

PAYMENT OF COUNSEL APPOINTED UNDER THE CRIMINAL JUSTICE ACT

COMPENSATION

Aggregate Limits: For direct criminal appeals, appeals from the denial of habeas corpus relief, and civil forfeiture appeals, a \$3,700 limitation, exclusive of expenses, applies to attorney compensation. For interlocutory appeals, appeals from orders dismissing an indictment, appeals from post-judgment motions, bail appeals, commitment appeals, appeals from probation revocation proceedings, extraordinary writs, and motions for authorization to file successive petitions, a \$1,200 limit applies. These limitations apply per defendant in a consolidated matter. If another attorney is substituted during the appeal, the limitations apply to joint compensation. Attorneys seeking compensation in excess of these limits must submit a separate, detailed memorandum demonstrating that the case is more complex or time consuming than the average case and that excess payment is necessary to provide fair compensation.

Hourly Rates: A \$90 hourly rate applies to in-court and out-of-court work.

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: (a) interviews and conferences; (b) obtaining and reviewing records; (c) legal research and brief writing; (d) travel time; and (e) investigative and 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 five 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. 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 must be supported with a copy of the petition.

Whose Time May Be Claimed: Court-appointed counsel may claim compensation for their own time as well as for the time of a partner or associate in their firm by separately identifying the provider of each service on appointed counsel's time worksheet. Appointed counsel may not claim compensation for time of paralegals or legal secretaries; however, compensation paid to qualified law students may be claimed as an expense as described under expenses. If appointed counsel has obtained prior authorization from the court for assistance from an attorney outside counsel's firm, appointed counsel may also claim compensation for that attorney's time. The limits on compensation set by the Act apply to all compensation claimed.

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 20 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 36 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 within limitations applicable to federal employees. **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 21 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 of 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 the 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 should 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). The cost of research performed by employees of a commercial legal research firm is not reimbursable unless counsel obtains advance approval for such services 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. Claims for court-approved commercial computer research services are submitted on CJA Form 21.

Compensation Paid to Law Students: Claims for reimbursement for compensation paid to a qualified law student must be supported with: (1) a statement of the issues researched and (2) the hourly rate paid to the law student. Expenses incurred by a law student in assisting appointed counsel are not reimbursable under the CJA.

CLAIM PROCEDURE

When to Apply: The court will send counsel a CJA 20 pay voucher along with instructions when judgment is entered. The completed voucher 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.

What to Submit: Counsel must submit the CJA 20 pay voucher, the worksheets itemizing counsel's services and expenses, and all receipts. 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, a copy of the petition is required. If counsel is claiming time in excess of the aggregate limits, counsel must attach a detailed memorandum demonstrating that the case was unusually extended or complex and that excess payment is necessary for fair compensation.

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 20 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. A Memorandum to Attorneys Appointed Under the Criminal Justice Act and the court's Plan in Implementation of the Criminal Justice Act are available free of charge to court-appointed counsel on the court's website, www.ca4.uscourts.gov, or upon request from the clerk's office.