

**PAYMENT OF COURT-APPOINTED COUNSEL
IN FEDERAL CAPITAL CASES**

COMPENSATION

Hourly Rates: Hourly rates paid in capital cases are up to \$125 per hour for both in-court and out-of-court time. Due to the complex and extended nature of capital cases, the CJA does not set a ceiling on total compensation. Counsel in capital cases must append a memorandum to their voucher providing sufficient detail regarding counsel's services in the case to demonstrate that counsel's claim for compensation is reasonable.

Breakdown of Attorney Time: Attorney time must be documented on the worksheet enclosed for this purpose, or like form. Time must be broken down according to date, description of services, amount of time in hours and tenths of an hour, and according to the following categories established for payment under the CJA: 15(b) interviews and conferences with client; 15(c) witness interviews; 15(d) consultation with investigators and experts; 15(e) obtaining and reviewing the court record; 15(f) obtaining and reviewing documents and other evidence; 15(g) consulting with resource center; 15(h) legal research and writing; 15(i) travel time; and 15(j) other work. Use of the enclosed worksheet facilitates the court's review of counsel's request for compensation, but billing records may be submitted in place of the worksheet so long as all hours claimed are assigned to one of the nine CJA categories and the totals for each category are listed on the face of the voucher.

What Time May Be Claimed: Counsel may claim in this court all time spent representing the client on appeal, after filing of the notice of appeal through preparation of a petition for writ of certiorari, and completion of any applicable clemency proceedings. Counsel's obligation upon appointment 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. Claims seeking compensation for work performed on a petition for writ of certiorari or application for clemency must be supported with a copy of the petition or application.

Whose Time May Be Claimed: Court-appointed counsel may claim compensation for their own time. In federal capital cases, an indigent defendant is generally entitled to appointment of two attorneys upon request. Court-appointed counsel may also seek prior court authorization to use the services of attorneys who work in association with appointed counsel, provided that the employment of such additional counsel (at a reduced hourly rate) diminishes the total cost of representation or is required to meet time limits. Once such authorization has been obtained and associated counsel has entered an appearance in the case, court-appointed counsel may include the associated attorney's time on court-appointed counsel's voucher, separately identifying the provider of each service. Compensation may not be claimed for work performed by non-attorneys; however, a CJA Form 31 may be used to pay for services provided by paralegals, legal

assistants, and other professional support personnel, including law students, if such services will result in greater efficiency and lower costs for the CJA program than would occur if counsel performed and charged for these services. The hourly rate charged for such services cannot exceed the lesser of the CJA rate applicable to counsel and the rate typically charged to fee-paying clients for such services. If the cost of such services will exceed \$300, advance authorization is required. Secretarial services are not reimbursable.

EXPENSES

Travel Expenses: Counsel traveling to Richmond to present oral argument should request a Travel Authorization from the clerk's office. The Travel Authorization entitles counsel to obtain government travel rates and authorizes counsel to make plane and train reservations through the National Travel Service. If reservations are made through the National Travel Service, the clerk's office will make payment directly to the carrier after verifying that counsel used the reservation. If plane or train reservations are not made through the National Travel Service, 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 the National Travel Service, reimbursement will be limited to the government rate. Mileage expenses of 37.5 cents per mile may be claimed by itemizing on the enclosed expense worksheet the date, destination, and number of miles traveled. Court-appointed counsel are eligible for government hotel rates and may obtain reimbursement for reasonably incurred travel expenses (current reimbursement limits for meals and lodging in Richmond are \$184.50 for the first day of travel and \$57 for the last day of travel). **All** travel expenses (lodging, meals, parking, ground transportation) must be supported by receipts. 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. Reimbursement for significant travel other than for argument will be made only if counsel obtained leave of court before incurring the expense, upon a showing of specific need for the travel and the expenses to be incurred.

Copying Expenses: For copies made in-house, counsel may obtain reimbursement of actual expenses, not to exceed \$.15 per copy, by itemizing on the enclosed expense worksheet the dates, number of copies, and cost per page. Counsel may claim reimbursement for copying portions of the record for the defendant, up to \$75, and for providing defendant with a copy of the briefs and joint appendix. For photocopying of briefs and appendices by commercial printers, reimbursement for actual expenses not to exceed \$.35 per sheet may be obtained by submitting a receipt detailing what was copied, number of copies, and cost per copy. Double-sided copying must be used for appendices prepared by commercial printers. Under Local Rule 32(a), no appendix in a court-appointed case may exceed 500 pages (or 250 double-sided sheets if commercial copying is used) absent advance permission from the court. Unless counsel has obtained leave to file an oversize appendix, reimbursement will be limited to the pages allowable under Local Rule 32(a). In addition, counsel may be required to bear any additional costs associated with resubmitting corrected briefs and appendices in cases where counsel did not

follow the court's rules in the initial submission. If a commercial printer prepares the briefs and appendix, a separate application may be made on CJA Form 31 for direct payment of printing bills, in excess of \$100, to the printer. Petitions for rehearing must be copied in-house. Because Rule 14(1)(i) of the Supreme Court Rules requires only an extremely limited appendix to accompany a petition for writ of certiorari, copying costs for petitions for writs of certiorari and accompanying appendices shall not exceed \$300 absent advance permission of the court of appeals.

Long Distance Telephone Calls and Facsimile Charges: Counsel may claim reimbursement for long distance phone calls and facsimile charges by itemizing on the enclosed expense worksheet the date and amount of long distance charge. If the amount exceeds \$50, a copy of the bill is required. Any other charge associated with use of counsel's phone or fax equipment is considered non-reimbursable office overhead.

Postage and Courier Charges: Delivery charges may be claimed by itemizing on the enclosed expense worksheet the date, description of expense, and cost. Any expense in excess of \$50 must be supported by a detailed receipt. Briefs and appendices are deemed filed upon first-class mailing or dispatch to a commercial courier for delivery within three days, and counsel are expected to minimize the use of special services such as same day or overnight delivery.

Computer Assisted Legal Research: The cost of use by appointed counsel of computer assisted legal research equipment may be allowed in an amount not to exceed the attorney compensation that would have been approved if counsel had performed the research manually. Claims for reimbursement for computer assisted legal research must be supported with: (1) a statement of the issues researched; (2) an estimate of the number of hours of attorney-time that would have been required to do the research manually; and (3) a copy of the bill and receipt for use of the equipment or an explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges, or by charges identifiable to the specific research). Payment for research services provided by employees of a computer legal research firm is made on a CJA Form 31, upon a showing that the costs will not exceed the number of hours of attorney time that would be required to perform the research manually. If the cost of such services will exceed \$300, advance authorization is required.

CLAIM PROCEDURE

When to Apply: The court will send counsel two CJA 30 pay vouchers along with instructions when judgment is entered. Separate vouchers must be filed for work done in connection with the appeal and for work done in connection with any petition for writ of certiorari. The vouchers must be filed within 60 days of entry of judgment, denial of a petition for rehearing, or the grant or denial of a petition for certiorari, whichever is later. Counsel may request an additional voucher for other proceedings, such as clemency applications. Any voucher for work done in connection with clemency proceedings must be filed within 60 days of completion of those proceedings. If undue hardship is caused by extraordinary and substantial expenses and case

delay, counsel may request in writing the issuance of an interim voucher, setting forth in detail the reasons for the request.

What to Submit: Counsel must submit the CJA 30 pay voucher, the worksheets itemizing counsel's services and expenses, and all receipts. Counsel must attach a memorandum outlining the services provided in sufficient detail for the court to assess the reasonableness of the claim for compensation. Receipts are required for all travel expenses, non-office copying services, and any other expense in excess of \$50. Hotel and restaurant bills are required for lodging and meal expenses. A copy of the plane or train ticket and the Travel Authorization are required if counsel traveled by plane or train. If counsel is claiming compensation for time spent preparing a petition for writ of certiorari or application for clemency, a copy of the petition or application is required. If counsel is seeking payment for services provided by a legal research firm, paralegal, legal assistant, or law student, a CJA Form 31 (available at www.ca4.uscourts.gov) must be completed.

Records: For audit purposes, the CJA requires counsel to retain time and expense records for three years after approval of the voucher.

Public Disclosure: CJA Form 30 vouchers filed by counsel are 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 at the time the voucher is filed. Absent such a motion, the voucher will be made available to the public upon request.

Questions: Payment of attorneys appointed under the Criminal Justice Act is governed by the court's Plan in Implementation of the Criminal Justice Act and Volume VII of the Guide to Judiciary Policies and Procedures. Questions regarding compensation, reimbursable expenses, or record keeping should be addressed to Patty Layne in the clerk's office at 804-916-2727. The court's Plan in Implementation of the Criminal Justice Act is available at www.ca4.uscourts.gov or upon request from the clerk's office.