

GENERAL ORDER NO. 50

CRIMINAL JUSTICE ACT PROCEDURES FOR
ATTORNEY COMPENSATION AND FUNDING FOR NEEDED SERVICES

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

I. VOUCHER SUBMISSIONS AND APPROVAL

A. Introduction

The following policies and procedures are applicable to representations for attorneys appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (referred to herein as the “CJA”), death-eligible and capital habeas representations for attorneys appointed under 18 U.S.C. § 3005 or § 3599(a), and payment for investigative, expert and other services.

Claims and payments shall be made in accordance with the provisions as set forth herein, Volume 7 of the Guide to Judiciary Policy, the CJA Plan of the United States District Court for the Northern District of California (General Order 2, referred to herein as the “Plan”), the fiscal policies of the Administrative Office of the United States Courts, the policies of the Ninth Circuit Judicial Council, the CJA Policy Manual for the Northern District of California, the Ninth Circuit Compensability Handbook, and any other guidelines that may be implemented by the CJA Administration Committee.

Questions about this general order should be directed to the Court’s CJA Unit (cja@cand.uscourts.gov).

B. Court Compensation Policies

1. Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA panel attorneys must be compensated for time expended in court and time reasonably expended out of court and reimbursed for expenses reasonably incurred. In determining the reasonableness of out-of-court time, the court must consider three factors:
 - a. whether the work was performed;
 - b. whether the work performed was a reasonable means of achieving the client’s aims in the litigation; and
 - c. whether the time spent to accomplish that work was reasonable.
2. Voucher reductions will be limited to mathematical errors; instances in which work billed was not compensable, undertaken, or completed; and instances in which the hours billed clearly exceed what was reasonably required to complete the task.

3. Vouchers and funding requests for service providers and other litigation costs will not be delayed or reduced to lessen Defender Services program costs in response to adverse financial circumstances.
4. Absent extraordinary circumstances, the Court will act on compensation claims within 30 days of submission.
5. Payment vouchers and amounts paid to counsel or service providers will not be disclosed except as required by law or CJA Guidelines.

C. Claim Submission

1. Claims for compensation must be submitted on the appropriate CJA form through the Court's eVoucher system. Information regarding eVoucher is available at cand.uscourts.gov/cja/evoucher.
The following forms are only available through eVoucher:
CJA-20 – Attorney voucher in a criminal case or other representations including grand jury witness and supervised release violations
CJA-21 – Expert and service provider voucher in a criminal case or other representations including grand jury witness and supervised release violations
CJA-26 – Statement for a Compensation Claim in Excess of the Statutory Case Compensation Maximum
CJA-30 – Attorney voucher in a capital (death-eligible) case or capital habeas representation.
CJA-31 – Expert and service provider voucher in a capital (death-eligible) case or capital habeas representation.
All other forms referred to in this General Order can be found at cand.uscourts.gov/cja/forms.
2. Claims for compensation must be submitted no later than 60 days after final disposition of the case, unless good cause is shown.

D. Delegated Authority for Claim Approval

This Court has delegated to the CJA Supervising Attorney the authority to approve vouchers and authorize payment as follows:

1. Vouchers for attorney services;
2. Vouchers for interpreters, investigators, and paralegals requesting payment for less than the prevailing waivable case compensation maximum provided in the Guide to Judiciary Policy, Volume 7A, Ch.3, §310.20.10(A) or that are within pre-authorized funding limits in all felony, misdemeanor, non-capital habeas, and other criminal proceedings;

¹ Once a case is designated as capital, even if de-authorized, the attorney will use the CJA-30/CJA-31 throughout the representation.

3. Vouchers for all other service providers requesting payment under the current statutorily imposed limit provided in the Guide to Judiciary Policy, Volume 7A, Ch.3, §310.20.30(A) or that are within funding limits pre-authorized by the assigned Judge in felony, misdemeanor, non-capital habeas, and other criminal proceedings;
4. Vouchers for attorneys and service providers in capital habeas cases in which the expenditures were previously authorized in a budget that was approved by the assigned Judge; and
5. Vouchers for transcript services, interpreter services, and routine travel.

The Court retains ultimate review and approval authority.

E. Interim Vouchers

Prior to the completion of the case, any attorney providing representation under the CJA may submit interim vouchers for payment of fees and reimbursement of allowable expenses

Interim vouchers should be submitted every 60 days unless the voucher amount is less than \$1,400.

F. Final Vouchers

1. For completed cases and cases in which the services of the CJA attorney have been terminated for any reason, vouchers must be submitted no later than 60 days after the attorney ceases representation without regard to the amount of the claim or the date of any previously submitted interim voucher.
2. Attorneys must provide good cause to justify payment of any voucher submitted more than 60 days after representation is completed.

G. Statutory Maximums

When compensation exceeds, or is expected to exceed, the statutory maximums permitted under 18 U.S.C. § 3006A(d)(3), the attorney must submit a CJA-26 through eVoucher showing why payment in excess of the statutory maximum is necessary to provide fair compensation to the attorney.

H. Case Budgeting

1. Budget Forms:
Budgets should be submitted every 6 months and must be submitted through the eVoucher system as attachments to a CJA-26 or BUDGETAUTH. All budget forms are available at cand.uscourts.gov/cja/forms.

2. Budgets are required in the following cases:
 - a. Complex Cases: Any case in which the case maximum is expected to exceed 300 hours is considered a complex case. The attorney is required to complete and submit a Confidential Ex Parte Application for CJA Funds in a Complex Case.
 - b. Capital Cases: Any case where the defendant is “death-eligible” is considered a capital case. The Lead Attorney is required to complete and submit a Capital Case Funding Authorization.
 - c. Capital Habeas Cases: Lead Attorney is required to submit a budget at each phase of the representation. Lead counsel is required to complete and submit a:
 1. Capital Habeas Funding Application; and
 2. Capital Habeas Confidential Case Evaluation.

I. Details Required in Attorney Vouchers

Without violating the Canons of Ethics or disclosing attorney work product, attorneys must include sufficient detail to permit meaningful review. If a voucher contains insufficient detail for auditing purposes, it will be returned to the attorney to resubmit with sufficient detail. To provide sufficient detail, an attorney must:

1. Delineate discrete services. Separate, unrelated services may not be “bundled” in one entry.
2. Describe witness interviews with sufficient information to distinguish between individuals, e.g. “Witness 1” or “W1” or “witness A.K.”.
3. Identify the participants in telephone conversation or conferences and general topics discussed.
4. Specify topics researched and the pleadings filed as a result of the research by ECF docket number.
5. List the type of documents, number of pages reviewed, and Bates numbers when review exceeds one hour. (e.g. FBI 302s, 77 pages SC300-377).

J. Voucher Review Procedure

The CJA Department will perform an initial review for accuracy and compensability under the CJA Guidelines and Ninth Circuit CJA Policies and Procedures. In determining whether services provided by counsel are compensable, the guidelines for ancillary appointment of counsel in Section IV.A.3 of General Order 2, the Criminal Justice Act Plan, may be considered. After this review, vouchers will be forwarded for consideration and action by the presiding judge or his or her designee, who will review claims for overall reasonableness.

K. Voucher Reductions and Independent Review Procedures

1. Reductions Claims for compensation under the CJA will not be reduced without affording counsel notice and an opportunity to be heard.
 - a. When contemplating a voucher reduction, the CJA Department will notify CJA counsel of any proposed reduction and offer counsel the opportunity to justify the submission.
 - b. If counsel indicates that the reduction is not contested, or if no response is received within ten days, the CJA Department will process the reduced voucher.
 - c. If counsel responds and provides information justifying the claimed time or expense, the voucher will be approved as submitted.
2. Independent Review Procedures
 - a. Judicial Approval: The CJA Supervising Attorney must obtain the approval of the assigned Judge for a proposed voucher reduction greater than \$375.
 - b. Fee Review Committee: A voucher reduction in excess of \$375 may be reviewed by the Fee Review Committee (FRC) at the request of either the assigned Judge or the attorney. The attorney must submit the request for review in writing to the CJA Supervising Attorney. The assigned Judge will give significant weight to the FRC's recommendation in making a final determination. Information regarding the Fee Review Committee can be found at cand.uscourts.gov/cja/feereview.

L. No Receipt of Other Payment

Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the CJA, unless such payment is approved by order of the Court.

II. Investigative, Expert, and Other Services; Litigation Expenses

Counsel for a person financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request CJA funding in an *ex parte* application to the Court as provided in 18 U.S.C. § 3006A(e)(1), regardless of whether counsel is appointed under the CJA. Upon finding that the services are necessary, and that the person is financially unable to obtain them, the presiding judge or designee must authorize the funding.

Cost Considerations. CJA counsel are expected to use lower-cost service providers such as investigators or paralegals to undertake tasks not requiring attorney expertise. In multi-defendant cases with multiple CJA attorneys, counsel must make all reasonable efforts to coordinate with each other to reduce costs, including coordinating and sharing discovery and utilizing shared investigators and other services to the extent possible.

Attorneys are responsible for obtaining qualified experts and service providers and for conducting careful review of experts' and service providers' bills to assure that the charges are accurate and reasonable and that they contain sufficient detail.

Delegation. This Court has delegated to the CJA Supervising Attorney the authority to approve requests for associates, paralegals, interpreters, and investigators.

A. Requests for Services

1. Applications To request funds for investigative, expert, and other services, an attorney must submit a Funding Request by email to the CJA Unit (cja@cand.uscourts.gov). The Funding Request must provide sufficient detail to demonstrate that the service is reasonably necessary, the hourly rate charged by the provider, and that the estimated number of hours needed to complete the work is reasonable. The request must not be disclosed except with the consent of the person represented or as required by law or CJA Guidelines.

2. Obtaining Services Without Prior Request

Attorneys may obtain investigative, expert or other services without prior authorization if necessary for adequate representation under the following circumstances:

- a. Interpreters, investigators, and paralegals: the total cost of services for each such provider may not exceed the prevailing waivable case compensation maximum provided in the Guide to Judiciary Policy and Procedure, Volume 7A, Ch. 3, §310.20.10(A) plus the cost of expenses reasonably incurred.
- b. All other service providers: the total cost of services per case may not exceed the statutorily imposed limit provided in the Guide to Judiciary Policy and Procedure, Volume 7A, Ch. 3, §310.20.30(A) the plus the costs of expenses reasonably incurred.

B. Nunc Pro Tunc Requests

If an attorney obtains services without seeking prior approval or the service provider exceeds the specific terms of the funding authorization, as soon as possible the attorney must submit a Funding Request justifying the services, a request for *nunc pro tunc* authorization to the date services were first rendered, and a thorough explanation of why prior authorization could not have reasonably been obtained. *Nunc pro tunc* requests to compensate service providers will be considered and authorized only upon a showing of good cause, such as when a service not previously contemplated required immediate action. If the assigned Judge denies the request in whole or in part, the Court will not be liable for refusal to pay for services rendered without prior approval or in excess of authorized funds.

C. Payment to Experts and Service Providers

A separate voucher must be created in eVoucher for each expert or service provider.

1. Paralegals, investigators, and mitigation specialists have access to eVoucher and are required to enter their time directly into the system.
2. All other experts and service providers must submit their invoices to the attorney.
3. Invoices should contain adequate detail of the services performed and include supporting documentation.
4. Each invoice for expert and service provider services must be accompanied by a Certificate of Service ("COS") verifying services invoiced.
5. The attorney is responsible for attaching the invoice, any documentation, and the COS on behalf of the expert or service provider to the voucher.
6. The attorney is responsible for reviewing and submitting the voucher on behalf of all service providers.
7. Interpreters must use the CJA Interpreter Invoice.

D. Compliance.

Counsel must comply with Judicial Conference policies set forth in CJA Guidelines, Ch. 3.

III. CJA DOCUMENTATION

A. Confidentiality

All CJA documents are filed in the confidential CJA financial files maintained by the Clerk's Office. Documents maintained in the CJA financial files shall not be disclosed to the public except as provided by statute, by the Guide to Judiciary Policy, or by order of the Court. Accordingly, it is not necessary for the attorney to request sealing of CJA documents.

B. Standardized Forms

Where the Administrative Office of the United States Courts provides standard forms, such forms shall be used in connection with all actions taken under the Plan and the provisions set forth herein.

IT IS SO ORDERED.

ADOPTED: June 30, 2000

AMENDED: October 16, 2000

April 24, 2001

June 18, 2002

March 15, 2005

December 20, 2011

October 19, 2018

September 22, 2019

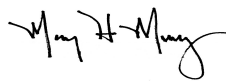
January 22, 2020

September 23, 2022



CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**FOR THE COURT FOR THE JUDICIAL
COUNCIL OF THE NINTH CIRCUIT:**



CHIEF JUDGE
NINTH CIRCUIT COURT OF APPEALS

DATE: December 5, 2022