

**OFFICE OF THE CIRCUIT EXECUTIVE
United States Third Circuit**

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(via email)

M E M O R A N D U M

To: Marcia M. Waldron
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From: Renee Hurtig Edelman, Case Budgeting Attorney

Re: Guidelines for Claims Submitted for Reimbursement Under the Criminal Justice Act in all District Court and Court of Appeals Representations

The Judicial Council of the Third Circuit adopted the attached Guidelines for Claims Submitted for Reimbursement Under the Criminal Justice Act in all District Court and Court of Appeals Representations, effective January 1, 2016.

The Judicial Council kindly requests that you post the attached on your Court's website, and distribute to all appropriate staff in your office.

If you have any questions, please contact me at renee_edelman@ca3.uscourts.gov or (267) 232-0210.

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

**GUIDELINES FOR CLAIMS SUBMITTED FOR REIMBURSEMENT
UNDER THE CRIMINAL JUSTICE ACT
IN ALL DISTRICT COURT AND COURT OF APPEALS REPRESENTATIONS**

1. Payment for Legal Services

1.1 Pre-Approval for Non-Appointed Co-Counsel in Non-Capital Cases

Appointed counsel may not claim compensation for services furnished by an associate, partner, or co-counsel, unless specifically authorized or separately appointed in accordance with Guide to Judiciary Policy, Vol. 7A, § 230.53.20(b), except if co-counsel is a partner or associate of appointed counsel, no prior authorization is required to receive compensation for up to ten hours of work by the partner or associate. If appointed counsel anticipates requesting compensation for more than ten hours of work by a partner or associate, appointed counsel should promptly request authorization. If co-counsel is not a partner or associate of appointed counsel, prior authorization is required to receive compensation for any work by co-counsel.

1.2 Presumptive Hourly Rate for Non-Appointed Co-Counsel in Non-Capital Cases

The hourly rate for non-appointed co-counsel who are not members of the CJA Panel shall not exceed 80% of the hourly rate for CJA Panel Attorneys, except when the presiding judge determines that there are special circumstances justifying a higher hourly rate, such as when co-counsel possesses specialized knowledge or skills relevant to the case.

1.3 Compensation of CJA Panel Attorneys

Attorneys who are members of the CJA Panel shall be paid the full CJA hourly rate in all representations, regardless of whether they are appointed as counsel or serve as non-appointed co-counsel.

2. Payment for Expert and Other Services

2.1 Hourly Rate for Service Provider Travel Time

Service providers shall be compensated for travel time and expenses. Unless otherwise approved by the presiding judge, investigators, experts, and other service providers should bill travel time at 50 percent of the approved normal billing rate, subject to the exceptions (1) and (2) below:

(1) The first six hours traveling by automobile to, and the first six hours traveling by automobile from, a case-related destination (i.e., a destination relevant to the responsibilities or duties assigned to the expert or service provider by the attorney for the defendant).

(2) Reasonable travel time at or around the case-related destination in order for the expert or service provider to complete the responsibilities or duties assigned to the expert or service provider by the attorney for the defendant.

Time spent performing case-related work while traveling, by any mode of transportation, 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 the attorney for the defendant.

The presiding judge, upon application by counsel, may authorize payment at the full hourly rate for travel in appropriate circumstances. Examples of such instances may include when a medical doctor is retained and must leave his or her practice to fly to a prison to examine a defendant, or when service providers have to travel because of the requirements of the government (for example, prosecutors might not release evidence, such as photographs or computer hard drives, to be sent to service providers, instead requiring the service provider to travel to the prosecutor’s office or to a laboratory).

2.2 Engagement Letter for Service Providers

In all capital representations and all non-capital representations that appear likely to become or have become extraordinary in terms of potential cost (i.e., attorney hours are expected to exceed 300 or total expenditures are expected to exceed \$30,000), attorneys shall use written retainer agreements for investigators, experts, and other service providers 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 record-keeping.

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

The written engagement letter shall also specify that service providers shall bill travel time at 50% of their hourly rate, except for the first six hours traveling by automobile to, and the first six hours traveling by automobile from, a case-related destination, or reasonable travel time at or around the case-related destination in order for the expert or service provider to complete the responsibilities or duties assigned to the expert or service provider by the attorney for the defendant.

To assist counsel, sample engagement letter language is included as part of this document.¹ For additional information or samples, please contact the Third Circuit Case Budgeting Attorney at (267) 299-7000.

¹ Attached hereto as Appendix A.

APPENDIX A

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 [or specify some other fee arrangement], and [\$ _____ per hour for long-distance travel-related time that will be explained in correspondence to you]. The maximum payment amount authorized by the court as of this date for your services is \$ _____, which includes any expenses incurred by you.
- (2) You will submit your voucher(s) (CJA Form 21 in a non-capital representation and CJA Form 31 in a capital representation) to me, and 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 and, in certain circumstances, the chief judge of the court of appeals. 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.
- (3) The presiding judge (and the circuit chief judge, if applicable) has discretion to reduce a voucher. Specific reasons include: (a) a mathematical error; (b) non-compliance with the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), *Guide to Judiciary Policy*, Volume 7, Part A, or court policies; and (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.
- (4) **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 from the court for a new maximum authorization level, before such work is performed or expenses incurred.
- (5) 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.

- (6) Record Keeping – Consistent with CJA Guidelines § 320.90, you are required to maintain contemporaneous time and attendance records for all work/services billed, including work performed by associates, partners, and support staff, as well as expense records. These records should be submitted with your CJA voucher for payment, and must be retained for three years after approval of the appointed counsel’s or the service provider’s final voucher, whichever is later.

- (7) Unless otherwise authorized by the court, a voucher for services performed and expenses incurred for the representation will 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.

- (8) Scope of Work – You are authorized to do the following work:

Accepted by: _____

Date: _____