

# District of Oregon Criminal Justice Act Panel Attorney Manual

Administered by  
The Federal Public Defender  
Updated March 2016



## **Criminal Justice Act in the District of Oregon**

The Sixth Amendment to the United States Constitution guarantees the assistance of counsel for those accused of serious crimes. The Criminal Justice Act (CJA), 18 U.S.C. § 3006A, protects this right in federal court by providing the financial resources necessary to obtain counsel and related services for indigent defendants. Under the CJA Plan for the District of Oregon, the Federal Public Defender is designated as the administrator of the CJA for the district, and manages the CJA Panel Office. The goal of the CJA Panel Office, within the Office of the Federal Public Defender, is to help counsel in obtaining all resources needed for the effective representation of clients, while assisting the court in administering the CJA in a fiscally responsible manner.

The guidelines in this manual are based on statutory and regulatory requirements under the CJA, Administrative Office policies relating to obtaining counsel and securing payment for services, and expectations of the court, as identified in the local CJA Plan. Along with these guidelines, attorneys and others receiving CJA funds should familiarize themselves with the following:

- Criminal Justice [Act](#), 18 U.S.C. § 3006A
- Criminal Justice Act [Plan](#) for the District of Oregon
- Guide to Judiciary Policy, [Volume 7](#): Defender Services
- National CJA Voucher Reference [Tool](#)
- District of Oregon [Federal Public Defender](#) CJA Panel tab

It is the responsibility of counsel to keep accurate records that demonstrate compliance with applicable laws and regulations. The CJA Panel Office is ready and willing to assist you and can be contacted at 503-326-2123 or [oregon\\_evoucher\\_support@fd.org](mailto:oregon_evoucher_support@fd.org). The CJA Panel Office includes Mara Walker, CJA Panel Administrator; Jennifer Horvath, CJA Resource Attorney; and Brad Dobrinski, CJA Assistant.

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## **I. The Criminal Justice Act Panel**

The CJA Panel is a group of highly qualified private attorneys who are eligible and willing to provide representation under the Criminal Justice Act. The court pays an hourly rate for the attorney's work and authorizes payments for experts and other services. Membership on the panel is highly selective and is reviewed every four years. The Portland and Eugene Panel will open again in 2020. The Medford panel will be reviewed in the spring of 2016.

Attorneys selected to be on the CJA Trial Panel are expected to promptly accept cases -- generally between three and eight cases per year -- upon request by the FPD. Assignments are made in rotational order from the list of panel attorneys, subject to exceptions based on the nature and complexity of a case, an attorney's expertise, or geographical considerations. Assignments for supervised release cases are tracked separately but equally distributed. This procedure is designed to achieve a balanced distribution of appointments and compensation among the members of the CJA Panel, and high quality representation for every defendant.

Attorneys selected for the Emeritus Panel are not in the general assignment rotation but may be called upon when their particular expertise is needed, when they indicate they are available for assignments, and/or if the need for representation on a multi-defendant case exceeds the capacity of the active trial panel.

Assignments for the appellate and habeas panels take into consideration availability of the attorney and expertise or familiarity with particular legal issues.

## **II. General Expectations for CJA Panel Attorneys**

### **A. Bar Membership**

Attorneys are expected to remain members in good standing with the Oregon State Bar. Attorneys should promptly report to the CJA Panel Office any disciplinary action taken by the bar.

### **B. Court Appearances Non-Delegable**

Attorneys appointed to a case under the CJA are expected to personally appear and participate in all proceedings related to plea, detention, substantive motions, trial and sentence. Associate counsel and contract attorneys may not appear in court as the attorney of record unless a specific exception has been submitted and approved.

### **C. Zealous and Effective Representation**

CJA Panel attorneys are selected based on their skills, reputation for excellence, and experience in federal court. Attorneys are expected to attend CLEs, maintain a current knowledge of the law, and provide high quality representation to indigent defendants. Attorneys are encouraged to participate in moot courts arranged by the CJA Panel Office before appellate appearances and to otherwise use and contribute to the resources available through the Office of the Federal Public Defender to improve the effectiveness of the CJA Panel.

#### **D. Fiscal Responsibility**

Consistent with this manual, the court expects appointed counsel to assist the court in assuring fiscally responsible use of CJA funds. Whenever appropriate, without compromising the quality of the work, services should be performed by the least expensive, competent staff member or service provider authorized by the court and capable of performing the work. Counsel are encouraged to arrange travel, when possible, to allow consecutive meetings with two or more clients, and to pursue other cost-saving measures that do not affect the quality of representation.

#### **E. Continuity of Representation**

CJA appointments may occur at any stage of the proceedings, from witness representation at a grand jury, to pre-indictment appointments and onward. Once accepted, the representation continues through appeal. Attorneys who do not regularly handle appeals may move to withdraw in the district court before the notice of appeal is filed, or in the Ninth Circuit after the notice has been filed.

### **III. Specific Requirements For CJA Panel Attorneys**

#### **A. Appointment Orders**

Payment to attorneys is not authorized under the CJA without an order appointing counsel signed by the court. Proposed appointment orders are submitted by the Federal Public Defender to the court based on the CJA Panel List rotation. In order to maintain an equal distribution of cases throughout the panel, attorney requests for out-of-rotation assignment are disfavored. Nevertheless, if an attorney previously represented a defendant and/or has specific knowledge relevant to a case that weighs in favor of continuity of counsel, the attorney may contact the CJA Panel Office to determine if appointment would be appropriate. Attorneys should not begin work on a case with the expectation that they will later be appointed and paid, without first contacting the CJA Panel Office.

#### **B. Motions to Withdraw**

CJA attorneys who determine they must withdraw from a case should contact the CJA Panel Office before filing a motion with the court. Counsel should complete a confidential form to provide information about the nature of the conflict or the reason for the motion, an estimate of the amount of time spent and nature of services used on the case, and the work product that could be turned over to successor counsel with the consent of the client. The CJA Panel Office will provide the CJA counsel with a certification, signed by the Federal Public Defender, to be filed as an attachment to counsel's *ex parte* declaration in support of the motion to withdraw. The motion to withdraw itself is filed regularly on ECF, not *ex parte*; the declaration and certification should be filed *ex parte*.

The *Guide* provides that the total attorney fees paid to original and substitute attorneys may not exceed the statutory maximum, unless the case involves extended or complex representation. (*See*

Section V.B.) Although ordinarily counsel seeking to withdraw from a case can expect to be paid for authorized work, counsel should be aware that the court may reduce or decline payment for discovery review or other work if the attorney is unable to transmit usable work product to successor counsel.

### **C. Termination of Appointment**

If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with the client's representation, and the source of the attorney's information is not protected as a privileged communication, counsel should advise the court.

In any case in which an appointment of counsel has been made under the CJA and the court subsequently finds that the person is financially able to obtain counsel, the court may require the person to reimburse the court for all or part of the cost of the representation.

### **D. Discovery Management**

In cases involving high volume or complex discovery, the court may order attorneys to follow a discovery management protocol to assure efficient use of resources during review of discovery. The CJA Panel Office will facilitate the implementation of these protocols, which might include, for example, initial processing of discovery through a third party vendor. CJA Panel attorneys should have a working understanding of electronic discovery. Attorneys and their staff should be proficient in the use of e-mail programs, word processing, spreadsheets, ECF filing, searching of electronic data, and other common software programs.

Minimum technology standards require:

- PC or Mac computer, including a DVD/CD writer;
- printer;
- scanner with ability to convert paper documents to a PDF/A format;
- speakers;
- secure unlimited Internet connection (high speed preferred);
- web browser, such as Windows Internet Explorer;
- multi-media player, such as Windows Media Player;
- word processing program, preferably Microsoft Word;
- database, spreadsheet, and presentation software, such as the Microsoft Office Suite;
- PDF program with writing and reading capability, plus the ability to create searchable PDF documents;
- individual private e-mail address;
- anti-virus software and automatic security updates;
- ability to utilize external hard drives and thumb drives.

CJA Panel attorneys should have computer hardware that is able to support the minimum requirements for currently supported releases of the Windows operating system and Microsoft Office applications, since some litigation support programs do not work with Apple operating systems. Attorneys should anticipate the need to upgrade their computer and peripheral equipment

a minimum of every five years. Upgrade decisions should consider what hardware and software will provide the best compatibility with future versions of CM/ECF.

#### **E. Standard Forms and Pleadings**

Attorneys are expected to maintain a form bank of standard pleadings, such as motions to continue, waivers of appearance, plea petitions, and waiver of speedy trial. Sample pleadings are available from the CJA Panel Office. The drafting of these pleadings will not be reimbursable in excess of .5 hours without additional justification.

### **IV. Compensation, Recordkeeping, and Budgets**

#### **A. Requests for Compensation and Reimbursement of Expenses**

All requests for CJA compensation and reimbursement of expenses in the District of Oregon must be submitted through [eVoucher](#). Forms (vouchers), together with instructions for their use, can be found on eVoucher. To set up an eVoucher account, contact the CJA Panel Office.

Vouchers should contain a detailed statement as to the type, dates, and hours of services provided, along with an itemized expense statement supported by receipts uploaded into the “Documents” tab in eVoucher.

Attorneys are responsible for creating a voucher for each service provider and assigning the voucher to the service provider for entry of services and expenses. Attorneys must carefully review all services submitted on the service provider’s voucher, prior to approving and submitting the voucher to the CJA Panel Office.

#### **B. Time Limits**

All requests for payment on a case should be submitted no later than 45 days after final disposition of a case, unless good cause is shown. In accordance with a memorandum issued by Chief Judge Aiken (June 9, 2014), vouchers submitted after 45 days are likely to be denied. Late vouchers must contain a statement or declaration justifying the delay in submission. It is the attorney’s responsibility to contact all service providers at the close of a case to ensure that requests for payment are submitted within 45 days of final disposition.

#### **C. Record and Time Keeping**

Appointed counsel and service providers must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records are subject to audit by the Administrative Office of the U.S. Courts and must be retained for three years after approval of the final voucher for an appointment.

Time must be reported in tenths of an hour (six minute increments). Services of less than three minutes should not be entered as .1 (a six minute increment), whether performed by the attorney or office staff, except where the time is combined with other similar services for that calendar day. This may include such examples as a simple scheduling, a stand-alone email, leaving or retrieving of phone messages, or individual docket activity review.

<b>Minutes</b>	<b>=</b>	<b>Tenths</b>
0-3		.0
3-6		.1
7-12		.2
13-18		.3
19-24		.4
25-30		.5
31-36		.6
37-42		.7
43-48		.8
49-54		.9
55-60		1.0

#### **D. Detailed Time Entry**

Without violating ethical rules or disclosing attorney work product, counsel should describe work performed for each time entry in detail sufficient to permit meaningful review. The reviewer should be able to ascertain that the work performed was reasonable in light of the type of service entered. Aggregate time blocks or entries that are vague or ambiguous will not be approved for payment. Vouchers will be returned if services are not sufficiently detailed.

Detail may include notes referring to phone conversations, team conferences, or interviews. Names or identifiers may be used for the prosecutor and counsel. Initials or identifiers other than full name should be used for witnesses. The amount of and nature of discovery reviewed should be noted, for example, by number of pages. For complex discovery matters, searching and indexing may be described. Legal research should contain a simple explanation of the type of work performed.

#### **E. Interim Payments in Complex or Extended Cases (Non-Capital)**

Interim payments are encouraged in complex or extended cases. Interim attorney fee requests should not be less than \$4,000 (or less than four months), nor should they exceed \$12,000. Requests for service providers may be in lesser amounts, but generally not less than \$1,000.

*Note:* Presiding judicial officers are urged to permit interim payment in capital cases.

#### **F. Proration of Claims**

If services are provided for more than one CJA representation, time spent in common, including travel time, must be represented on the eVoucher forms either by prorating the service time among

the representations on separate vouchers, or by billing the entire service time on a voucher for one of the representations. The supporting materials to the vouchers must explain the method of billing and, when applicable, cross-reference the other CJA representations.

When service providers pro rate payment requests, they should include the case numbers on the voucher without other identifying information, to preserve confidentiality.

To ensure that an appointed attorney does not receive inappropriate information as to another attorney's use of the service provider, the CJA representations that are cross-referenced should not be identified by name and case number if the work was performed for an attorney other than the one who will be certifying the voucher, although the number of other representations should be listed.

Time or expenses "spent in common" includes work performed simultaneously or within the same unit of time, or expenses incurred, for more than one representation (e.g., travel for more than one client). Double billing of time or expenses is prohibited (i.e., billing the same time on more than one voucher). In addition, proration of time among CJA representations must not result in a service provider billing a larger amount than would have been billed if all the time was assigned to one voucher.

#### **G. Voucher Review**

Attorneys and service providers should submit CJA forms (vouchers) using eVoucher to request compensation of services or expenses. Consult the eVoucher Attorney Technical [Manual](#) or eVoucher [FAQs](#) for more information.

CJA vouchers for the District of Oregon are audited, reviewed, and processed by the CJA Panel Office and district judges. The audit process includes reviews of service and expense records associated with a CJA representation to verify that services and expenses comply with CJA guidelines and district court policies. The CJA Panel Office conducts a review of the submitted services by comparing vouchers, verifying in court time and pleadings using CM/ECF or PACER, and evaluating if services and expenses are justified by the nature of the case.

After a review by the Federal Public Defender or her designee, vouchers are sent to the presiding judicial officer for review and approval. Once a voucher has been approved by the presiding judicial officer (and, if it exceeds case compensation limits, the administrative judge of the circuit), it is processed for payment. Payment is mailed from the Administrative Office of the U.S. Courts in Washington, D.C.

Vouchers may be reduced to comply with CJA guidelines and district court policies, or due to technical/mathematical errors. In the event a voucher reduction exceeds \$50.00 or the presiding judicial officer has questions about a voucher, the CJA Panel Office will provide attorneys with notice of the proposed reduction with a brief statement of the reason(s) for it, and an opportunity to address the matter. The CJA Panel Office or the presiding judicial officer may also communicate informally with counsel about voucher questions.

## **H. Case Budgets**

As a result of amendments to the *Guidelines for Administering the CJA and Related Statutes*, proposed budgets and supporting documents are required in new and existing cases where it appears likely the attorney will exceed 300 hours, or total expenditures will exceed \$39,000. When an attorney expects billing to exceed these thresholds, the attorney must notify the CJA Panel Office in writing. The attorney should also generally request that the presiding judicial officer designate the case as complex.

In all capital prosecutions and capital habeas cases, case budgeting is required. As soon as counsel is aware that the death penalty will be sought in connection with the prosecution of a criminal case, appointed counsel should contact the CJA Panel Office. Capital budgets will be reviewed by the circuit capital case committee.

Generally, counsel should submit a proposed budget within 60 days of appointment. The budget, broken down into phases, should cover all anticipated services, costs, and expenses of attorneys and service providers. Budgets may be amended in light of new facts and developments. Attorneys may request approval for services in advance of submitting an initial litigation budget where it is necessary to provide adequate representation.

Attorneys should prepare a budget using existing forms available through the CJA Panel Office and submit the budget to the CJA Panel Office for review by the Federal Public Defender, prior to submission for court approval. The CJA Panel Office will attach the proposed case budget to a CJA 26 to be filed *ex parte*, and maintained under seal.

## **V. Attorney Compensation**

The Judicial Conference is authorized to increase annually all hourly rate maximums by an amount not to exceed the federal pay comparability raises given to federal employees. Hourly rate maximums are generally adjusted each year, contingent upon the availability of sufficient funds. The new rates apply for services performed on or after the effective date.

Non-Capital

<b>§ 230.16(a) Non-Capital Hourly Rates</b>	
<b>If services were performed between...</b>	<b>The maximum hourly rate is...</b>
01/01/2016 to present	\$129
01/01/2015 through 12/31/2015	\$127
03/01/2014 through 12/31/2014	\$126
09/01/2013 through 02/28/2014	\$110
01/01/2010 through 08/31/2013	\$125
03/11/2009 through 12/31/2009	\$110
01/01/2008 through 03/10/2009	\$100
05/20/2007 through 12/31/2007	\$94
01/01/2006 through 05/19/2007	\$92
05/01/2002 through 12/31/2005	\$90

Capital

<b>§ 630.10.10(a) Capital Hourly Rates</b>	
<b>If services were performed between...</b>	<b>The hourly rate maximum is...</b>
01/01/2016 to present	\$183
01/01/2015 through 12/31/2015	\$181
03/01/2014 through 12/31/2014	\$180
09/01/2013 through 02/28/2014	\$163
01/01/2010 through 08/31/2013	\$178
03/11/2009 through 12/31/2009	\$175
01/01/2008 through 03/10/2009	\$170
05/20/2007 through 12/31/2007	\$166
01/01/2006 through 05/19/2007	\$163
05/01/2005 through 12/31/2005	\$160

**A. Maximum Attorney Fees Per Case**

The CJA sets maximum compensation amounts for attorney fees based on case type. 18 U.S.C. § 3006A(d)(2). These maximums apply only to attorney fees, not expenses, and can be waived in cases involving extended or complex representation if the judicial officer certifies that the excess

payments are necessary to provide fair compensation and the chief judge of the circuit approves the payment.

For work performed on or after January 1, 2016, case compensation maximums for attorney fees are as follows:

<b>Non-Capital Attorney Fee Maximums per Case January 1, 2016</b>		
<b>Case Type</b>	<b>Trial</b>	<b>Appeal</b>
Felonies, civil forfeiture, post-conviction (2241, 2254,	\$10,000	\$7,200
Misdemeanors	\$2,900	\$7,200
Prisoner Transfers	\$2,100	\$7,200
Paroled Prisoner Transfers	\$2,100	\$7,200
Other: probation violation; supervised release violation; parole violation; material witness (in custody); mental condition hearings (with exceptions); contempt (with possible loss of liberty); witnesses (grand jury, court, Congress, etc.); international extradition	\$2,100	\$2,100

For work performed prior to January 1, 2016, please see *Guide*, Vol. 7, [§ 230.23.30](#) for case compensation maximums. Fee limits do not apply in federal death penalty cases and federal capital habeas corpus proceedings.

**B. Exceeding Case Compensation Limits For Attorney Fees**

Payments in excess of CJA attorney fee maximums may be made to provide fair compensation in cases involving extended or complex representation, if certified by the court or U.S. magistrate judge and approved by the chief judge of the circuit (or by an active or senior circuit judge to whom excess compensation approval authority has been delegated).

Requests for fees that exceed case compensation maximums must be accompanied by a detailed memorandum supporting and justifying counsel’s claim that 1) the representation given was in an extended or complex case, and 2) the excess payment is necessary to provide fair compensation due to the complexities or extended nature of the case. Detail should be sufficient to justify the services and payment, but should not contain confidential information or work product. If the

presiding judicial officer approves the claim, the claim is then forwarded to the chief judge of the circuit for review and approval.

## **VI. Case Staffing**

### **A. Requests for Co-Counsel**

In a complex case, CJA counsel may discuss with the CJA Panel Office the possibility of obtaining co-counsel to assist. The CJA Panel will assist with the application if warranted, and the court may appoint co-counsel in the interest of justice. The statutory cap on attorney fees for co-counsel applies to each attorney separately.

If co-counsel are not in the same firm, attorney conferences will be approved for limited and reasonable expenditures of time. Fee requests by more than two attorneys at any meeting will not be approved.

### **B. Associate Attorneys and Contract Attorneys (Legal Analysts)**

CJA attorneys are encouraged to use legal analysts or associate attorneys to assist with discrete tasks on a case, if such use is more cost-effective. The CJA Panel attorney remains responsible for the representation. Associate counsel may not effectively become the primary attorney on the case and may not appear in court in place of the CJA Panel attorney without prior authorization.

Fee requests for associates must be approved in advance and submitted on a CJA 20 separate from the CJA Panel attorney fee requests, based on a scale of \$75 to \$100 per hour, depending on the experience of the associate. Research time may not exceed 20 hours unless the case is deemed complex, in which case the request for authorization shall specify the complexity of the case and the reasons for the additional hours.

Meetings should be for the specific purpose of coordination of information or to request additional information. Only two parties may bill for the same meeting times, even where multiple associates have attended the meeting.

Contract attorneys (legal analysts) should submit requests for payment as service providers on a CJA 21 in eVoucher, rather than a CJA 20 for attorney fees. However, the same policies regarding hourly rates, meeting times, and general practices apply.

### **C. Paralegals and Law Clerks**

Paralegals and law clerks, whether in-house or independent contractors, should submit requests for payment as service providers on a CJA 21. Fee requests for paralegals and law students do not count against the statutory cap.

## **D. Joint Use of Experts and Other Service Providers**

When possible, without compromising confidentiality or the defense of any defendant, attorneys are encouraged to reach agreement in multi-defendant cases to share experts and other service providers, such as interpreters or paralegals. The court may order that attorneys comply with a case management plan, facilitated by the CJA Panel Office, for complex cases.

## **VII. Service Providers**

### **A. Generally**

Investigative, expert, or other services necessary for adequate representation are available to individuals who are represented by CJA attorneys. CJA payment for expert and other service providers may also be available to pro se defendants and individuals who have retained counsel, but cannot also afford the cost of investigation or other services. (*See* Section IX.A.)

Requests for authorization for service providers in eVoucher are submitted *ex parte* and maintained under seal. Maintaining the secrecy of the application prevents the possibility that an open hearing may cause defendants to reveal their defense.

Prior to engaging any relative to perform CJA compensable services, other than as associate counsel in the same law firm, counsel should first notify the CJA Panel Office of the relationship and potential services.

### **B. Pre-Authorization**

CJA Panel attorneys must obtain authorization in advance from the presiding judicial authority for the use of investigators, experts, or other service providers where the total cost by any one or combination of service providers is expected to exceed \$800.

A request for the approval of funds over \$800 shall be submitted in eVoucher, including a declaration in support of the request. In cases without a budget, the request should detail the need for the service, the cost involved, the hourly rate, the number of hours, and an explanation of efforts counsel has made to reduce costs. The declaration should also include the anticipated services and justification for those services. Each request must be case specific and unique to the needs of that defense. Boilerplate declarations will not be accepted. In budgeted cases, a copy of the approved budget will ordinarily be sufficient support for the request.

Appointed counsel is responsible for communicating, in writing, the pre-authorized amount to the service provider and any limitations placed by the court on the appointment.

### **C. Service Provider Compensation**

The CJA compensation statutory maximum to any service provider is \$2,400.00 per provider in non-capital cases, and \$7,500.00 in capital cases. These maximums apply only to service provider fees, not expenses.

The district court has approved a range of hourly rates for various service providers. Within these ranges, appointed counsel is expected to negotiate the lowest reasonable compensation rate and total time required with the service provider. Service providers with special skills may merit a higher rate if approved in advance.

<b>Service Provider Hourly Rate Guidelines</b>	
<b>Provider Type</b>	<b>Hourly Rate</b>
Investigator	\$65
Paralegal	\$20-\$40
Psychologist	\$150-\$180
Polygrapher	\$400 flat fee
Legal Analyst/Consultant	\$75-\$100
Mitigation Specialist	\$75

### **1. Paralegals**

The use of paralegals is encouraged, but must be pre-approved if the expenditure in conjunction with the use of other service providers is expected to exceed \$800. With prior approval, paralegals, whether independent or employed in the same firm as appointed counsel, may perform case preparation services distinct from normal clerical support services. When in-house paralegals or other service providers are used, the hourly rate requested should not exceed the actual cost to the law firm.

### **2. Interpreters**

#### **a. Interpreter Fees**

The CJA pays interpreters on a flat half-day/whole-day basis. Federally certified interpreters can bill at a rate of \$210 for half-day (up to 4 hours), \$388 for full-day (from 4-8 hours). For work over eight hours in one day, the overtime rate for federally certified interpreters is \$55 per hour. The alternate interpreter rate for interpreters who have not been federally certified is \$140 for a half-day, \$260 for full-day, and an overtime rate of \$40 per hour. All interpreters are entitled to reimbursement for travel expenses if they travel more than 30 miles per case, per day. Interpreters should note, in the “Services” field on the Form CJA 21, the actual time spent providing interpretation. Interpreters should also note if they have split interpretation services with more than one CJA client. Interpreters should contact the CJA Panel Office for the District of Oregon interpreter policy packet for more information.

#### **b. Pre-Authorization**

Counsel must seek pre-authorization through eVoucher for Spanish language services that are expected to exceed \$800. The request should be made in a simple motion requesting services in

\$2000 increments. This funding is not associated with a particular interpreter, and can be used by any Spanish interpreter.

### **c. Cancellation Policy**

There is a 24 hour cancellation policy. If an attorney cancels the services of the interpreter with less than 24 hours' notice, the attorney will be responsible for reimbursing the interpreter for his/her services.

### **D. Exceeding Authorized Amounts For Service Providers**

Attorneys must submit additional requests for authorization if it appears the cost of service providers will exceed the authorized amount. Nunc pro tunc requests are strongly discouraged, and may be denied.

In a non-budgeted case, if service provider costs exceed the authorized amount, counsel must submit a declaration with the final Form CJA 21 detailing why, in the interests of justice, the services were necessary and counsel could not submit a timely request for additional funding. If the cost of unauthorized services exceeds \$1,000, however, the attorney must submit a request for additional funding, which must be approved before the attorney submits a CJA 21.

Some service providers may be able to provide multiple services; for example, a bilingual investigator may be retained as an interpreter, or an investigator as a paralegal. If one service provider can perform multiple roles, a separate request should be submitted for each type of service, and the hourly rate must be consistent with other service providers in a similar field. (There may be some exceptions for experts who are very specialized and by providing multiple services, may be cost effective in overall case costs.)

## **VIII. Expenses and Travel**

In general, all expenses should be thoroughly itemized and documented. Receipts should be scanned and attached to vouchers. Vouchers will be rejected for failure to itemize or supply sufficient documentation of expenses.

Receipts are required for:

- individual expenses over \$50
- computer-assisted legal research
- phone charges in excess of \$50 per month
- postage over \$50 per incident
- messengers, couriers, and express mail (discouraged unless there is a genuine need)
- photocopies

### **A. Reimbursable Expenses**

Reimbursement for reasonably incurred out-of-pocket expenses may be requested. Requests must be itemized and reasonably documented. Expenses for investigators or other service providers are

not considered out-of-pocket expenses. Necessary and reasonable expenses will be compensated over and above case statutory maximums. Providers should use the following forms when requesting payment:

<b>eVoucher Forms</b>		
<b>Provider</b>	<b>Case Type</b>	<b>Form</b>
Attorney	Non-Capital	CJA 20
Attorney	Capital	CJA 30
Service Provider	Non-Capital	CJA 21
Service Provider	Capital	CJA 31
Court Reporter	Non-Capital or Capital	CJA 24

### **1. Transcripts**

Transcripts are not considered an “out-of-pocket” expense. Attorneys should contact the CJA Panel Office prior to ordering transcripts. The cost of transcribing depositions in criminal cases is the responsibility of the Department of Justice, except when the witness is a defense expert.

### **2. Computer-Assisted Legal Research**

Reasonable costs of computer-assisted legal research services is reimbursable. Counsel is required to attach a copy of the bill or receipt, regardless of the amount, to the CJA 20 in eVoucher. If the amount claimed is more than \$500 or if it includes costs for downloading or printing, counsel should include a brief statement of justification.

### **3. Other Reimbursable Expenses**

Other reimbursable expenses include telephone toll calls, telegrams, photographs, and copying (note that printing is *not* reimbursable). In-house photocopies should be billed at actual costs, not to exceed ten cents (\$0.10) per page. If using a copy service, counsel should negotiate the lowest possible rate or utilize the special rates made available to the U.S. Courts by contract. For information on government copying rates, contact the CJA Panel Office. In-room movies and other non-essential travel expenses are not reimbursable.

## **B. Non-Reimbursable Expenses**

### **1. General Office Overhead**

General office overhead includes general office expenses that would normally be reflected in the fee charged to the client, such as rent, personnel, secretarial services, office supplies or equipment including computers, software, and telephone lines or service.

### **2. PACER**

Appointed attorneys can apply for a no-fee account for CJA work and should contact the PACER Service Center in San Antonio at 1-800-676-6856 for more information. Attorneys may contact

the CJA Panel Office for assistance. CJA attorneys should not be charged for research in the District of Oregon or in other districts for CJA-related inquiries.

### **3. Filing Fees**

The fees are waived for persons proceeding under the CJA.

### **4. Printing and Copying of Briefs**

The cost of printing briefs is not reimbursable, although the cost of photocopying is.

### **5. Service of Process**

Witness fees, travel costs, and expenses for service of subpoenas on fact witnesses are not payable out of the CJA appropriation, but are governed by Rule 17 of the Federal Rules of Criminal Procedure, and 28 U.S.C. § 1825.

### **6. Time Spent on Voucher Process**

Attorneys, staff, and service providers, cannot bill for time spent preparing or entering forms and documents in eVoucher, including time spent preparing a declaration in support of a voucher where the fees requested exceed the statutory maximum. A reasonable period of time preparing budgets, however, is compensable.

### **7. Taxes**

Taxes paid on attorney compensation received under CJA, whether based on income, sales, or gross receipts, are not reimbursable expenses.

### **8. Secretarial Help/Administrative Assistance**

Whether completed by the attorney or service provider, tasks which do not require legal training or expertise are not reimbursable under CJA guidelines, including but not limited to the following:

- filing of court documents (CM/ECF)
- mailing, faxing, copying
- preparation of correspondence by either drafting from general instructions or typing in prescribed format
- transcribing dictation, editing and proofreading of initial drafts, general word processing
- receiving, screening and referring telephone and in-person callers
- answering/obtaining general inquiries/information about attorney office
- setting up meetings and conferences, including jail visits, and informing participants of dates, times, locations etc. and maintaining office calendar (the scheduling attorney in complex, multi-defendant cases may bill for this service)
- notifying client of dates and times of court appearances and appointments with counsel, interpreters and other experts
- opening and closing case file

- preparation of attorney or expert billing, including creating CJA 20s and CJA 21s

### **9. Items and Services of Personal Nature**

The cost of services of a personal nature which cannot be considered legal representation are not compensable under the CJA. Such services include assisting the defendant in the disposition of the defendant's personal property; arranging for the placement of minor children of the defendant; assisting the defendant in executing the conditions of probation; or providing legal assistance in matters unrelated to the litigation of the case, including assisting a client transfer or adding funds to a jail account, even if incidental to the defendant's arrest.

The cost of items of a personal nature purchased for, or on behalf of, the client are not reimbursable under the CJA. Such items include purchasing new clothing or having clothing cleaned; getting a haircut; or furnishing cigarettes, candy, or meals.

### **10. Expenses Related to Fact Witnesses**

Expenses related to fact witnesses including service of subpoenas, witness fees, and travel costs are not reimbursable with CJA funds. Subpoena service should be completed by the Marshal's office. Payment of fact witness vouchers are also administered by the Marshal's office utilizing a DOJ 3 form, accompanied by a declaration of counsel regarding the witness's attendance. Attorneys should contact the CJA Panel Office to request assistance and to submit the DOJ 3.

### **11. Appeal Related Tasks**

Time and expenses related to the review of proceedings and the preparation of an appeal (whether from interlocutory orders or final judgments) are considered to be part of the case before the United States Court of Appeals, and must be included on the voucher for services performed in that court.

### **12. Other Non-Reimbursable Expenses:**

Fees for deeds of trust to secure the defendant's release; alcoholic beverages; costs related to educational seminars, including travel, attendance, registration or materials.

### **C. Travel Expenses**

The CJA provides for reimbursement of expenses actually incurred during travel, including meals and lodging, rather than providing a per diem amount. Therefore, all travel-related expenses (lodging, meals, parking, taxis, ferries) **MUST HAVE LINE ITEM RECEIPTS FOR REIMBURSEMENT**. In determining whether actual expenses incurred are reasonable, counsel should be guided by the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees, which varies depending on location, in accordance with existing government travel regulations. Attorneys and experts may use the [GSA website](#) as a guideline for lodging and expenses.

Government travel rates, at substantial reductions from ordinary commercial rates, may be available from common carriers for travel authorized by the court in connection with representation under the CJA. National Travel Services (NTS) is the current contract government travel agency. NTS may be contacted at any time at 1-800-445-0668 to obtain travel cost quotes. If approved for air travel, CJA travelers should book airfare through NTS. Air travel is paid directly by the CJA Panel Office. Travelers should seek the most economical, government fully refundable air fare when available. Actual travel time may be considered when determining whether a direct flight is most cost effective.

Travel arrangements other than airfare (car rental, hotels, etc.) can also be made by NTS; however, the attorney or service provider will need to provide their personal or business credit card to secure the reservation.

### **1. Overnight Travel**

Travelers must submit a request in eVoucher for authorization for out-of-district vehicle travel exceeding one night, and for all air travel, at least two weeks in advance of the proposed travel. The travel request must include a declaration detailing the purpose, itinerary, duration, and estimated expenses for the travel.

The declaration should be attached in the “Documents” tab of the request submitted in eVoucher. Travel estimates, entered in the “Authorization Request” tab of the request should allow for some flexibility, and note that dates of travel are subject to change due to unforeseen scheduling conflicts. Travel must occur within two months of approval, unless otherwise specified.

### **2. Travel by Vehicle**

Travel by privately owned vehicle within the district or within 500 miles, and with only one overnight stay, does not require prior authorization and should be claimed at the mileage rate currently prescribed for federal judiciary employees. Travel during other time periods will automatically be calculated, based on the date of travel entered in eVoucher. Document the date, destination (use the general location, rather than a specific address, to preserve confidentiality), and the number of miles traveled. Parking fees, ferry fares, and bridge, road, and tunnel tolls may also be claimed. Transportation other than by privately owned automobile should be claimed on an actual expense basis.

### **3. Travel by Air**

Travelers must submit a request in eVoucher for air travel authorization at least two weeks in advance of the proposed travel. Air travel is paid by the CJA Panel Office. Travelers must travel in coach class; any other arrangement must be detailed and specifically approved. Panel attorneys and experts are encouraged to take advantage of government rates for travel. If air travel expenditures cannot be made at government rates, reimbursement to the attorney or expert for the travel costs may be limited to the amount of the government rate.

#### **4. Meals and Lodging**

CJA Panel attorneys and service providers are reimbursed for actual expenses incurred for meals and lodging while on overnight travel exceeding 12 hours. Alcohol is not reimbursable. Receipts are required for reimbursement, and meal receipts must show an itemization of actual food and beverage purchased. If a credit card slip is the only record, a redacted copy of a credit card slip may be submitted, accompanied by a statement confirming no reimbursement is requested for alcohol or taxes.

When possible, case work should be done during extensive travel (e.g., on airplanes) if it does not compromise confidential information or safety. Travelers may only seek reimbursement for their own expenses and cannot add other travelers or members of a case to their expense request.

#### **5. Client Travel**

Clients are responsible for their own travel, except that the Marshals, if ordered by the court, will provide the client with transportation to (but not from) the hearing. In cases of unexpected hardship, the attorney may provide the court with a declaration detailing the hardship and requesting that return travel to be covered by CJA funds. Attorneys are encouraged to schedule expert consultations and client meetings to coincide with court hearings whenever this is cost-effective.

Lodging and expenses are not provided except in cases of extreme hardship, and if Pretrial Services has been contacted in advance. In all cases, clients should be encouraged at the onset of their case to be prepared to fund their own transportation and be able to pay for meals and lodging.

#### **D. Reimbursement for Expenses Incurred Defending Malpractice Allegations**

Attorneys defending against malpractice allegations should contact the CJA Panel Office. Courts are authorized to reimburse panel attorneys for expenses reasonably incurred in defending actions alleging malpractice on CJA representations. The total reimbursement must not exceed the deductible amount of counsel's professional liability insurance policy or \$5,000, whichever is less.

### **IX. CJA Funding Where Attorney is Not a Member of the CJA Panel**

#### **A. Retained Counsel Seeking CJA Funding For Service Providers**

Occasionally, retained counsel will find that the unexpected cost of service providers exceeds the financial capability of a represented party who has paid a retainer or who can otherwise afford to pay for counsel. Under 18 U.S.C. § 3006A(e), a retained attorney is authorized to apply in advance for funds to pay costs of non-attorney services in these circumstances. The retained attorney must submit to the CJA Panel Office a letter explaining the expected proposed expenses and the financial circumstances that cause the defendant to be unable to pay for the services, along with a copy of the retainer agreement between counsel and client, a statement of the number of hours worked by the attorney, and a CJA 23 affidavit completed by the client.

The Federal Public Defender will review the fee arrangement, the nature of the proposed expenses, and the cause of the hardship, and then make a recommendation to the court. By regulation, if the court determines that the fee arrangement is unreasonable or was “made in gross disregard of the defendant's trial expenses,” the court may decline to provide compensation and may instead order the retained attorney to pay needed costs and expenses out of the retainer fees. *Guide*, Vol. 7A, [§ 310.10.20](#). Generally, expenses that should have been anticipated at the outset of the representation will not be covered under the CJA until the retained attorney’s rate of compensation approaches the hourly rate for CJA panel work (\$127 per hour as of January 1, 2015).

## **B. Retained Counsel Seeking CJA Funding For Attorney Fees**

If retained counsel undertakes a representation but later discovers that the client is unable to pay the retainer as agreed, or that the costs of the representation unexpectedly exceed the agreed amount of the retainer or fees, the attorney can contact the Federal Public Defender and the CJA Panel Office to determine if provisional acceptance on the CJA Panel or out-of-rotation appointment may be available.

Before making a recommendation to the court, the Federal Public Defender will review the fee arrangement, the hours expended and expenses paid, the unexpected nature of the financial hardship, the attorney’s qualifications and history of CJA work compared to others on the CJA panel, the need for continuity of counsel, and the potential cost to the CJA of the appointment. Generally, if the Office of the Federal Public Defender does not have a conflict and the potential costs of the representation are high, the court may allow retained counsel to withdraw and will appoint the Federal Public Defender to undertake the representation. In other circumstances, the court may allow the retained attorney to withdraw and appoint a CJA panel attorney to complete the representation. If the benefit of continuity of counsel outweighs other concerns, the court may agree to convert the retained counsel’s appearance to a court-appointed representation under the CJA, provided that counsel’s unpaid hours effectively have reduced the rate of past hourly compensation to a level approaching the rate for CJA panel work.

## **C. Pro Hac Vice Appointment by the Court**

In rare circumstances, in the interests of justice, judicial economy, continuity of representation, or some other compelling circumstance, the Federal Public Defender may recommend and the district court may admit an attorney to the CJA Panel *pro hac vice* in order to appoint the attorney to represent a CJA defendant. The attorney should possess such qualities as would qualify the attorney for admission to the district’s CJA Panel in the ordinary course of panel selection.

## **X. Other Representations**

### **A. Ancillary Matters**

Pre-authorization from the court must be obtained prior to appointed counsel working on any state court proceedings or ancillary matters related to an initial appointment.

## **B. Supplemental Claims**

After final disposition, counsel may submit a supplemental claim for services if necessary by submitting a “Supplemental” voucher, accompanied by a declaration with a justification for the request.

## **C. Guardian Ad Litem**

Guardian Ad Litem representations cannot be paid out of CJA funds. Guardian Ad Litem appointments are paid by the DOJ.

## **D. Standby Counsel**

Criminal defendants have both a constitutional and statutory right to self-representation in federal court. In some cases, however, the court or U.S. magistrate judge may find it necessary to appoint a CJA Panel member as “standby” counsel to be available to assist a pro se defendant in that defendant’s defense and also to protect the integrity and ensure the continuity of the judicial proceedings.