in CM/ECF to approve the travel, addressing the specific need for the travel and the estimated time and expenses. The court's order authorizing the travel must be uploaded as a PDF document to CJA eVoucher for submission with the CJA 30 voucher.
- iii. Counsel traveling by plane or train should request a Travel Authorization by calling the clerk's office at 804-916-2700. The Travel Authorization entitles counsel to make plane and train reservations through National Travel Service (NTS) at government travel rates. If reservations are made through NTS, the clerk's office will make payment directly to the carrier after verifying that counsel used the reservation.
- iv. If plane or train reservations are not made through NTS, counsel should claim reimbursement for the plane or train ticket on the CJA 30 voucher. If the ticket was more expensive than the government rate that could have been obtained through NTS, reimbursement will be limited to the government rate. Reimbursement is limited to coach class rates. A copy of the invoice or ticket must be uploaded to CJA eVoucher as a PDF document.
- v. Automobile mileage expenses may be claimed by entering the date, destination, and number of miles traveled in CJA eVoucher. Mileage for travel by privately-owned automobile is reimbursed at the rate in effect for federal employees at the time of travel, plus parking fees and tolls. The CJA eVoucher program automatically applies the correct mileage rate based upon the date of travel. Current mileage reimbursement rates may be found at <https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov->

[rates-etc/privately-owned-vehicle-pov-mileage-reimbursement-rates](#), and archived mileage rates may be found at <https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates-etc/privately-owned-vehicle-pov-rates/pov-mileage-rates-archived>.

- vi. Expenses for lodging plus meals and incidental expenses will be reimbursed in accordance with prevailing limitations imposed on federal judiciary employees by government travel regulations. Per diem is not allowable, since the CJA provides for reimbursement of expenses actually incurred. Court-appointed counsel are eligible for government hotel rates and should request the lowest available rate when making their hotel reservations.
- vii. See <http://www.uscourts.gov/rules-policies/judiciary-policies/judiciary-staff-travel-regulations> for judiciary travel regulations. For government rates for lodging and meals, see <https://www.gsa.gov/travel/plan-book/per-diem-rates>.
- viii. **All** travel expenses (lodging, meals, parking, ground transportation) must be supported by receipts. Upload all receipts using the Documents tab in CJA eVoucher. Receipts for meals and lodging must be sufficiently detailed to establish that reimbursement is not being sought for alcoholic beverages, safe deposit boxes, in-room movies or other expenses which are not reimbursable under the CJA. For this reason, the **hotel or restaurant bill**, rather than a credit card receipt must be submitted.
- ix. Counsel traveling to a location for more than one representation must maintain their records in a manner that prevents submission of duplicate travel reimbursement claims.

#### **b. Computer Assisted Legal Research Expenses**

- i. The cost of use of computer assisted legal research equipment may be allowed as a reimbursable expense, provided that the amount claimed is reasonable.
- ii. Claims for reimbursement for computer assisted legal research must be supported with a copy of the bill and receipt for the use of the legal research services or an explanation of the precise basis of the charge. Upload the bill using the Documents tab in CJA eVoucher.
- iii. If the amount claimed is in excess of \$500 or if it includes costs for downloading or printing, counsel should include a brief justification.

#### **c. Copy Expenses**

- i. CJA counsel are not required to pay PACER fees or court copy fees in CJA cases, and such fees are therefore not reimbursable under the CJA. Counsel should register for a fee exempt PACER account at <https://www.pacer.gov/>, and use that account when accessing electronic documents in CJA cases. The district court's PACER docket and electronic documents are accessible through a link to the district court docket from the appellate docket. The "Create appendix" option for running a PACER docket report enables counsel to select which documents to include in the appendix.

- ii. Counsel may obtain reimbursement for necessary and actual copy expenses at a rate not to exceed \$.15 per page by itemizing the dates, number of copies, and cost per page. Reimbursement for copies of CDs or DVDs filed as a separate exhibit volume may be claimed at a rate not to exceed \$1 per item, plus \$.15 per page for copies of the cover and table of contents of the exhibit volume. A copy of the bill must be uploaded to the Documents tab in CJA eVoucher if a commercial copy charge exceeds \$50.
- iii. Copy costs for providing the defendant with the briefs and appendix are reimbursable expenses of the representation. Counsel may also claim reimbursement for providing the defendant with portions of the record up to \$75. A motion to approve/authorize should be filed in CM/ECF for authorization of additional copy costs.

**d. Long Distance Telephone Calls and Facsimile Charges**

- i. Counsel may claim reimbursement for long distance phone calls and facsimile charges by itemizing the date and amount of the long distance charge. If the amount exceeds \$50, a copy of the bill is required and should be uploaded using the Documents tab in CJA eVoucher.
- ii. Any other charge associated with use of counsel's phone or fax equipment is considered non-reimbursable office overhead.

**e. Postage and Courier Charges**

- i. Delivery charges may be claimed by itemizing the date, description of expense, and cost. Any expense in excess of \$50 must be supported by a detailed receipt uploaded to the Documents tab in CJA eVoucher.
- ii. Since briefs, appendices, and petitions for certiorari are generally deemed filed upon first-class mailing or dispatch to a commercial courier for delivery within three days, counsel should minimize the use of special services such as same day or overnight delivery.

**4. EXPERT SERVICES CLAIMED ON CJA 31 VOUCHER**

**a. Computer Assisted Legal Research Services**

- i. Payment for computer research services performed by employees of a legal research firm is made on a CJA 31 voucher, upon a showing that the total amount charged for the services is reasonable.
- ii. If the total cost of such services will exceed \$800 for the appeal, counsel must submit either a motion to approve/authorize in CM/ECF or an expert authorization request in CJA eVoucher, setting forth the estimated number of hours and rate.

**b. Interpreter Services**

- i. Use of a certified interpreter is not required for services provided on appeal. Contact information for interpreters may be obtained from the district court or through the online database maintained by the [National Association of Judiciary Interpreters and Translators](#).
- ii. Federally certified interpreters are paid at a rate not in excess of \$59 per hour or part thereof. Interpreters without a federal certification are paid at a rate not in excess of \$35 per hour or part thereof. The court generally pays interpreters based on hourly rates, rather than half-day or daily rates.
- iii. If the total cost of such services will exceed \$800 for the appeal, counsel must submit either a motion to approve/authorize in CM/ECF or an expert authorization request in CJA eVoucher, setting forth the estimated cost of necessary interpreter services based on the number of hours and the hourly rate.

**c. Paralegal and Law Clerk Services**

- i. Services provided by paralegals may be claimed at an hourly rate of \$35. Services provided by law clerks may be claimed at an hourly rate of \$25. Secretarial services are not reimbursable.
- ii. If the total cost of such services will exceed \$800 for the appeal, counsel must submit either a motion to approve/authorize in CM/ECF or an expert authorization request in CJA eVoucher, setting forth the estimated number of paralegal or law clerk hours required and the hourly rate.

**d. Paralegal Services from Local Printers**

- i. Several local printers provide paralegal services for the compilation and formatting of briefs and appendices in accordance with the court's local rules.
- ii. The \$35/hour rate for paralegal compensation applies to these services, and required copies can be claimed as an expense on the CJA 31 voucher.
- iii. If the cost of such services will exceed \$800 for the appeal, counsel must submit either a motion to approve/authorize in CM/ECF or an expert authorization request in CJA eVoucher, setting forth the estimated cost of the services.

**5. TRANSCRIPTION SERVICES CLAIMED ON CJA 24 VOUCHER**

**a. Transcript Orders**

- i. CJA authorization for all transcript needed for appeal is requested by submitting an AUTH-24 in the district eVoucher system in accordance with the district's eVoucher procedures. New appellate counsel must contact district eVoucher staff for appointment

to the underlying district court case in order to submit the AUTH-24 request for district judge approval.

- ii. All CJA counsel must also submit a [Transcript Order Form](#) with attached AUTH-24 or CJA 24 form to the court reporter and district court and file the same in the court of appeals with counsel's Docketing Statement. Upon filing of the Transcript Order Form, the court of appeals will set deadlines for filing of all transcript.
- iii. If a transcript has already been ordered by a co-defendant, counsel may request a copy from co-defendant's counsel or the court reporter (\$.15 per page copy rate applies) or may ask the district court to provide appointed counsel with access to the transcript on the district court docket.
- iv. Counsel is responsible for requesting redaction of any private or sensitive data before a transcript is made publicly available on the district court's PACER docket, in accordance with the [Judicial Conference Policy on Privacy and Public Access to Electronic Case Files](#).
- v. For assistance in obtaining access to transcripts, see [Record Access for New Appellate Counsel](#) or contact the Fourth Circuit appointments deputy, Lisa McFarland.

#### **b. Transcript Payments**

Once the transcript has been provided to counsel, counsel creates and submits a CJA 24 voucher in district eVoucher for payment of the court reporter in accordance with the district's eVoucher procedures.

### **6. CLAIM PROCEDURE**

#### **a. CJA 30 Vouchers**

- i. In capital cases, counsel submits two vouchers -- a final voucher covering representation from filing of the notice of appeal through completion of representation in the court of appeals and a supplemental voucher covering representation at the petition for certiorari stage. Both vouchers must be filed within 60 days from entry of judgment, dismissal of the appeal, denial of rehearing, or filing of a petition for certiorari, which is later.
- ii. The vouchers of all attorneys providing representation in the case are reviewed together, and the court will defer its review until vouchers have been submitted by all counsel.
- iii. In cases in which extraordinary expenses and case delay create undue financial hardship, counsel may file a motion in CM/ECF to approve/authorize an interim voucher, setting forth in detail the justification for an interim voucher.
- iv. Vouchers must be carefully reviewed prior to submission to ensure they do not contain errors, duplicate claims, or other improper charges. Consult the [Checklist for CJA 20 and 30 Vouchers](#) for a list of items that must be submitted with the CJA 30 voucher.



- v. The combination of counsel’s eVoucher user name and password serves as counsel’s signature for documents and forms submitted to the CJA eVoucher system. Counsel is responsible for securing the password against unauthorized use and for notifying the clerk’s office of suspected misuse.

**b. CJA 31 Vouchers**

- i. Counsel creates and approves the CJA 31 voucher for expert payment and submits it to the court upon completion of the expert’s services. Prior authorization is required for services in excess of \$800.
- ii. Local printers are set up to enter their services and expenses and upload their invoice to CJA eVoucher. When creating a CJA 31 voucher for a local printer, counsel should change the voucher assignment to “Expert” to enable the printer to enter their services and expenses and upload their invoice. Counsel then approves the CJA 31 voucher in CJA eVoucher for submission to the court.
- iii. For other types of experts, counsel must enter the expert’s services and expenses and upload the invoice. After completing the entry step for the expert’s services and expenses, counsel returns to the home screen, reopens the CJA 31 voucher, and approves it, which submits the voucher to the court for payment.

**7. PUBLIC DISCLOSURE OF FEES**

- a. After completion of the appeal, the voucher (though not the supporting documentation) will be made available in response to a public request unless counsel requested, at or before the time the voucher was filed, that public disclosure be limited to the amounts approved for payment in order to (1) protect any person's Fifth Amendment right against self-incrimination, (2) protect the defendant's Sixth Amendment right to effective assistance of counsel; (3) protect the defendant's attorney-client privilege; (4) protect counsel's work product privilege; (5) protect the safety of any person; or (6) protect any other interest that justice may require.
- b. For further information, see [CJA 19 Notice to Court-Appointed Counsel of Public Disclosure of Attorney Fee Information](#).

**8. QUESTIONS**

- a. For budgeting questions, contact CJA Budgeting Attorney Larry Dash at 804-916-2177.
- b. For payment questions, contact CJA Administrator Patty Layne at the CJA Help Desk, 804-916-2703, or via email at [4cca-cja@ca4.uscourts.gov](mailto:4cca-cja@ca4.uscourts.gov) .

**9. WORKSHEETS**

- a. Counsel may enter their time and services in CJA eVoucher on an ongoing basis or track their time and services outside CJA eVoucher for entry at the close of the case.

- b. The court's [CJA 30 Worksheets](#) may be used to record services and expenses for later entry of data into CJA eVoucher.