

GUIDANCE TO ATTORNEYS IN DRAFTING THE MEMORANDUM REQUIRED FOR A COMPENSATION CLAIM IN EXCESS OF THE CASE COMPENSATION MAXIMUM: COURT OF APPEALS

Paragraph 2.22C(2) of the *Guidelines for the Administration of the Criminal Justice Act (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, provides:

In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel shall submit with the voucher a detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation.

Paragraph 2.22B(3) of the *CJA Guidelines* states that a case is complex if the "legal or factual issues. . . are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case," and that a case is extended if "more time is reasonably required for total processing than the average case". Paragraph 2.22B(3) lists the following criteria as useful in determining fair compensation in extended or complex cases: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and injury thereto; any extraordinary pressure of time or other factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

To assist counsel in writing a "detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation," the following topics are provided for counsel's consideration. Some of these issues may not apply to a particular case or may not be noteworthy for this memorandum. Counsel, of course, may address topics other than those listed below.

Whether appeal is from a guilty plea, trial disposition, habeas petition, or other matter.

Offense(s) and number of counts on which client convicted; length of sentence; and number of co-defendants (pre-judgment and convicted.)

Size of transcript; number of trial days, if applicable; and description and length of other materials reviewed.

Whether appointed counsel represented the client at the district court level, and, if applicable, whether counsel represented the defendant at the trial. Hours claimed for obtaining and reviewing records.

Length of appellant's brief and number of sentencing and other issues; length of appellee's brief and number of issues; length of appellant's reply brief and number of issues; hours claimed for legal research and writing principal brief; and hours claimed for legal research and writing reply brief.

Whether there was a disposition before briefing, submission on the briefs, or oral argument. If applicable, hours claimed preparing for oral argument on principal brief.

Whether a petition for rehearing or a suggestion for rehearing in banc was filed by either party; the number of pages, the number of issues raised, the length of the response in opposition; hours claimed for legal research and writing petition for rehearing/suggestion for rehearing in banc or response in opposition; and, if applicable, hours claimed preparing for oral argument.

Whether a petition for a writ of certiorari was filed by either party; number of pages and issues raised; number of pages of a brief in opposition; number of pages of a reply brief; and hours claimed for legal research and writing petition/reply brief or brief in opposition. Attach counsel's documents.

Whether any of the following factors apply and their impact on the number of hours claimed: complex legal issues, novel legal issues, complex fact pattern, and legal issues researched but not written.

Whether any of the issues were briefed at the district court. The additional work required if any of the issues were briefed at the district court.

Any expense (see Items 17 and 18 of the CJA 20 voucher) greater than \$500.

Any other noteworthy circumstances regarding the case and the representation provided to support this compensation request. Include, if applicable: responsibilities involved measured by the magnitude and importance of the case, including, if applicable, precedential value; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and hardship or injury resulting from the representation; any extraordinary pressure of time or other factors under which services were rendered.

**SUPPLEMENTAL INFORMATION STATEMENT FOR A COMPENSATION CLAIM IN EXCESS OF THE
STATUTORY CASE COMPENSATION MAXIMUM: COURT OF APPEALS**

THIS FORM PROVIDES INFORMATION TO SUPPORT COUNSEL'S CLAIM THAT THE REPRESENTATION GIVEN WAS IN AN EXTENDED OR COMPLEX CASE, AND THAT THE EXCESS PAYMENT IS NECESSARY TO PROVIDE FAIR COMPENSATION. PARAGRAPH 2.22 B(3) OF THE *GUIDELINES FOR THE ADMINISTRATION OF THE CRIMINAL JUSTICE ACT*, VOLUME VII, *GUIDE TO JUDICIARY POLICIES AND PROCEDURES*, DEFINES THE TERMS "EXTENDED" AND "COMPLEX," AND SUGGESTS CRITERIA FOR DETERMINING "FAIR COMPENSATION." THIS FORM SERVES AS COUNSEL'S MEMORANDUM REQUIRED BY PARAGRAPH 2.22 C(2) OF THOSE *GUIDELINES*, AND DOES NOT REPLACE ANY OTHER DOCUMENTATION REQUIRED TO SUPPORT THE PAYMENT REQUEST. IF EXTRA SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS OF PAPER.

ATTORNEY NAME: _____ REPRESENTING: APPELLANT _____ APPELLEE _____

CASE _____

DOCKET NUMBER: _____ VOUCHER NUMBER: _____

1 APPEAL FROM: GUILTY PLEA _____ TRIAL DISPOSITION _____ HABEAS PETITION _____ OTHER _____

OFFENSE(S) AND NUMBER OF COUNTS ON WHICH CONVICTED: _____

LENGTH OF SENTENCE: _____

NUMBER OF CO-DEFENDANTS: PRE-JUDGMENT _____ CONVICTED _____

SIZE OF TRANSCRIPT: _____ PAGES IF NOTEWORTHY, DESCRIPTION/LENGTH OF OTHER MATERIALS REVIEWED: _____

NUMBER OF TRIAL DAYS _____

2 DID YOU REPRESENT YOUR CLIENT AT THE DISTRICT COURT LEVEL? YES _____ NO _____. IF YES, AT TRIAL? YES _____ NO _____.

HOURS CLAIMED FOR OBTAINING AND REVIEWING RECORDS: _____

3 LENGTH OF APPELLANT'S BRIEF: _____ PAGES. NUMBER OF SENTENCING ISSUES: _____ NUMBER OF OTHER ISSUES: _____

LENGTH OF APPELLEE'S BRIEF: _____ PAGES. NUMBER OF ISSUES: _____

LENGTH OF APPELLANT'S REPLY BRIEF: _____ PAGES. NUMBER OF ISSUES: _____

HOURS CLAIMED FOR LEGAL RESEARCH AND WRITING PRINCIPAL BRIEF: _____ IF APPLICABLE HOURS CLAIMED FOR LEGAL RESEARCH AND WRITING REPLY BRIEF: _____

CHECK ONE OF THE FOLLOWING: DISPOSITION BEFORE BRIEFING _____ SUBMISSION ON BRIEFS _____

ORAL ARGUMENT: _____ IF APPLICABLE, HOURS CLAIMED PREPARING FOR ORAL ARGUMENT _____

4 PETITION FOR REHEARING/SUGGESTION FOR REHEARING IN BANC FILED BY: APPELLANT _____ APPELLEE _____

PAGES: _____ NUMBER OF ISSUES RAISED: _____ RESPONSE IN OPPOSITION: _____ PAGES

HOURS CLAIMED FOR LEGAL RESEARCH AND WRITING PETITION/SUGGESTION OR RESPONSE IN OPPOSITION: _____

5 PETITION FOR WRIT OF CERTIORARI FILED BY: APPELLANT _____ APPELLEE _____ PAGES _____

NUMBER OF ISSUES: _____ BRIEF IN OPPOSITION: _____ PAGES REPLY BRIEF: _____ PAGES

HOURS CLAIMED FOR LEGAL RESEARCH AND WRITING PETITION/REPLY BRIEF OR BRIEF IN OPPOSITION (ATTACH COUNSEL'S DOCUMENTS): _____

6 CHECK WHETHER ANY OF THE FOLLOWING APPLY: COMPLEX LEGAL ISSUE(S) _____
NOVEL LEGAL ISSUE(S) _____ COMPLEX FACT PATTERN _____ LEGAL ISSUE(S) RESEARCHED BUT NOT WRITTEN _____
IF NOTEWORTHY, EXPLAIN IMPACT ON THE NUMBER OF HOURS CLAIMED: _____

ITEM 6 (CONTINUED)

7 INDICATE WHETHER ANY OF THE ISSUES WERE BRIEFED AT THE DISTRICT COURT: YES _____ NO _____.
IF YES, EXPLAIN ADDITIONAL WORK REQUIRED:

8 EXPLAIN ANY EXPENSE (SEE ITEMS 17 AND 18 OF THE CJA 20 VOUCHER) GREATER THAN \$500:

9 EXPLAIN ANY OTHER NOTEWORTHY CIRCUMSTANCES REGARDING THE CASE AND THE REPRESENTATION PROVIDED TO SUPPORT THIS COMPENSATION REQUEST:

INCLUDE, IF APPLICABLE: (A) RESPONSIBILITIES INVOLVED MEASURED BY THE MAGNITUDE AND IMPORTANCE OF THE CASE, INCLUDING PRECEDENTIAL VALUE; (B) MANNER IN WHICH DUTIES WERE PERFORMED AND KNOWLEDGE, SKILL, EFFICIENCY, PROFESSIONALISM, AND JUDGMENT REQUIRED OF AND USED BY COUNSEL; (C) NATURE OF COUNSEL'S PRACTICE AND HARDSHIP OR INJURY RESULTING FROM THE REPRESENTATION; AND (D) ANY EXTRAORDINARY PRESSURE OF TIME OR OTHER FACTORS UNDER WHICH SERVICES WERE RENDERED.

SIGNATURE OF APPOINTED ATTORNEY:

DATE: