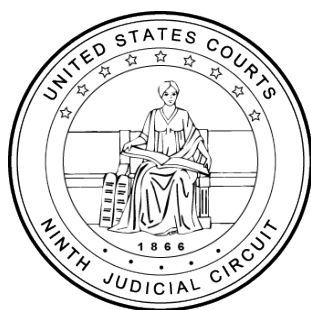


# JUDICIAL COUNCIL OF THE NINTH CIRCUIT



## CRIMINAL JUSTICE ACT POLICIES AND PROCEDURES

EFFECTIVE OCTOBER 20, 2016

APPENDICES REVISED JUNE 7, 2019

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# I. INTRODUCTION

## I. INTRODUCTION

The Judicial Council of the Ninth Circuit (“Judicial Council”) has approved the following case management and budgeting policies and procedures applicable to representations for counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (“CJA”), and to death-eligible and capital habeas representations for counsel appointed under 18 U.S.C. § 3005 or § 3599(a). The policies implement the statutory authorization for fair compensation of legal services reasonably necessary for indigent legal representation.

The policies should be read in conjunction with the Guidelines for Administering the CJA and Related Statutes, Volume 7, Part A, Guide to Judiciary Policy (“[CJA Guidelines](#)”) which apply to all CJA representations. To the extent these policies conflict with the CJA Guidelines, the policies prevail.

Districts may supplement these policies and procedures provided there is no conflict between them. Although districts should adhere to these policies, variation is permissible for good cause. Notice of such should be provided to the Judicial Council through the Circuit Executive’s Office.

## II. CJA PLANS

### II. CJA PLANS

Pursuant to the CJA and the CJA Guidelines, each district should develop a plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA. The objective of the plan should be to attain equal justice under the law for all persons.

A model plan is available in Appendix 2A of the CJA Guidelines. Districts may want to incorporate some of the policies and procedures set forth herein in plan provisions related to CJA panel attorneys.

Each district should review its plan every five years to ensure compliance with the CJA, the CJA Guidelines, and other relevant Judiciary Conference and Ninth Circuit policies. Plans must be approved by the Judicial Council of the Ninth Circuit.

## III. CASE BUDGETING

### III. CASE BUDGETING

The development of a case budget in unusually expensive representations helps ensure that defense counsel receive the resources necessary to effectively represent the accused. A case budget with supporting documentation provides the reviewing court with sufficient information to assess reasonableness, monitor fairness, and more effectively oversee the expenditure of CJA funds. To the extent possible, the circuit CJA Case Managing Attorneys (“circuit CMA”) should be utilized to assist courts and appointed counsel with case budgeting. *See [Appendix 10](#)* for their contact information.

For cases subject to budgeting, the CMAs should be given access to that court’s eVoucher system to facilitate development and review of a budget and to monitor case costs.

#### A. DEATH-ELIGIBLE PROSECUTIONS

CJA attorneys appointed in all death-eligible prosecutions, including as co-counsel with a federal public or community defender, must budget CJA case costs. Within 30 days of appointment, the court or CJA counsel assigned to a death-eligible federal case should contact one of the circuit CMAs or the district CJA Supervising Attorney or CJA administrator for assistance in budgeting the case.

#### B. CAPITAL HABEAS CORPUS PROCEEDINGS

CJA attorneys appointed in all capital habeas cases, including as co-counsel with a federal public or community defender, must budget CJA case costs. Within 30 days of appointment, the court or CJA counsel assigned to a capital habeas case should contact one of the circuit CMAs or the district CJA Supervising Attorney or CJA administrator for assistance in budgeting the case. The court-authorized budget will be submitted to and reviewed by the Ninth Circuit’s Criminal Case Committee. The Criminal Case Committee will then make a recommendation to the Judicial Council of the Ninth Circuit. A

## III. CASE BUDGETING

significant budget supplement, defined as the lesser of a twenty percent increase in the total amount of the budget or \$25,000, also is subject to the budget-approval process.

### **C. NON-CAPITAL HIGH-COST CASES**

Other high-cost cases should be budgeted. The U.S. Judicial Conference encourages budgeting any representation anticipated to exceed either 300 attorney hours or total costs (attorney plus service provider fees) in excess of 300 times the prevailing CJA panel attorney non-capital hourly rate, rounded up to the nearest thousand. *See* CJA Guidelines § 230.26.10. The Judicial Council also encourages courts to budget representations that meet these thresholds and to seek budgeting assistance from a circuit CMA, CJA Supervising Attorney, or CJA panel administrator with budgeting experience. Representations that are anticipated to exceed \$100,000 should be referred at the earliest opportunity to a circuit CMA.

Indications of a potential high-cost case are listed in [Appendix 9](#).

### **D. NOTICE OF POTENTIAL HIGH-COST CASE**

The Judicial Council encourages districts to have a local rule, or for judges to implement a standing order, identifying non-capital high-cost cases as early in the criminal process as possible. Because a district's United States Attorney's Office is most knowledgeable about a case's charges and discovery, such rule or order can direct that office to provide notice of a potential high-cost case. Districts are not precluded from requiring similar notice from defense counsel.

### **E. BUDGETING IN STAGES**

To make the budget submission and review process more manageable and effective, budgeting may be accomplished in stages and, if appropriate, discrete time periods within stages, such as in three, four, or six-month intervals.



### III. CASE BUDGETING

For example, the first stage of a non-capital case may extend through the filing of pretrial motions. The attorney could submit a budget for the entire pretrial stage, or, if the pretrial stage is expected to be lengthy, could submit a budget to cover a shorter interval of time. Similarly, the first stage of a capital-eligible federal prosecution may extend to a decision by the Department of Justice whether to authorize the prosecution to seek the death penalty. Depending on the timing for DOJ's decision-making process, the attorney could submit a budget for the entire stage or for a given period of time within the stage.

For capital habeas proceedings, budgets may be composed of numerous stages, depending on a number of factors particular to a case or district. Such stages may include record review, petition preparation, responsive briefing, and evidentiary hearing.

It may be difficult for counsel to anticipate costs early in a capital or other high-cost case. Therefore, a court should consider authorizing early on a limited amount of "seed money" to allow the defense to become familiar with the case, develop strategy, gather a team, and develop and file budgets for attorneys and service providers. The seed money authorization should provide sufficient funding for the first 90 days of representation and include authorization for counsel to enlist reasonably necessary service providers, such as an investigator, paralegal, or mitigation specialist. The seed money is part of the overall budget and not money in addition to the budget; therefore, the seed money should be included in the Stage 1 budget.

#### **F. VOUCHER REVIEW IN BUDGETED CASES**

Although budgeting should expedite voucher review, courts are still obligated to assess whether amounts billed are reasonable, appropriate, and necessary to provide fair compensation.

## III. CASE BUDGETING

### **G. BUDGET SUPPLEMENTS**

Counsel is responsible for keeping track of attorney hours and all CJA-funded service provider hours. Counsel, investigators, experts, and other service providers must not exceed the budget authorized by a court without first seeking prior approval. Supplemental budget requests should be made before funding is exhausted and far enough in advance to give the court sufficient time to review and rule on the request. *Nunc pro tunc* requests will be considered only upon a showing of good cause, such as when a task not previously contemplated required immediate action. A general assertion of “competing professional demands” does not establish good cause; a detailed explanation of those demands is required.

## IV. COUNSEL APPOINTMENT AND COMPENSATION

### IV. COUNSEL APPOINTMENT AND COMPENSATION

#### A. GEOGRAPHIC PROXIMITY

Courts should try to appoint CJA panel attorneys who are located reasonably near to where the case will be heard to avoid unnecessary travel time and facilitate access to the client. In cases where more than one attorney is appointed, the counsel nearest the client should conduct most of the client visits unless the counsel farthest from the client possesses a certain expertise or working relationship with the client that warrants otherwise. Counsel not in close geographic proximity to the client should coordinate client visits with court hearings whenever feasible.

#### B. HOURLY RATES FOR APPOINTED COUNSEL

##### 1. Death-Eligible Prosecutions

At the outset of any proceeding in which a financially eligible defendant is or may be charged with a crime punishable by death, a court must appoint two counsel, at least one of whom is learned in the law applicable to capital cases. 18 U.S.C. § 3005. Courts must consider the recommendation of the federal defender organization before appointing counsel.<sup>1</sup> The maximum hourly rate in death-eligible prosecutions is set forth in [Appendix 1](#).

Pursuant to CJA Guidelines § 630.30, if the prosecution files notice that the death penalty will not be sought in a case in which a defendant was charged with a death-eligible offense, the court should consider reducing the number of counsel and reducing prospectively the hourly compensation rate for remaining counsel, absent extenuating circumstances. Extenuating circumstances include those cases where the prosecution waits until weeks before trial to decertify death or the defense has reasonably allocated trial duties among counsel well into

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<sup>1</sup> Districts without a federal defender organization must consult with the AO's Defender Services Office.

## IV. COUNSEL APPOINTMENT AND COMPENSATION

the case such that it would negatively impact the representation to dismiss one counsel.

If a court reduces the number of counsel, it should authorize a sufficient number of hours to allow for an orderly transition of the defense team. This includes allowing departing counsel and the mitigation investigator or specialist time to draft transmittal memoranda and meet with remaining counsel and client. Typically, twenty (20) hours should be adequate for this purpose.

### **2. Capital Habeas Corpus Proceedings**

Pursuant to 18 U.S.C. § 3599(a)(2), a financially eligible petitioner seeking to vacate or set aside a death sentence in any proceeding under 28 U.S.C. § 2254 or 2255 is entitled to the appointment of one or more attorneys.

The hourly rate range for CJA-appointed attorneys in capital habeas cases is listed in [Appendix 1](#). The maximum rate is reserved for lead counsel who have substantial experience and skill in federal capital habeas corpus proceedings. All other counsel must be compensated at a rate that takes into account the attorney's experience and skill. Two lead counsel may be appointed at the maximum hourly rate. *See infra* [Section IV.F](#) regarding division of labor in cases with more than one appointed attorney.

### **3. Non-Capital Representations**

The current maximum hourly rate for CJA attorneys is set forth in [Appendix 1](#). In most cases, only one CJA-compensated attorney is authorized for each client representation. However, courts have discretion to appoint co-counsel in the interest of justice.

## **C. CJA APPOINTMENT OF RETAINED COUNSEL**

Courts have discretion under the CJA, 18 U.S.C. § 3006A(c), to authorize appointment and payment for an attorney retained by a person who later becomes financially unable to pay for representation. In deciding whether to authorize the appointment, the court should take into account whether counsel is a CJA panel

## IV. COUNSEL APPOINTMENT AND COMPENSATION

attorney or otherwise regularly practices in federal court. Regarding payment, the court should inquire into the fees already paid to the retained attorney. Such inquiry may include requiring counsel to provide copies of the retainer agreement, billing statements, and a statement of funds actually received from or on behalf of the client.

A court may find it appropriate to allow the retained attorney to begin billing under the CJA upon appointment. Or, a court may find it appropriate to appoint the retained attorney *nunc pro tunc* to the start of counsel's representation. In the latter scenario, the court may then order that any funds paid to retained counsel be attributed to work already performed and costs incurred (at the applicable CJA hourly rate), as well as new work performed and costs incurred, until the funds are deemed exhausted. Once exhausted, counsel and service providers would begin billing under the CJA. Other equitable arrangements may be appropriate.

### **D. COMPENSABLE AND NON-COMPENSABLE SERVICES**

#### **1. Budgeting and Voucher Preparation**

Time spent preparing a CJA-20 (attorney payment voucher in non-capital case) or CJA-30 (attorney payment voucher in capital case) is not compensable. Time spent reviewing and certifying expert and service provider vouchers as required by the CJA Guidelines is compensable. Additionally, time spent preparing a budget for the court is compensable because it requires counsel to plan for litigation by preliminarily reviewing records, sorting through discovery, initiating contact with experts and other service providers, and assessing overall case needs.

#### **2. Travel Arrangements**

Time spent making travel arrangements, whether undertaken by an attorney, paralegal, or other staff member, is not compensable. Time spent preparing a request for travel authorization from the court is compensable.

## IV. COUNSEL APPOINTMENT AND COMPENSATION

### 3. Travel

Appointed counsel must be compensated for travel time and expenses reasonably incurred, subject to the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations. Counsel should consult with the district's CJA supervising attorney or CJA administrator for those regulations.

Advance approval by the court is ordinarily required in two circumstances: (1) out-of-district travel, and (2) overnight travel. Counsel should consult with the district's CJA supervising attorney or CJA administrator regarding its travel authorization procedures. When feasible, counsel are expected to perform case-related work while traveling.

### 4. Administrative Work Related to Notices of Electronic Filing

Because it is a clerical function, counsel should not charge for downloading, reviewing, renaming, saving, printing, or forwarding a Notice of Electronic Filing ("NEF"), unless the NEF is a text-only entry unaccompanied by an Electronic Court Filing ("ECF") document. Counsel may bill for reading substantive ECF documents attached to a NEF, but should aggregate time spent during the day and ensure that double billing of time does not occur. An example of how to bill time for aggregated ECF review is in [Appendix 6](#).

### 5. Discovery Organization and Review

For cases with complex or voluminous discovery, courts and attorneys should confer with a circuit CMA, CJA Supervising Attorney, or the National Litigation Support Team ("NLST") in the Defender Services Office (*see* [Appendix 10](#)). In any case where counsel is contracting for discovery-related services in excess of \$10,000 or seeking to purchase computer hardware or software in excess of \$800, counsel must confer with the CMAs or the NLST. *See* CJA Guidelines § 320.70.40(a)(2).

## IV. COUNSEL APPOINTMENT AND COMPENSATION

In budgeted cases, at the onset of the case, counsel should present a preliminary budget detailing an efficient and cost-effective method to process, distribute, and organize discovery. This may include the use of an eDiscovery vendor or case management software and use of paralegals and investigators. If the court appoints consultants or attorneys skilled in electronic discovery to assist appointed counsel in developing a budget and discovery plan, the time associated with preparing the budget is compensable and should be included in the budget. Counsel in multi-defendant cases must make every effort to collaborate and share discovery organization resources.

Counsel and courts should review *Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases*, available on [www.fd.org](http://www.fd.org), as well as *Criminal e-Discovery: A Pocket Guide for Judges*, available on [www.fjc.gov](http://www.fjc.gov), and encourage the parties to meet and confer about the nature, volume, and mechanics of producing electronic discovery.

### **6. Discovery Motions**

Counsel must attempt to resolve discovery issues informally through conferences with opposing counsel. Except as to third-party discovery, counsel should not file formal discovery motions without first meeting and conferring with opposing counsel.

### **7. Record Review in Capital Habeas Cases**

For purposes of developing a budget, the presumptive rate of review for the state record and other documents is 60 pages an hour. All appointed counsel should review core materials and divide review of non-core materials between them. Core materials include the trial transcript from opening statements to verdict, substantial motions, state appellate briefs and decisions, and state post-conviction pleadings, exhibits, transcripts, and decisions. Non-core materials include prior counsel's case files, co-defendant files, and investigative reports.

## IV. COUNSEL APPOINTMENT AND COMPENSATION

To reduce extraordinary expenses associated with record review of cases with voluminous documents, a two-stage approach should be employed for review of non-core materials. Use of a paralegal is strongly encouraged.

### Stage One

In the first stage, the court approves a modest amount (*e.g.*, 40-60 hours) for the attorney or paralegal to assess the available materials and prepare an inventory or index, including a general description of each box. For example: Box 1, Source – Trial Attorney; Contents – 4 redwell folders labeled “police reports.” Original documents that have potential use as exhibits should be preserved and copies made as needed for the paralegal or attorney to use during substantive review.

### Stage Two

In the second stage, counsel should know the types and volume of documents that need careful review (*e.g.*, police reports with handwritten notes) and those that may need less detailed attention (*e.g.*, the second or third copy of a transcript). Accordingly, counsel should be in a position to prepare a detailed, accurate budget proposal for review of the core and non-core materials.

The budget may include time for preliminary review and organization of materials by a paralegal prior to attorney review. For example, a paralegal could organize all state pleadings in notebooks, prepare separate notebooks on witnesses, put police reports into chronological order or into witness notebooks, summarize transcripts or other materials, and prepare an exhaustion/default chart identifying each claim raised in state court on appeal or in a post-conviction proceeding.

### **8. Certificate of Appealability Briefing in Capital Habeas Cases**

Consistent with Rule 11 of the Rules Governing § 2254 Cases (effective Dec. 1, 2009), courts must issue or deny a Certificate of Appealability (“COA”) when entering a final order adverse to the petitioner. Briefing on entitlement to a COA



## IV. COUNSEL APPOINTMENT AND COMPENSATION

should be authorized only if a court concludes that it cannot rule without additional argument from the parties.

Courts should indicate whether a COA will be granted when ruling on a specific claim in a non-final order and then at the very end of the final dispositive order identify, by claim number, any and all claims for which a COA is granted. For example: “A COA is granted as to Claims \_\_, \_\_, and \_\_. A COA is denied as to all other claims. *See* 28 U.S.C. § 2253(c); *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003); *Slack v. McDaniel*, 529 U.S. 478, 484 (2000).”

### **9. Transferring Case to Appellate Counsel**

Time spent transferring a case to appellate counsel, including meeting with appellate counsel and reviewing the file, is compensable.

## **E. NON-APPOINTED ATTORNEYS**

### **1. Prior Authorization**

Pursuant to CJA Guidelines § 230.53.20(b) (non-capital) and § 620.10 (capital), CJA panel attorneys may utilize the services of attorneys who are members of appointed counsel’s firm. However, prior approval is required in all capital cases and in some districts in non-capital cases. Counsel must consult with the district’s CJA supervising attorney or CJA administrator regarding its authorization procedures before using members of appointed counsel’s firm.

In all cases prior authorization is required to utilize contract attorneys who are not members of appointed counsel’s firm.

### **2. Hourly Rate in Non-Capital Cases**

For associates, an experience-based hourly rate range is listed in [Appendix 1](#). For non-appointed attorneys who are members of the district’s CJA panel, a court may authorize up to the maximum non-capital CJA hourly rate.

## IV. COUNSEL APPOINTMENT AND COMPENSATION

### 3. Billing

The services of non-appointed counsel may not be billed as an expense of appointed CJA counsel, even if the attorney is an employee of appointed CJA counsel's firm. Counsel are required to use separate CJA voucher forms 20 and 30 to bill those services. Such vouchers must be submitted at the same time as appointed CJA counsel for the same billing period.

### 4. Expectations

Appointed counsel is expected to do all substantive work, including in-court hearings, pre-trial and probation interviews, and plea negotiations.

Non-appointed attorneys may be compensated for reasonable time conferring with appointed counsel. Where a non-appointed attorney appears in court with appointed CJA counsel, prior approval of the court should be sought to allow the court to rule on the necessity of the non-appointed attorney's participation.

## F. DIVISION OF LABOR

Appointed counsel are encouraged to use associates, law clerks, paralegals, investigators, and other cost-effective service providers to reduce costs where appointed attorney's expertise is not required, such as for legal research and file or preliminary discovery review.

Counsel should develop a plan to divide responsibilities among defense team members so that each team member is performing duties effectively and efficiently, thereby avoiding unnecessary duplication of effort. While meetings are needed to effectively divide responsibilities among team members and to coordinate efforts, counsel should also avoid unnecessary conferences among multiple attorneys, and between counsel and defense team members. In-person team meetings are compensable if the frequency and time billed are reasonable given the needs of a case, but counsel should always assess the need for a meeting in advance and consider whether the purpose of the meeting could be served equally by a team conference call.

## IV. COUNSEL APPOINTMENT AND COMPENSATION

Initial fact-gathering interviews of potential witnesses generally should be conducted by an investigator or mitigation specialist. After key witnesses are identified, usually only one attorney along with an investigator or mitigation specialist should conduct interviews.

Support staff—including law clerks, paralegals, associates, and investigators—will not be compensated for attendance at court hearings without prior court approval. However, courts should consider authorizing one or more such staff to assist appointed counsel during trial or an evidentiary hearing, especially in capital cases and cases involving voluminous discovery, trial exhibits, or witnesses.

## V. INVESTIGATIVE, EXPERT, AND OTHER SERVICE PROVIDERS

### V. INVESTIGATIVE, EXPERT, AND OTHER SERVICE PROVIDERS

#### A. PRIOR AUTHORIZATION

##### 1. District Court

Pursuant to 18 U.S.C. § 3006A(e)(2), prior authorization from the district court must be obtained for any service provider fees in excess of \$800 per case, *not* per service provider. CJA representations in districts within the Ninth Circuit routinely require the use of investigators, paralegals, and interpreters. The cost of those services combined typically exceed the statutory limit of \$800 per case.

To avoid the necessity of counsel having to expend time in numerous cases each year applying for permission to exceed the \$800 total case maximum, the Judicial Council of the Ninth Circuit encourages district courts to adopt a general order authorizing counsel to utilize the services of investigators, paralegals, and interpreters up to a court-determined amount not in excess of the statutory maximum for each provider type. An example of such a general order is in [Appendix 4](#).

Except as authorized by a general order, claims for service provider compensation exceeding \$800 without prior authorization will be approved only if the court finds, in the interest of justice, that timely procurement of necessary services could not await prior authorization. Every effort should be made to avoid *nunc pro tunc* applications.

When seeking prior approval, counsel must indicate the necessity for the service, the hourly rate charged by the provider, and the estimated number of hours to complete the work. Courts should rule on service provider requests as expeditiously as possible to minimize litigation delay and associated costs.

If counsel obtains prior approval for expert, investigative, or other services and it later becomes apparent that the cost will exceed the initial approved amount, requests for additional compensation should be requested by counsel

## V. INVESTIGATIVE, EXPERT, AND OTHER SERVICE PROVIDERS

and authorized by the court *before* any further service is provided. *Nunc pro tunc* requests will be considered only upon a showing of good cause, such as when a task not previously contemplated required immediate action.

Once funding for investigators, experts or other specialized services has been approved, counsel is responsible for communicating with the service provider to ensure compliance with specific terms of the court order and to ensure that charges do not exceed the amount authorized.

### 2. Circuit Reviewing Judge

In non-capital cases, service provider fees, excluding expenses, may not exceed the statutory maximum *per individual or organization* unless the excess fees are certified by the court as necessary to provide fair compensation for services of an unusual character or duration and approved by the Chief Judge of the Ninth Circuit or the Chief Judge's delegate.

In capital cases, the statutory maximum applies to the total payments for all ancillary services in a case, not to each service individually. Payments in excess of the statutory maximum must be approved by the Chief Judge of the Ninth Circuit or the Chief Judge's delegate.

Statutory maximums are set forth in [Appendix 5](#).

Absent a showing that procurement of necessary services could not await prior authorization, circuit approval to exceed the statutory maximum must be authorized *before* the work is performed.

### B. ENGAGING RELATIVES

In districts where permitted, counsel must first provide notification of the relationship and potential services to the court prior to engaging any relative to perform CJA compensable services, other than an associate counsel in the same law firm.

## V. INVESTIGATIVE, EXPERT, AND OTHER SERVICE PROVIDERS

### C. GEOGRAPHIC PROXIMITY

To minimize travel costs, counsel must make a reasonable effort to retain qualified experts, investigators, or other service providers from the locale where the proposed services are to be performed, if such providers are available.

### D. PRESUMPTIVE RATES

Counsel are expected to negotiate reasonable hourly rates with service providers. The current hourly rate ranges for paralegals, investigators, support staff, and other categories of experts are listed in [Appendix 2](#). These ranges are intended to take into account geographic variances within the Ninth Circuit. Courts may develop their own district-specific ranges up to the maximum rates set forth in Appendix 2. Service provider rates developed by courts may not exceed the maximum rates established by this policy unless authorized by the Chief Judge of the Ninth Circuit or the Chief Judge's delegate.

A court may approve a rate in excess of the presumptive maximum in Appendix 2 only for good cause. Factors that may be considered in determining the existence of good cause include the uniqueness of the service or the service provider; the education, training, or specialization of the service provider; the lack of availability of this or similar service providers; complexity of the case; and any time limitations on the case that may affect how quickly the service needs to be completed.

For service providers who are employees of appointed counsel or counsel's firm, such as an in-house paralegal, the hourly rate must not exceed the lesser of the maximum rate listed in Appendix 2 or the rate typically charged by counsel to a fee-paying client for such services.

Payments to service providers should be authorized only at the appropriate rate for the type of task performed. For example, a paralegal or investigator could gather and organize records to be provided to an expert rather than paying

## V. INVESTIGATIVE, EXPERT, AND OTHER SERVICE PROVIDERS

the expert to perform that function. If the service provider performs a function such as gathering records, such tasks should be compensated at the appropriate lower rate.

Any service providers testifying at a court proceeding must be paid for the actual number of hours they are in attendance at court, plus their travel time and expenses. Counsel are encouraged to negotiate lower or flat travel rates for out-of-district service providers.

### E. TRAVEL TIME

Service providers must be compensated for travel time and expenses reasonably incurred. However, advance approval by the court is ordinarily required in two circumstances: (1) out-of-district travel, and (2) overnight travel. Counsel should consult with the district's CJA supervising attorney or CJA administrator regarding its travel authorization procedures for service providers.

Counsel are encouraged to negotiate with service providers, especially higher-cost specialists, for lower hourly rates for travel time. If the service provider bills travel at a reduced rate, time spent performing case-related work while traveling is not "travel time" and should be compensated at the full (*i.e.*, not reduced) hourly rate. Case-related work is work relevant to the responsibilities or duties assigned to the expert or service provider by appointed counsel.

### F. INTERPRETERS AND TRANSLATORS

Except where justified by special circumstances such as limited availability of an interpreter, interpreting services that are paid by CJA must be billed according to actual time spent, including travel, rather than billing for blocks of time such as the half or full day rates typically used by the courts for in-court work. Actual time billing must be in tenths of an hour. Interpreters are also entitled to travel expenses. See [Appendix 2](#) for the approved range of hourly rates. Any rate in excess of the approved hourly range requires a supporting statement establishing

## V. INVESTIGATIVE, EXPERT, AND OTHER SERVICE PROVIDERS

the necessity of the higher rate and should be approved by the court prior to any work being performed.

The translation of documents should be billed by the English word at the rate set forth in [Appendix 2](#).

Interpreters are an integral and valued part of effectively representing financially-eligible defendants. Every effort should be made to avoid less than 24 hours' notice of a cancelled interpreter appointment. Should that occur, the interpreter can bill CJA for any actual out-of-pocket expenses and for the time required to get to and from the appointment.

### **G. ATTORNEY PAYMENT OF SERVICE PROVIDER FEES**

Payment of service provider fees and expenses must be made on CJA Form 21 (payment voucher for service provider in non-capital case) or 31 (payment voucher for service provider in capital case). Counsel must not pay service providers directly and then seek reimbursement from CJA.

### **H. ENGAGEMENT LETTERS**

Counsel should use written engagement letters for experts or other specialized services setting forth the details of their engagement, including the hourly rate, the maximum number of authorized hours or compensation amount, and the requirement of contemporaneous time recordkeeping.

For service providers being shared by multiple defendants in one case, the engagement letter should identify all the defendants' attorneys and not just the liaison attorney. In addition, the court's CJA administrator should be notified if a liaison attorney withdraws from the case.

Retained counsel should also use written engagement letters when they seek to use CJA funds to engage service providers.



## V. INVESTIGATIVE, EXPERT, AND OTHER SERVICE PROVIDERS

Counsel should note that engagement letters are potentially discoverable. Sample engagement letter language is included in [Appendix 3](#).

# VI. AUTHORIZATION AND BILLING PROCEDURES

## VI. AUTHORIZATION AND BILLING PROCEDURES

### A. PREAUTHORIZATION OF ATTORNEY FEES

District courts are encouraged to use eVoucher CJA Form 26 on its own or as a vehicle to request preauthorization of attorney fees in cases expected to exceed the statutory maximum, including cases subject to budgeting. To aid circuit review of a preauthorization request, counsel or the court should attach relevant documents to the voucher in eVoucher such as any motion, supporting declaration, court order, budget documents, or internal court memoranda concerning the request.

### B. PREAUTHORIZATION OF SERVICE PROVIDER FEES

Courts must use the eVoucher AUTH form to request preauthorization of fees for any individual service provider type expected to exceed the statutory maximum. To aid circuit review of a preauthorization request, counsel or the court should attach relevant documents to the voucher in eVoucher such as any motion, supporting declaration, court order, budget documents, or internal court memoranda concerning the request.

### C. USE OF INTERIM VOUCHERS

Courts should consider providing standing authorization for submission of interim vouchers for discrete periods of time, such as monthly, bi-monthly, or quarterly. Courts may also require a minimum dollar amount before an interim voucher must be submitted.

### D. SUBMISSION OF INTERIM VOUCHERS FOR CIRCUIT REVIEW

#### 1. Preauthorized Fees in Excess of Statutory Maximum

For cases in which the circuit reviewing judge has approved a budget or budget supplement prepared with the circuit CMA or a preauthorization request to exceed the case compensation maximum for either attorney fees (CJA Form 26/27) or service provider fees (AUTH), courts need only submit the final

## VI. AUTHORIZATION AND BILLING PROCEDURES

payment voucher for review and approval by the circuit reviewing judge. Interim vouchers that do not exceed the preauthorized case maximum should not be sent to the circuit for review, unless otherwise directed by the circuit reviewing judge.

### **2. Fees Not Preauthorized**

For cases in which the circuit reviewing judge has *not* approved a preauthorization request to exceed the case compensation maximum for attorney fees, courts must submit all interim payment vouchers to the circuit for review once the statutory maximum is exceeded. To aid circuit review, counsel or the court must attach relevant supporting documents such as a CJA 26 or similar form that provides justification for the excess costs.

Circuit policy requires preauthorization of service provider fees in excess of statutory maximum. In the rare instance preauthorization is not feasible, counsel or the court must attach relevant supporting justification documents to the voucher to aid circuit review.

## **E. TIMESHEETS AND RECORDKEEPING**

### **1. Specificity in Timesheets**

Actual time billing must be in tenths of an hour. Each entry in counsel's eVoucher timesheet must reflect discrete individual tasks and should not be bundled, especially tasks billable to different voucher categories. For example, if in one day counsel spent two hours conducting research, three hours reviewing discovery, 30 minutes on phone calls, and one hour drafting correspondence, counsel must create four separate entries in eVoucher for that day, with each task corresponding to its appropriate category. This requirement also applies to service providers.

Information must be provided in detail sufficient to permit meaningful review, without violating the canons of ethics or disclosing client confidences, so

## VI. AUTHORIZATION AND BILLING PROCEDURES

that reviewers may determine that the amount sought in the voucher provides fair compensation for the services rendered. In particular:

- Describe witness interviews with sufficient information to distinguish between individuals (*e.g.*, “Witness 1” or “W1” or “Witness A.K.”);
- Identify the person(s) involved in telephone conversations or conferences and general topic of discussion (using descriptors or initials where confidentiality is needed);
- Generally describe any issue being researched;
- When preparing or reviewing a court filing, identify the document by name or ECF number.

Appendix 6 contains further guidance regarding specificity for timesheets. In addition, counsel should consult with the district’s CJA staff regarding the level of specificity required in the supporting documentation.

### **2. Record and Discovery Review**

Counsel should indicate bates stamp ranges or the total number of pages reviewed for all record or discovery review billing entries. Such entries should also indicate the nature of the material reviewed (*e.g.*, transcripts, investigative reports, medical records, etc.).

### **3. Aggregate Time**

Multiple tasks in one day of less than 0.1 hour (six minutes) each (*e.g.*, reviewing ECF documents, reviewing and sending brief emails, leaving phone messages) must be quantified together at no more than the total actual time expended on all tasks. *See* Appendix 6 for an example.

### **4. Excess Hours in One Day**

If billing more than twelve (12) hours in a single day when not in trial, counsel must ensure that sufficient justification is provided to explain the necessity for the excessive time. Without such justification, the voucher may be rejected back to counsel with a request to provide additional information.

## VI. AUTHORIZATION AND BILLING PROCEDURES

### 5. Expenses

Courts should ensure that panel attorneys abide by the expense policies set forth in [Appendix 7](#).

### 6. Records

Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, contract lawyers, and support staff, as well as expense records. In the absence of a district-specific policy defining “contemporaneous time and attendance records,” information entered into eVoucher timesheets satisfies counsel’s recordkeeping requirement, provided the information is entered as soon as is feasible after performing the work described or is entered based upon contemporaneous notes. Written records may be subject to audit and must be retained for at least three years after approval of the final voucher for any appointment. *See* CJA Guidelines § 230.76.

Counsel should advise all investigative, expert, and other service providers that they must maintain contemporaneous time and attendance records for all work billed by them, as well as expense records. These records are subject to audit and must be maintained for at least three years after approval of the service provider’s or appointed counsel’s final voucher, whichever is later. *See* CJA Guidelines § 320.90.

### F. DEADLINE FOR VOUCHER SUBMISSION

Final vouchers should be submitted no later than 45 days after the filing of the judgment and commitment order or other disposition, absent good cause. *See* CJA Guideline § 230.13. Districts may by local policy extend this period up to a maximum of 90 days. Counsel should make every effort to submit all outstanding vouchers in a case at the same time and is responsible for advising service providers of this voucher submission requirement.

## VI. AUTHORIZATION AND BILLING PROCEDURES

Vouchers submitted beyond a district's time limit but less than one year after the case concluded, must include an affidavit or letter demonstrating good cause for the untimely submission. Counsel must obtain prior court authorization before submitting a voucher one year or more after the case concluded. If submitted outside a district's time limits, counsel risks not being paid for the representation.

### **G. VOUCHER REVIEW**

Vouchers are reviewed for technical compliance with the CJA Guidelines, these policies, and any policies adopted by a district court.

The reasonableness of a claim is determined by the judge presiding over the matter (or designee) and, if the voucher exceeds the statutory maximum, the Chief Judge of the Ninth Circuit or the Chief Judge's delegate.

Pursuant to CJA Guidelines § 230.13 and § 310.70, absent extraordinary circumstances, courts should act upon compensation claims within 30 days of submission.

### **H. VOUCHER REDUCTION PROCEDURES**

Prior to the reduction of any voucher, other than for technical errors or non-compliance with billing guidelines, the CJA panel attorney must receive notice and a brief statement of the reason for the proposed reduction. The CJA attorney will then be allowed a reasonable opportunity to address the matter to the court.

Courts are encouraged to use the eVoucher program to facilitate this process by providing the reason(s) for the reduction either in the Public Notes section of eVoucher, or as an attachment in the Documents section. Attorneys can be directed to respond in the same manner. Keeping the process within eVoucher will make for a transparent and convenient account of the exchange between the court and counsel.

## VI. AUTHORIZATION AND BILLING PROCEDURES

Any request for reconsideration by a panel attorney should be submitted within 10 days of notification of the proposed reduction unless good cause is shown. A decision on the reconsideration request must be communicated to the CJA panel attorney. To facilitate this policy and to ensure fairness in voucher review, courts are encouraged to adopt a peer review committee to evaluate reconsideration requests where a proposed reduction exceeds \$500. Appendix 8 contains an example of peer review committee procedures.

# APPENDIX 1 – ATTORNEY HOURLY RATES

## VII. APPENDIX 1 – ATTORNEY HOURLY RATES

<b>For services performed by appointed counsel on or after February 15, 2019:<sup>1</sup></b>	
<b>A. CAPITAL-ELIGIBLE PROSECUTIONS</b>	
Learned Counsel	\$190
Co-Counsel	\$190
Associate Counsel <sup>2</sup>	\$95 – \$130
<b>B. CAPITAL HABEAS CASES</b>	
Lead Counsel <sup>3</sup>	\$165 – \$190
Co-Counsel (other than co-lead)	\$145 – \$165
Associate Counsel	\$95 – \$130
<b>C. NON-CAPITAL CASES</b>	
Lead Counsel	\$148
Co-Counsel	\$148
Associate Counsel	\$75 – \$115

<sup>1</sup> Consult CJA Guidelines § 230.16 and § 630.10.10 for the maximum hourly rates paid to capital and non-capital counsel for services performed prior to February 15, 2019.

<sup>2</sup> The hourly rate authorized for associate counsel in both capital and non-capital cases should be based on years of experience as a licensed attorney.

<sup>3</sup> The maximum rate is reserved for lead counsel who have substantial experience and skill in federal capital habeas corpus proceedings.



# APPENDIX 2 – SERVICE PROVIDER HOURLY RATES

## VIII. APPENDIX 2 – SERVICE PROVIDER HOURLY RATES

Paralegal <sup>1</sup>	\$35 – \$60
Law Student	\$15 – \$25
Investigator <sup>2</sup>	\$55 – \$85
Legal Analyst/Consultant	\$75 – \$100
Mitigation Specialist	\$75 – \$100 (\$55 for record collection)
Attorney Expert – Capital Case	\$190
Attorney Expert – Non-Capital Case	\$148
Litigation Support Expert	\$65 – \$129
Psychiatrist (M.D.)	\$250 – \$375
Neurologist (M.D.)	\$250 – \$375
Other Medically-licensed Expert (M.D. or D.O.)	\$250 – \$375
Neuropsychologist (with Ph.D.)	\$200 – \$350
Psychologist (with Ph.D.)	\$150 – \$300
Accountant	\$150 – \$275
Audio, Video, or Photo Analyst	\$100 – \$200
Ballistics/Firearms Expert	\$150 – \$250
Chemist	\$100 – \$250
DNA	\$150 – \$250
Fingerprint Analyst	\$100 – \$125
Forensic Computer/Cellphone Analyst	\$150 – \$250
Gang Expert	\$100 – \$200
Handwriting Analyst	\$100 – \$125
Jury Consultant	\$150 – \$225
Interpreter/Translator	\$25 – \$78.58
Document Translation <sup>3</sup>	16.5 cents per word

<sup>1</sup> The policy contemplates that paralegals appointed at the maximum hourly rate possess foreign language skills, discovery database management expertise, or subjective coding experience in at least two prior federal cases or complex civil litigation.

<sup>2</sup> The policy contemplates that investigators authorized at the maximum hourly rate have foreign language skills, a high level of investigative expertise in the type of crime alleged, special skills the case requires, or experience conducting investigations in a significant number of federal cases.

<sup>3</sup> Rate based on those prescribed by the United States Department of State, Office of Language Services, Translation Division.

# APPENDIX 3 – SAMPLE ENGAGEMENT LETTER

## IX. APPENDIX 3 – SAMPLE ENGAGEMENT LETTER

### Sample Engagement Letter: Contents of Financial Arrangements

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

The engagement of your services for this case is subject to the following:

- 1) You will be compensated at a rate of \$\_\_\_\_\_ per hour for services and \$\_\_\_\_\_ per hour for travel time. The maximum payment amount authorized by the court as of this date for your services is \$\_\_\_\_\_, excluding properly documented reimbursable expenses.
- 2) A CJA Form 21 (non-capital) or 31 (capital) will be created for you in the court's electronic voucher system which either you or I will complete and submit. Instructions on how to use the eVoucher system will be provided to you.
- 3) It is my responsibility as counsel to certify to the court that the services were rendered. Payment for your services is subject to approval by the presiding judge (or CJA Supervising Attorney) and, in certain circumstances, the Chief Judge of the Ninth Circuit (or the Chief Judge's delegate). Approved payments are made by the Department of the Treasury out of the federal judiciary's Defender Services account, **not by me or my law firm.**
- 4) The presiding judge (and the Chief Judge of the Ninth Circuit or the Chief Judge's delegate, if applicable) has discretion to reduce a voucher. Specific reasons include: (a) a mathematical error; (b) non-compliance with circuit policy, district court policies or the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), *Guide to Judiciary Policy*, Volume 7, Part A, or (c) a determination that the services claimed are unreasonable either in terms of the work performed or the amount of time and expenses submitted. Accordingly, this Engagement Letter is not a guarantee of payment for all services rendered or expenses incurred.
- 5) **Do not perform services or incur expenses that would result in an invoice in excess of the maximum payment amount authorized by the court** (as set forth in paragraph 1)). Doing so creates a risk that the court will not authorize the payment for the work done or expenses incurred in excess of the maximum authorized amount, even if the services performed or expenses incurred are necessary. You must advise me **before** you exceed the court's maximum authorized payment amount, and if I determine such additional work and/or expenses are necessary for the representation, I will seek approval

# APPENDIX 3 – SAMPLE ENGAGEMENT LETTER

from the court for a new maximum authorization level, before such work is performed or expenses incurred.

- 6) Travel expenses will be reimbursed on the basis of actual expenses incurred. Please consult with me regarding the maximum reimbursement amounts for travel expenses. Airline travel must be authorized by the court by my application. If airline travel is authorized, I will provide guidance to you regarding the purchase of a ticket.
  
- 7) Record Keeping – Consistent with CJA Guidelines § 320.90, you are required to maintain contemporaneous time and attendance records for all work/services billed, as well as expense records. These records should be attached to your CJA eVoucher that is submitted for payment. Any separate time and attendance records must be retained for three years after approval of the appointed counsel’s or the service provider’s final voucher, whichever is later.
  
- 8) Unless otherwise authorized by the court, a voucher for services performed and expenses incurred for the representation should be submitted at the conclusion of your services. While the court attempts to process invoices as quickly as possible, there may be delays in payment due to workload and other factors.
  
- 9) Scope of Work – You are authorized to do the following work:

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Accepted by: \_\_\_\_\_

Date: \_\_\_\_\_

# APPENDIX 4 – SAMPLE GENERAL ORDER

## X. APPENDIX 4 – SAMPLE GENERAL ORDER AUTHORIZING FUNDING FOR COMMONLY UTILIZED SERVICE PROVIDER TYPES

**FILED**  
AUG 27 2012  
CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**


In the matter of )  
Obtaining CJA Services ) General Order No. 613  
Without Prior Authorization )  
\_\_\_\_\_ )

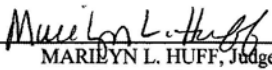
Pursuant to 18 U.S.C. § 3006A(e)(2), prior approval is required for investigative, expert, and other services if the total cost of those services exceeds \$800.00. Because the CJA representations in this District routinely require use of the services of investigators and interpreters, and the cost of those services combined may ordinarily exceed \$800.00, to avoid the necessity of CJA defense counsel having to expend the time necessary in hundreds of cases each year to make application to exceed the \$800.00 total maximum, the Court hereby authorizes CJA defense counsel to utilize the services of interpreters and investigators up to \$800.00 for each service provider without further order of the Court.

CJA defense counsel and service providers shall otherwise comply with 18 U.S.C. § 3006A(e)(2).

**IT IS SO ORDERED.**

Dated: August 27, 2012

  
BARRY TED MOSKOWITZ, Chief Judge  
United States District Court

  
MARILEYN L. HUFF, Judge  
United States District Court

Page 1 of 2

## APPENDIX 5 – STATUTORY MAXIMUMS

### XI. APPENDIX 5 – STATUTORY MAXIMUMS

#### A. ATTORNEY CASE COMPENSATION MAXIMUMS

For representations in which work is performed on or after February 15, 2019:	
Felony	\$11,500 for trial court level \$8,200 for appeal
Misdemeanors	\$3,300 for trial court level \$8,200 for appeal
Non-capital post-conviction proceedings under 28 U.S.C. § 2241, § 2254, or § 2255	\$11,500 for trial court level \$8,200 for appeal

#### B. SERVICE PROVIDER CASE COMPENSATION MAXIMUMS

For representations in which services are performed on or after February 15, 2019:	
Non-capital cases	\$2,600 (per individual authorization, exclusive of expenses reasonably incurred)
Capital cases	\$7,500 (applicable to total payments for investigative, expert, and other services in a case, not to each service individually)

# APPENDIX 6 – SPECIFICITY IN TIMESHEETS

## XII. APPENDIX 6 – SPECIFICITY IN TIMESHEETS

### PROPER CLASSIFICATION OF SERVICES (NO BUNDLING):

**Do this...**

Date	Service	Time	Description
4/5/16	Interviews and Conferences	1.6	Met with AUSA (.4); phone call with client (.4); met with client at jail (.8)
4/5/16	Obtain/Review Rcds	3.2	Reviewed 302s re: Count 1 (Bates Nos. 001-225)
4/5/16	Legal Research	1.5	Legal research for motion to suppress

**Not this...**

Date	Service	Time	Description
4/5/16	Interviews and Conferences	4.1	Met with AUSA (.4); phone call with client (.8); reviewed 200 pages of wiretap transcripts (Bates Nos. 220-420) (1.0); met with client at jail (.4); legal research for motion to suppress (1.5)

### DETAILED TASK DESCRIPTIONS:

**Do this...**

Date	Service	Time	Description
4/5/16	Travel Time	1.0	Traveled by private car to locate and meet with two possible eye-witnesses (W1 and W2) in Fresno, CA (includes travel to and within Fresno to two separate residences)
4/5/16	Interviews and Conferences	1.6	Interviewed two possible eye-witnesses (W1 and W2) in Fresno, CA, at their separate residences
4/8/16	Obtain/Review Rcds	1.5	Reviewed 200 pages of wiretap transcripts (Bates Nos. 220-420)
4/17/16	Legal Research	5.2	Researched whether the search of client's car without a warrant was unlawful; drafted motion to suppress (Doc. 112)
4/20/16	Obtain/Review Rcds	2.0	Reviewed cell site data, take notes, and draft timeline. Approx 150 pages of cell site discovery (no bates numbers).

**Not this...**

Date	Service	Time	Description
4/5/16	Travel Time	1.0	Travel to Fresno, CA
4/5/16	Interviews and Conferences	1.6	Witness interviews
4/8/16	Obtain/Review Rcds	1.5	Reviewed discovery
4/17/16	Legal Research	5.2	Legal research and writing
4/20/16	Obtain/Review Rcds	2.0	Reviewed discovery

# APPENDIX 6 – SPECIFICITY IN TIMESHEETS

## AGGREGATE ECF DOCUMENT REVIEW:

**Do this...**

Date	Service	Time	Description
4/5/16	Obtain/Review Rcds	.3	Reviewed multiple ECF filings (Doc. 2-9)

**Not This....**

Date	Service	Time	Description
4/5/16	Obtain/Review Rcds	.1	ECF document review
4/5/16	Obtain/Review Rcds	.1	ECF document review
4/5/16	Obtain/Review Rcds	.1	ECF document review
4/5/16	Obtain/Review Rcds	.1	ECF document review
4/5/16	Obtain/Review Rcds	.1	ECF document review

## APPENDIX 7 – EXPENSE POLICIES

### XIII. APPENDIX 7 – EXPENSE POLICIES

- Prior approval of the presiding judicial officer is required for any non-travel, case-related expense in excess of \$800.
- The use of couriers, messengers, and other premium delivery services such as Express Mail, Federal Express, and United Parcel Service, is discouraged unless there is a genuine necessity for this service or unless the cost of the premium service does not exceed United States Postal Service express mail rates. Explanations and receipts for all such services are required.
- In-house copying is strongly encouraged and is reimbursable at a rate not to exceed ten cents (\$0.10) per page. If in-house duplication is neither feasible nor cost effective, counsel are expected to negotiate the lowest rate possible from an outside vendor. Counsel should utilize the special rates made available to the U.S. Courts by contract (see [Appendix 10](#)).
- Counsel should use the most fiscally responsible method for discovery duplication. In some instances this will require coordination among co-counsel, a “meet and confer” with the AUSA, and potential use of an outside vendor.
- The cost of use by appointed counsel of computer-assisted legal research (*e.g.*, Westlaw) may be allowed as a reimbursable out-of-pocket expense, provided the research pertains to the case and the amount claimed is reasonable and properly documented.
- General office overhead expenses are not reimbursable, including, but not limited to, flat-fee computerized research plans unless itemized by client, land and cellular telephone maintenance fees, books and publications, office supplies and equipment, and all costs related to educational seminars.



## APPENDIX 7 – EXPENSE POLICIES

- Transcript requests must be submitted on CJA Form 24. Except during trial, expedited or daily copy is discouraged. Any requests for expedited or daily copy must be justified and pre-approved by the court.

# APPENDIX 8 – SAMPLE FEE REVIEW COMMITTEE

## XIV. APPENDIX 8 – SAMPLE FEE REVIEW COMMITTEE PROCEDURES

### CJA Fee Review Committee

#### I. Purpose

The court, through its CJA Committee, has established a CJA Fee Review Committee (FRC) to investigate and review vouchers submitted by appointed counsel and service providers for payment of fees and expenses. The purpose of the FRC is to assist the court in ensuring compliance with mandated billing guidelines and accurate record keeping; to assess the reasonableness of vouchers or individual time entries; and to provide due process and ensure fairness in voucher review.

#### II. Initiation of Review

Attorney and service provider vouchers will be reviewed by the CJA Fee Review Committee in any of the following circumstances:

- A. Upon request by the court for review of a specific voucher or series of vouchers;
- B. Upon referral by the court for assessment of an appointed attorney's or service provider's general billing practices;
- C. Upon timely written request to the court or CJA administrator by appointed counsel or a service provider for a voucher that has been reduced by an amount exceeding \$500.00;
- D. Upon referral by the court for a random audit.

#### III. Investigation

The FRC shall conduct a review and investigation to determine whether the panel attorney's or service provider's voucher conforms to the court's billing guidelines, is reasonable considering a funding authorization or the circumstances of the case, and is otherwise accurate and proper. The investigation may include review of vouchers submitted by other panel members or service providers in the same, or similar cases, a review of court files, records of detention facilities, or interviews of panel members or service providers including the individual whose voucher is being reviewed.

No provision of this section shall be construed as permitting disclosure to the panel member or service provider of information from which they may infer the source, and no information shall be disclosed to the panel member or service provider or be obtained by any process which would jeopardize the confidentiality of communications for persons whose opinions have been sought in the investigation.

#### IV. Determination

In the event that the FRC determines that a voucher does not comply with the court's billing guidelines, is unreasonable, or is not otherwise accurate or proper, the court shall so notify the appointed counsel or service provider in writing, specifying the reasons therefor. The panel attorney or service provider may provide a written response within 10 days. After reviewing the response, the FRC shall make a recommendation regarding any reduction in the voucher it deems appropriate. A copy of this recommendation will be provided to the presiding judge, the CJA administrator, and to the panel member or service provider. The presiding judge will give significant weight to the FRC's recommendation in making a final determination. Whether the court adopts the FRC's recommendation or not, the court's decision is final and there shall be no additional right of review or further appeal. Any determination that a voucher should be reduced does not necessarily constitute a finding of wrongdoing.

# APPENDIX 8 – SAMPLE FEE REVIEW COMMITTEE

## **V. Confidentiality**

All information gathered pertaining to a CJA panel member or service provider during the fee review process shall be the property of the U.S. District Court and is to be treated as confidential. Votes of the FRC shall also be confidential and its members shall not disclose to others in any manner the name of the panel member or service provider audited; the discussions, deliberations, or action of the FRC concerning any audit; information obtained during investigation or deliberation of the FRC, or any documents related to the foregoing, unless ordered to do so by a court of competent jurisdiction.

## **VI. FRC - Member Selection and Terms**

The FRC members shall be appointed by the court to investigate and review fee vouchers submitted by CJA attorneys or service providers. The FRC shall be comprised of at least three and no more than five people, all of whom shall be current or former members of the CJA panel and shall have handled at least ten cases of varying types pursuant to appointment under the Criminal Justice Act. Members of the FRC shall be appointed for two-year terms expiring at the end of a calendar year. There is no prohibition against reappointment for additional terms.

## **VII. Conflict of Interest**

A member of the FRC shall recuse himself or herself from any and all participation in the consideration of a panel attorney or service provider voucher or from attempting to influence others with respect to such consideration, in the following circumstances:

- A. The committee member is the current or former law partner or associate of the panel attorney, or a former employer of the service provider;
- B. The committee member, or the law firm or office with which the committee member is affiliated, represents the panel attorney or service provider;
- C. The committee member, or the law firm or office with which the committee member is affiliated, is a party to pending litigation in which the service provider or panel attorney member, or the law firm or office with which the panel attorney member is affiliated, is a party;
- D. The committee member or his or her spouse is related to the panel attorney or service provider by consanguinity or affinity within the third degree according to the rules of civil law;
- E. The committee member stands in the relation of guardian and ward, conservator and conservatee, employer and employee, or principal and agent to the panel attorney or service provider;
- F. The committee member has appeared as an expert witness or acted as a consultant or has been consulted with reference to an actual or threatened lawsuit against the panel attorney or service provider for malpractice;
- G. The committee member has any personal bias or prejudice concerning the panel attorney or service provider which would prevent the committee member from fairly evaluating all of the evidence;
- H. The committee member represents or represented one party in the matter for which the request for compensation is being reviewed where the panel attorney to be audited represents or represented another party or where the service provider worked on behalf of another party.

In the event that a member of the FRC does not voluntarily recuse himself or herself, the Chair of the CJA Committee, shall, upon becoming aware of factors which may indicate a potential conflict of interest as described above, initiate an inquiry and make a determination as to whether or not such member should be recused. Any resulting determination in that regard shall be binding.

# APPENDIX 9 – HIGH-COST CASE INDICATORS

## XV. APPENDIX 9 – HIGH-COST CASE INDICATORS

- Voluminous discovery (*e.g.*, more than one terabyte of data in the form of documents, audio or video recordings, or forensic images of computers, cell phones, or other devices)
- Use of wiretaps, especially involving foreign languages
- Multiple defendants
- Large indictments with multiple counts
- Terrorism cases
- Securities or other major fraud cases
- RICO cases
- Organized crime, gang, or drug trafficking cases
- Cases with multi-national aspects

# APPENDIX 10 – RESOURCES

## XVI. APPENDIX 10 – RESOURCES

### A. NINTH CIRCUIT CJA SUPERVISING ATTORNEY

- Kristine Fox  
415.355.8985  
[kfox@ce9.uscourts.gov](mailto:kfox@ce9.uscourts.gov)

### B. NINTH CIRCUIT CJA CASE MANAGING ATTORNEYS

- TBA
- Blair Perilman  
415.355.8982  
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# APPENDIX 11 – CJA ADMINISTRATORS

## XVII. APPENDIX 11 – CJA ADMINISTRATORS

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