

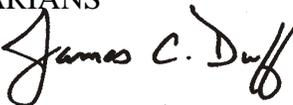
**ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS**

WASHINGTON, D. C. 20544

August 30, 2006

TRANSMITTAL 19 **VOLUME** 7 **CHAPTER** II & VI
FOR THE GUIDE TO JUDICIARY POLICIES AND PROCEDURES

TO: JUDGES, UNITED STATES COURTS OF APPEALS
JUDGES, UNITED STATES DISTRICT COURTS
UNITED STATES MAGISTRATE JUDGES
CIRCUIT EXECUTIVES
FEDERAL PUBLIC/COMMUNITY DEFENDERS
DISTRICT COURT EXECUTIVES
CLERKS, UNITED STATES COURTS OF APPEALS
CLERKS, UNITED STATES DISTRICT COURTS
CHIEF PROBATION OFFICERS
CHIEF PRETRIAL SERVICES OFFICERS
SENIOR STAFF/CHIEF PREARGUMENT ATTORNEYS
CIRCUIT LIBRARIANS

FROM: James C. Duff 

SUBJECT: Revisions to Appointment of Counsel in Criminal Cases, Volume 7, *Guide to Judiciary Policies and Procedures*.

This transmittal provides changes to the Appointment of Counsel in Criminal Cases, Volume 7, *Guide to Judiciary Policies and Procedures (Guide)*, <http://jnet.ao.dcn/Guide/Volume 7/Section A.html>. Those changes are detailed below. Questions may be directed to the Office of Defender Services, Duty Attorney, on 202-502-3030.

FILING INSTRUCTIONS (Keep this transmittal sheet in the front of the appropriate volume for reference):

<u>Remove Previous</u>	<u>Insert Attached</u>	<u>Dated</u>
Table of Contents Pages iii, iv	Table of Contents Pages iii, iv	08/30/06
Chapter II Pages i, ii, 11-24	Chapter II Pages i, ii, 11-24	
Chapter VI Pages 5-12	Chapter VI Pages 5-12	
Appendix E E-3, E-4	Appendix E E-3, E-4	
Appendix F F-3, F-4, F-13, F-14	Appendix F F-3, F-4, F-13, F-14	
Index (all)	Index (all)	

Change Code:
 E = editorial
 P = new policy/procedure
 R = revised policy/procedure

Section-by-Section Comparison Chart

Type of Change	Old Information	New Information	Reason for Change
R	<p>Paragraphs 2.22A(1) - (3) of Volume 7 of the <i>Guide</i> included provisions for establishing alternative hourly maximum attorney compensation rates for non-capital appointments (for particular districts or circuits), and for paying different rates for in-court and out-of-court work. Those provisions (and references to them) became obsolete when Congress established a uniform, non-capital attorney compensation rate of \$90 per hour in FY 2002 (Pub. L. No. 107-077, 115 Stat.748). In FY 2006, Congress funded a one-year cost-of-living increase, raising the hourly rate to \$92 (Pub. L. No. 109-115, 119 Stat. 2396).</p>	<p>Paragraph 2.22A(1) has been amended to revise the outdated compensation descriptions and amounts, and to delete obsolete references to alternative hourly rates. It now provides that, except in federal capital prosecutions and in death penalty federal habeas corpus proceedings, compensation paid to appointed counsel may not exceed \$90 per hour for time expended in court or out of court or before a United States magistrate judge, effective for work performed on or after May 1, 2002 and before January 1, 2006; for work performed on or after January 1, 2006, the compensation paid may not exceed \$92 per hour.</p> <p>The text of former subparagraph 2.22A(2) (providing for alternative hourly rates) has been deleted in its entirety. A reference to alternative rates has been deleted from subparagraph 2.22A(3); as revised, it has been renumbered as the new subparagraph 2.22A(2).</p>	<p>The Judicial Conference approved the revisions to subparagraphs 2.22A(1) - (3) of Volume 7 of the <i>Guide</i> (JCUS-SEP 05, p. 22) to update the maximum hourly attorney compensation rate to be paid appointed counsel for non-capital representations and to remove the outdated guidance. Increases funded by Congress after the Judicial Conference approved the update are included in this transmittal as administrative revisions.</p>
R	<p>Subparagraphs 2.22B(4) and 6.02F of Volume 7 of the <i>Guide</i> encourage, with respect to panel attorney representations, case budgeting for non-capital cases with the potential for extraordinary cost and all capital representations.</p>	<p>Subparagraphs 2.22B(4) and 6.02F of Volume 7 of the <i>Guide</i> have been revised to provide that courts, pending submission and approval of case budgets, should act upon requests for investigative, expert, and other services where prompt authorization is necessary for adequate representation.</p>	<p>The revision to the case-budgeting guidelines is intended to help ensure that the case-budgeting process does not delay the furnishing of necessary representational services. The new language serves to recognize that the case-budgeting process, which sometimes requires multiple layers of review, can be time consuming.</p>

Type of Change	Old Information	New Information	Reason for Change
R	<p>Subparagraphs 6.02A(1)(a) and 6.02B(1) of Volume 7 of the <i>Guide</i> included provisions for setting the hourly compensation rate for appointed counsel in capital cases. Subparagraph 6.02A(1)(a) provided that the court shall set the hourly compensation rate in an amount not to exceed \$125. Subparagraph 6.02B(1) recommended that the court set the hourly compensation rate for a capital case within a range between \$75 and \$125, and provided that the rate shall not exceed \$125. These provisions became obsolete when Congress approved an increase in the maximum capital hourly rate from \$125 to \$160 in FY 2005 (Pub. L. No. 108-447, 118 Stat. 2809). In FY 2006, Congress funded a one-year cost-of-living increase to \$163 (Pub. L. No. 109-115, 119 Stat. 2396).</p>	<p>Subparagraphs 6.02A(1)(a) and 6.02B(1) have been amended to replace the outdated \$125 statutory maximum for capital representations with \$160 for work performed on or after February 1, 2005, but before January 1, 2006; and with \$163 for work performed on or after January 1, 2006. Subparagraph 6.02A(1)(a) includes cites to the congressional action that supported the increases. The sentence in subparagraph 6.02B(1) that referred to a range between \$75 and \$125 has been deleted.</p>	<p>The Judicial Conference approved revisions to subparagraphs 6.02A(1)(a) and 6.02B(1) of Volume 7 of the <i>Guide</i> (JCUS-SEP 05, p. 22) to reflect the recent increase by Congress to the maximum hourly attorney compensation rate from \$125 to \$160 to be paid to appointed counsel for capital representations, which became effective on February 1, 2005. Also included as an administrative revision is a cost-of-living increase to \$163, effective January 1, 2006, which Congress authorized after the Judicial Conference approved updating the above subparagraphs.</p>

Type of Change	Old Information	New Information	Reason for Change
R	<p>Paragraph 2.22D, entitled “<u>Reduction of CJA Compensation Vouchers by the Reviewing Judicial Officer.</u>” provided that “... [i]n cases where the amount approved is less than was requested by appointed counsel, the judicial officer may wish to notify appointed counsel that his or her claim for compensation and/or reimbursement has been reduced, and to provide an explanation of the reasons for the reduction.”</p>	<p>The above-quoted language in paragraph 2.22D (re-designated as 2.22E) was replaced with: “<u>Reduction of CJA Compensation Vouchers by the Reviewing Judge.</u>” and “ ... If the court determines that a claim should be reduced, appointed counsel should be provided (a) prior notice of the proposed reduction with a brief statement of the reason(s) for it, and (b) an opportunity to address the matter. However, notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.</p> <p>Nothing contained in this guideline should be construed as requiring a hearing or as discouraging the court from communicating informally with counsel about questions or concerns in person, telephonically, or electronically, as deemed appropriate or necessary.”</p> <p>(Pre-existing paragraphs 2.22D through F are re-designated as 2.22E through G.)</p>	<p>The revision to the voucher review guideline is intended to help ensure a fair system of compensation for panel attorneys by addressing procedures for courts to follow prior to reducing a voucher. To minimize the potential burden on judges, the guideline specifically endorses informality and flexibility both in communicating the notice and evaluating counsel’s justification; no hearing, formal or otherwise, is required, and no right to review the judge’s decision is conferred. Additionally, the guideline does not apply to reductions arising from mathematical or technical errors.</p>
P	None	<p>A new paragraph 2.22D provides: <u>Impact of an Appropriation Shortfall on Voucher Review.</u> Vouchers should not be delayed or reduced for the purpose of diminishing Defender Services program costs in response to adverse financial circumstances.</p>	<p>This new policy addresses the concern that some courts may delay or reduce panel attorney vouchers in response to constrained budgetary circumstances regarding the Defender Services appropriation specifically or the federal judiciary’s appropriation generally.</p>

Type of Change	Old Information	New Information	Reason for Change
R	<p>Appendices E and F of Volume 7 of the <i>Guide</i> contain sample interim voucher orders for panel attorneys and providers of investigative, expert, and other services. The sample orders for non-capital attorney claims, and for capital and non-capital claims from investigative, expert, and other service providers, suggest a one-third of compensation withholding amount.</p>	<p>The sample interim voucher orders for non-capital attorney claims, and for capital and non-capital claims from investigative, expert, and other service providers, contained in Appendices E and F of Volume 7 of the <i>Guide</i>, have been revised to lower the suggested withholding amount from one-third to 20 percent of compensation.</p>	<p>The objectives for withholding a portion of compensation from interim vouchers, set forth in paragraphs 2.30A, 3.06A and 6.03D of Volume 7 of the <i>Guide</i>, can be accomplished through a withholding amount of 20 percent of compensation.</p>

2.05 Partial Eligibility	8
2.06 Family Resources	9
Part B. <u>Appointment of Counsel</u>	
2.10 Appointment of Counsel to Represent More Than One Individual in a Particular Case	9
2.11 Compensation of Co-Counsel	9
2.12 Continuity of Representation	9
2.13 Other Appointments	10
2.14 Appointment of Counsel in Habeas Corpus and Proceedings under Section 2255, Title 28, United States Code	10
2.15 Forms for the Appointment of Counsel	11
2.16 Waiver of Counsel	11
2.17 Standby Counsel	11
2.18 Termination of Appointment	11
2.19 Federal Defender Organizations	12
Part C. <u>Compensation and Expenses of Appointed Counsel</u>	
2.20 Forms to be used	12
2.21 Time Limits	12
2.22 Limitations	12
2.23 Prior Authorization by Court to Counsel to Incur Expenses	18
2.24 Proration of Claims	19
2.25 Substitution of Counsel	19

2.26 Travel Time	19
2.27 Reimbursable Out-of-Pocket Expenses	20
2.28 Non-reimbursable Items	22
2.29 Writ of Certiorari	23
2.30 Interim Payments to Counsel	23
2.31 Record Keeping	24

Chapter III. AUTHORIZATION AND PAYMENT FOR INVESTIGATIVE,
EXPERT OR OTHER SERVICES

Part A. General

3.01 Availability	1
3.02 Limitations	2
3.03 <i>Ex Parte</i> Applications	3
3.04 Claims for Services Other than Counsel	3
3.05 Forms for the Authorization and Payment for Services Other than Counsel	3
3.06 Interim Payments	4
3.07 Review of Vouchers	4

Part B. Policies Regarding Investigative, Expert and Other Services

3.10 Investigators	5
3.11 Psychiatrists, Psychologists	5
Summary Chart - Responsibility for Payment of Psychiatric and Related Expert Services	8

CHAPTER II

APPOINTMENT AND PAYMENT OF COUNSEL

<u>CONTENTS</u>	<u>PAGE</u>
<u>Part A. Eligibility for Representation Under the Act</u>	
2.01 District Plans	1
2.02 Criminal Justice Act Forms	7
2.03 Fact-finding	7
2.04 Standards for Eligibility	8
2.05 Partial Eligibility	8
2.06 Family Resources	9
<u>Part B. Appointment of Counsel</u>	
2.10 Appointment of Counsel to Represent More Than One Individual in a Particular Case	9
2.11 Compensation of Co-Counsel	9
2.12 Continuity of Representation	9
2.13 Other Appointments	10
2.14 Appointment of Counsel in Habeas Corpus and Proceedings under Section 2255, Title 28, United States Code	10
2.15 Forms for the Appointment of Counsel	11
2.16 Waiver of Counsel	11
2.17 Standby Counsel	11
2.18 Termination of Appointment	11

CONTENTS

PAGE

2.19 Federal Defender Organizations 12

Part C. Compensation and Expenses of Appointed Counsel

2.20 Forms to be Used 12

2.21 Time Limits 12

2.22 Limitations 12

2.23 Prior Authorization by Court to Counsel
to Incur Expenses 18

2.24 Proration of Claims 19

2.25 Substitution of Counsel 19

2.26 Travel Time 19

2.27 Reimbursable Out-of-Pocket Expenses 20

2.28 Non-reimbursable Items 22

2.29 Writ of Certiorari 23

2.30 Interim Payments to Counsel 23

2.31 Record Keeping 24

- (6) Under 18 U.S.C. § 983(b)(1), if a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of title 18, United States Code, in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

In determining whether to authorize counsel to represent a person in a judicial civil forfeiture proceeding under a civil forfeiture statute, the court shall take into account such factors as:

- (i) the person's standing to contest the forfeiture; and
- (ii) whether the claim appears to be made in good faith.

2.02 Criminal Justice Act Forms. The Judicial Conference of the United States, at its meeting in January 1965, approved the recommendation of its Committee to Implement the Criminal Justice Act of 1964, that every district incorporate in its plan a requirement that the standard forms, approved by the Conference, be used. (Copies of the pertinent forms are included in Appendix A.)

2.03 Fact-finding

- A. A person financially eligible for representation should be provided with counsel as soon as feasible after being taken into custody, when first appearing before a federal judge or United States magistrate judge, when formally charged, or when otherwise entitled to counsel under the Act, whichever occurs earliest. The determination of eligibility for representation under the Criminal Justice Act is a judicial function to be performed by a federal judge or United States magistrate judge after making appropriate inquiries concerning the person's financial condition.
- B. Unless it will result in undue delay, fact-finding concerning the person's eligibility for appointment of counsel should be completed prior to the person's first appearance in court. Other officers or employees of the court (i.e., clerk, deputy clerk, or Pretrial Services Officer) may be designated by the court to obtain or verify the facts upon which such determination is to be made. Relevant information bearing on the person's financial eligibility should be reflected on CJA Form 23 and the form shall be completed and executed before a judicial officer or employee. Employees of law enforcement agencies or United States attorney offices should not participate in the completion of the CJA Form 23 or seek to obtain information from a person requesting the appointment of counsel concerning his or her eligibility.
- C. The person seeking appointment of counsel has the responsibility of providing the court with sufficient and accurate information upon which the court can make an

eligibility determination. The prosecution and other interested entities may present to the court information concerning the person's eligibility, but the judicial inquiry into financial eligibility shall not be utilized as a forum to discover whether the person has assets subject to forfeiture, or the ability to pay a fine, make restitution, or compensate another person pursuant to the Victim/Witness Protection Act or other purposes not related to the appointment of counsel. Such determinations, if appropriate, shall be made at other stages of the proceedings in which the person seeking counsel is a party.

- 2.04 Standards for Eligibility. A person is "financially unable to obtain counsel" within the meaning of subsection (b) of the Act if his net financial resources and income are insufficient to enable him to obtain qualified counsel. In determining whether such insufficiency exists, consideration should be given to (a) the cost of providing the person and his dependents with the necessities of life, and (b) the cost of the defendant's bail bond if financial conditions are imposed, or the amount of the case deposit defendant is required to make to secure his release on bond.

Any doubts as to a person's eligibility should be resolved in his favor; erroneous determinations of eligibility may be corrected at a later time. At the time of determining eligibility, the judge or United States magistrate judge should inform the person of the penalties for making a false statement, and of his obligation to inform the court and his attorney of any change in his financial status. Prior to sentencing, the court should consider pertinent information contained in the presentence report, the court's intention with respect to fines and restitution, and all other available data bearing on the individual's financial condition in order to make a final determination concerning whether the individual then has funds available to pay for some or all of the costs of representation. At the time of sentencing, in appropriate circumstances, it should order the individual to reimburse the CJA appropriation for such costs. (See paragraph 2.22 F). Future earnings should not be considered or subject to a reimbursement order, however, other income or after-acquired assets which will be received within one hundred eighty days after the date of the court's reimbursement order may be available as a source of reimbursement.

- 2.05 Partial Eligibility. If a person's net financial resources and income anticipated prior to trial are in excess of the amount needed to provide him and his dependents with the necessities of life and to provide the defendant's release on bond, but are insufficient to pay fully for retained counsel, the judicial officer should find the person eligible for the appointment of counsel under the Act and should direct him to pay the available excess funds to the Clerk of the Court at the time of such appointment or from time to time thereafter. Such funds shall be held subject to the provisions of subsection (f). The judicial officer may increase or decrease the amount of such payments, and impose such other conditions from time to time as may be appropriate. With respect to the disposition of such funds, refer to paragraph 2.22 F of these Guidelines.

- 2.15 Forms for the Appointment of Counsel. Forms for the Appointment of Counsel, together with instructions for the execution and distribution thereof, are included in Appendix A.
- 2.16 Waiver of Counsel. A waiver of assigned counsel by a defendant should be in writing. If the defendant refuses to sign the waiver, the judge or United States magistrate judge should certify thereto. No standard form has been prescribed for this purpose. If an appointment of counsel has been made previously, the CJA appointment form and the waiver should be forwarded to the Administrative Office.
- 2.17 Standby Counsel. Criminal defendants have both a constitutional and statutory right to self-representation in federal court. [See Faretta v. California, 422 U.S. 806 (1975); 28 U.S.C. §1654]. In some cases, however, the judge or United States magistrate judge may find it necessary to appoint "standby" counsel to be available to assist a *pro se* defendant in his or her defense and also to protect the integrity and ensure the continuity of the judicial proceedings. [See McKaskle v. Wiggins, 465 U.S. 168 (1984); Faretta, supra]. The CJA, however, provides that "[u]nless the (financially eligible) person waives representation by counsel... [the court] shall appoint counsel to represent him." While the court has inherent authority to appoint standby counsel, such appointments may not be made and counsel may not be compensated under the CJA unless the defendant qualifies for appointed counsel and representation is actually rendered by counsel. Accordingly, if a financially eligible *pro se* defendant agrees to be represented, at least in part, by standby counsel, compensation may be provided under the CJA. Similarly, if at any time during the course of the proceedings the services of standby counsel are accepted by a financially eligible *pro se* defendant, a *nunc pro tunc* CJA appointment order should be effected and counsel may be compensated under the CJA.

On the other hand, in circumstances in which appointment is made under the court's inherent authority, and counsel serves exclusively on behalf of the court to protect the integrity and continuity of the proceedings, and does not represent the defendant, any compensation to be paid counsel shall be in the capacity of an "expert or consultant" pursuant to 5 U.S.C. §3109. Accordingly, an appointment pursuant to this section may be made regardless of whether the defendant is financially able to obtain adequate representation. In such cases, compensation will be determined by the judicial officer in accordance with CJA hourly rates and case compensation maximums. The Office of Defender Services of the Administrative Office should be consulted regarding appointment and payment procedures. If, during the course of the proceedings, a *pro se* defendant who is financially able to retain counsel elects to do so, the court's appointment of an attorney pursuant to §3109 shall be terminated.

- 2.18 Termination of Appointment. In any case in which appointment of counsel has been made and the court subsequently finds that the person is financially able to obtain counsel, such appointment should be terminated. (Use CJA Form 7, Appendix A.)

- 2.19 Federal Defender Organizations. When cases are assigned to a Federal Public or Community Defender Organization, the appointment should be made in the name of the Organization (i.e., the Federal Public Defender or Community Defender), rather than in the name of an individual staff attorney within the Organization. (see paragraph 4.04 of these Guidelines).

Part C. Compensation and Expenses of Appointed Counsel

- 2.20 Forms to be Used. Forms for the compensation and reimbursement of expenses to appointed counsel, together with instructions for the execution and distribution thereof, are included in Appendix A. A copy of all supporting documents which itemize or expand the amounts shown on the face of CJA Form 20 must be attached to at least copies numbered 1 and 2.

2.21 Time Limits.

- A. Vouchers shall be submitted no later than 45 days after the final disposition of the case, unless good cause is shown. The clerks of the concerned courts should ensure that attorneys are complying with the prescribed limits. Every effort should be made to have counsel submit the claim as soon as possible upon completion of services rendered.
- B. Absent extraordinary circumstances, judges should act upon panel attorney compensation claims within 30 days of submission.

2.22 Limitations.

A. Hourly Rates.

- (1) In General. Except in federal capital prosecutions and in death penalty federal habeas corpus proceedings, compensation paid to appointed counsel may not exceed \$90 per hour for time expended in court or out of court or before a United States magistrate judge, effective for work performed on or after May 1, 2002, but prior to January 1, 2006 (Pub. L. No. 107-77, 115 Stat. 748 (2001)).¹ For work performed on or after January 1, 2006, the hourly compensation paid may not exceed \$92 (Pub. L. No. 109-115, 119 Stat. 2396 (2005)).² (See paragraph 6.02A regarding compensation of counsel in federal capital cases and death penalty federal habeas corpus proceedings.)

¹ See also H.R. REP. NO. 107-278, at 143 (2001) (Conf. Rep.), *as reprinted in* 2002 U.S.C.A.N. 793, 856, 2001 WL 1402218, and H.R. REP. NO. 107-139, at 92-93, 2001 WL 790764.

² See also H.R. REP. NO. 109-307, at 73, 112, 279 (2005) (Conf. Rep.), 2005 WL 3131557, and S. REP. NO. 109-109, at 196 (2005), 2005 WL 1774046.

- (2) Annual Increase in Hourly Rate Maximums. Subsection (d)(1) of the Act, as amended by the CJA Revision of 1986, also authorizes the Judicial Conference to increase annually all hourly rate maximums by an amount not to exceed the federal pay comparability raises given to federal employees, beginning three years after the Act's March 14, 1987 effective date. Hourly rate maximums will be adjusted automatically each year in accordance with any federal pay comparability adjustment, contingent upon the availability of sufficient funds. The new rates will apply with respect to services performed on or after the effective date.

B. Case Compensation Maximums.

- (1) General.

- (i) Applicability and Exclusions. The Omnibus Appropriations Act, Fiscal Year 2005, included as part of Pub. L. No. 108-447, effective December 8, 2004, amended subsection (d)(2) of the CJA to increase the case compensation maximum amounts for attorneys. The new case compensation maximum amounts are indicated in paragraph 2.22 B(2) below. All compensation limits are for each attorney in each case. The case compensation limits are not applicable in federal capital cases and in death penalty federal habeas corpus proceedings. (See paragraph 6.02 A.) As further explained in paragraph 2.22 B(3), the CJA places limitations on the general authority of presiding judicial officers to unilaterally approve attorney compensation. Payments above case compensation limits referred to in subparagraph (2) below may be authorized when certified by the presiding judicial officer and approved by the chief judge of the circuit. The chief judge of the circuit is permitted to delegate this approval authority to another active circuit judge. Presiding judicial officers should certify excess compensation payments to counsel whenever in their judgment the case involves extended or complex representation and the amount certified is necessary to provide fair compensation. (See paragraph 2.22 B(3)). Case compensation limits apply only to attorney fees. There is no limit on the presiding judicial officer's authority to approve the reimbursement of expenses of counsel and the chief judge of the circuit has no role in authorizing the payment of such expenses. (See paragraph 2.27 for an explanation of reimbursable out-of-pocket expenses.)
- (ii) Change in Offense Classification Level. If a case is disposed of at an offense level lower than the offense originally charged, the compensation maximum is determined by the higher offense level.

- (iii) More than One Counsel. In difficult cases in which the court finds it necessary to appoint more than one attorney, the limitations apply to each attorney.

(2) Specific Proceedings.

- (i) Felonies [except federal capital prosecutions].

\$7,000 for trial court level.

\$5,000 for appeal.

- (ii) Misdemeanors [including petty offenses (class B or C misdemeanors or infractions) as set forth in subsection (a)(2)(A) of the Act].

\$2,000 for trial court level.

\$5,000 for appeal.

- (iii) Proceedings under section 4106A of title 18, United States Code [in connection with paroled prisoners transferred to the United States].

\$1,500 for representation before the United States Parole Commission.

\$5,000 for appeal.

- (iv) Proceedings under sections 4107 or 4108 of title 18, United States Code [for counsel and guardians ad litem providing services in connection with prisoner transfer proceedings. See Regulations for the Appointment of Counsel Pursuant to a Prisoner Transfer Treaty, which appears at Section B of this Volume, regarding appointment of counsel or guardians ad litem under 18 U.S.C. §4109].

\$2,000 for each verification proceeding.

- (v) Pre-Trial Diversion.

\$7,000 if offense alleged by the U.S. Attorney is a felony.

\$2,000 if offense alleged by the U.S. Attorney is a misdemeanor.

- (vi) Proceedings under section 983 of title 18, United States Code [for services provided by counsel appointed under 18 U.S.C. §983(b)(1) in connection with certain judicial civil forfeiture proceedings].

\$7,000 for trial court level.

\$5,000 for appeal.

- (vii) Non-capital Post-Conviction Proceedings under sections 2241, 2254 or 2255 of title 18, United States Code.

\$7,000 for trial court level.

\$5,000 for appeal.

- (viii) Proceedings to Protect Federal Jurors Employment under section 1875 of title 28, United States Code.

\$7,000 for trial court level.

\$5,000 for appeal.

- (ix) Other Representations required or authorized by the CJA.

\$1,500 for trial court level.

\$1,500 for each level of appeal.

[This category includes but is not limited to the following representations:

- (a) Probation Violation:
- (b) Supervised Release Hearing [for persons charged with a violation of supervised release or facing modification, reduction or enlargement of a condition or extension or revocation of a term of supervised release];
- (c) Parole Proceedings under chapter 311 of title 18, U.S.C.;
- (d) Material Witness in Custody;
- (e) Mental Condition Hearings Pursuant to chapter 313 of title 18, U.S.C. [with the exception of hearings pursuant to sections 4241 and 4244 of title 18, U.S.C., which are considered part of the case in chief with no separate compensation maximums applying. (A chart detailing the treatment for the purpose of compensation of representation at each hearing pursuant to chapter 313 is included as Appendix H.)];
- (f) Civil or Criminal Contempt [Where the person faces loss of liberty];

- (g) Witness [before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, where there is a reason to believe either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty];
 - (h) International Extradition [under chapter 209 of title 18, U.S.C.].
 - (x) Ancillary Matters. Representation in ancillary matters shall be compensable as part of the representation in the principal matter for which counsel has been appointed, and shall not be considered a separate appointment for which a separate compensation maximum would apply.
- (3) Waiving Case Compensation Maximums. Payments in excess of CJA compensation maximums may be made to provide fair compensation in cases involving extended or complex representation when so certified by the court or United States magistrate judge and approved by the chief judge of the circuit (or by an active circuit judge to whom excess compensation approval authority has been delegated).

In determining if an excess payment is warranted, the court or United States magistrate judge and the chief judge of the circuit (or an active circuit judge to whom excess compensation approval authority has been delegated) should make a threshold determination as to whether the case is either extended or complex. If the legal or factual issues in a case are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case, the case is "complex." If more time is reasonably required for total processing than the average case, including pre-trial and post-trial hearings, the case is "extended."

After establishing that a case is extended or complex, the approving judicial officer should determine if excess payment is necessary to provide fair compensation. The following criteria, among others, may be useful in this regard: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and injury thereto; any extraordinary pressure of time or other factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

- (4) Case Budgeting. Courts are encouraged to use case budgeting techniques in representations that appear likely to become or have become extraordinary in terms of potential cost (ordinarily, a representation in which attorney hours are expected to exceed 300 hours or total expenditures are expected to exceed \$30,000 for appointed counsel and services other than counsel on behalf of an individual CJA defendant). If a court determines that case budgeting is appropriate (either on its own or upon request of counsel), counsel should submit a proposed initial litigation budget for court approval, subject to modification in light of facts and developments that emerge as the case proceeds. Case budgets should be submitted *ex parte* and filed and maintained under seal. See generally the case budgeting principles pertaining to capital cases in paragraph 6.02F of these Guidelines.

Recognizing that investigative, expert, and other services may be required before counsel has an opportunity to prepare a case budget or the court to approve it, courts should act upon requests for services where prompt authorization is necessary for adequate representation. Courts, in examining the case budget, may reconsider amounts authorized for services prior to the budget's approval; however, courts shall not rescind prior authorization where work has already been performed.

C. Supporting Memorandum.

- (1) Claim for Less than the Case Compensation Maximum. In any case in which the total compensation claimed is less than the statutory case compensation maximum, counsel may be required to submit a memorandum supporting and justifying the compensation claimed, whenever called for by local rule, standing order, or by the presiding judicial officer.
- (2) Claim for More than the Case Compensation Maximum. In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel shall submit with the voucher a detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation. Upon preliminary approval of such claim by the presiding judicial officer, the court should furnish to the chief judge of the circuit a memorandum containing its recommendation and a detailed statement of reasons.

- D. Impact of an Appropriation Shortfall on Voucher Review. Vouchers should not be delayed or reduced for the purpose of diminishing Defender Services program costs in response to adverse financial circumstances.

- E. Reduction of CJA Compensation Vouchers by the Reviewing Judge. The Criminal Justice Act provides that the reviewing judge shall fix the compensation and reimbursement to be paid to appointed counsel. If the court determines that a claim should be reduced, appointed counsel should be provided (a) prior notice of the proposed reduction with a brief statement of the reason(s) for it, and (b) an opportunity to address the matter. However, notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors. Nothing contained in this guideline should be construed as requiring a hearing or as discouraging the court from communicating informally with counsel about questions or concerns in person, telephonically, or electronically, as deemed appropriate or necessary.

 - F. Payments by a Defendant Under Subsection (f) of the Act. No appointed attorney shall accept a payment from or on behalf of the person represented without authorization by a United States district or circuit judge or magistrate judge on CJA Form 7. If such payment is authorized, it shall be deducted from the fee to be approved by the court under subsection (d) of the Act. In this regard, the combined payment to any one attorney for compensation from both the person represented and the government shall be subject to applicable dollar limitations, unless excess compensation is approved under subsection (d)(3) of the Act. Whenever the court finds that funds are available for payment from or on behalf of a person represented and directs that such funds be paid to the court for deposit in the Treasury, payment should be made by a check or money order drawn to the order of the clerk of court, who will deposit all monies received to the credit of the Treasury and credit such sums to the CJA appropriation. Subsection (f) of the Act does not authorize a judicial officer to require reimbursement as a condition of probation, and the Judicial Conference believes that reimbursement of the cost of representation under the Act should not be made a condition of probation under any other authority.

 - G. Services Before United States Magistrate Judges. United States magistrate judges may only approve vouchers for services rendered in connection with a case disposed of entirely before the United States magistrate judge.
- 2.23 Prior Authorization by Court to Counsel to Incur Expenses. Court plans may require advance authorization for such items as counsel's expenses over stipulated amounts or counsel's travel in excess of stipulated distances. Such advance authorization need not be submitted to the Administrative Office.

- 2.24 Proration of Claims. When a defendant is charged in one indictment with severable counts, one voucher should be submitted and one maximum applied under subsection (d)(2) of the Act, whether or not the counts are severed for trial. When a defendant is charged in two or more indictments (other than a superseding indictment or information), a separate voucher should be submitted, and a separate maximum applied under subsection (d)(2) of the Act, for each indictment, whether or not the indictments are consolidated for trial.

Where single counsel is appointed to represent multiple defendants, separate vouchers should be submitted, and a separate maximum applied under subsection (d)(2) of the Act, for each defendant represented.

Whenever appointed counsel submit separate vouchers, as provided by this paragraph, time spent in common on more than one indictment or case must be prorated among the indictments or cases on which the time was spent; and each indictment or case must be cross-referenced on the vouchers. Time spent exclusively on any one indictment or case may properly be charged on the voucher for that indictment or case.

- 2.25 Substitution of Counsel. If an attorney is substituted for an attorney previously appointed for a defendant in the same case, the total compensation which may be paid both attorneys shall not exceed the statutory maximum for one defendant, unless the case involves extended or complex representation. In such cases, vouchers for attorney's services shall not be approved by a judicial officer until the conclusion of the trial so that the judicial officer may make such apportionment between the attorneys as may be just.

- 2.26 Travel Time. Compensation shall be approved for time spent in necessary and reasonable travel. Ordinarily, allowable time for travel includes only those hours actually spent **in or awaiting transit**. Accordingly, if a trip necessarily and reasonably requires overnight lodging, compensable travel time to the destination from the claimant's office would terminate upon arrival and check-in at the hotel or other place of accommodation plus travel time returning directly to the claimant's office from said destination. Compensation for travel time shall be at a rate not to exceed the rate provided in subsection (d) of the Act for "time reasonably expended out of court."

If such travel is made for purposes in addition to representing the person whom the attorney has been appointed to represent under the Act, the court shall determine whether, in fairness to the appointed attorney, the travel time should be apportioned, and the appointed attorney compensated for that portion of the travel time reasonably attributable to the performance of the attorney's duties under the Act. In determining whether such travel time should be so apportioned, the court may consider the time reasonably expended in the performance of the attorney's duties under the Act, in relation to the time expended furthering other purposes of the trip, the significance to the representation of the duties performed,

and the likelihood that the attorney would have made the trip to perform the duties under the Act in the absence of the other purposes for making the trip.

2.27 Reimbursable Out-of-Pocket Expenses. Out-of-pocket expenses reasonably incurred may be claimed on the voucher, and must be itemized and reasonably documented. Expenses for investigations or other services under subsection (e) of the Act shall not be considered out-of-pocket expenses.

A. Reimbursement for Transcripts.

(1) Generally, court reporters or reporting services which furnish court authorized transcripts in CJA cases claim and receive compensation for their services on the CJA Form 24, "Authorization and Voucher for Payment of Transcript," (See paragraph 3.12 of these Guidelines). While this is the preferred method for payment of transcripts, if assigned counsel has elected to pay for the court authorized transcripts "out-of-pocket," the cost may be claimed as a reimbursable expense, as provided for in subsection (d)(1) of the Criminal Justice Act. However, unlike most reimbursable expenses, which should be claimed on the CJA Form 20, "Appointment of and Authority to Pay Court Appointed Counsel," reimbursement to the attorney who has paid for the transcript as an "out-of-pocket" expense should be claimed on a CJA Form 24. (See Appendix A).

(2) The cost of transcribing depositions in criminal cases is the responsibility of the Department of Justice pursuant to Rule 17(b) of Fed. R. Crim. P. (but when witness is an expert, then the Administrative Office will pay out of CJA funds)(53 Comp. Gen. 638 (1974)).

B. Computer-Assisted Legal Research. The cost of use, by appointed counsel, of computer-assisted legal research services, may be allowed as a reimbursable out-of-pocket expense, provided that the amount claimed is reasonable. Whenever appointed counsel incurs charges for computer-assisted legal research, counsel should attach to the compensation voucher a copy of the bill and receipt for the use of the legal research services or an explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges, or by charges identifiable to the specific research). If the amount claimed is in excess of \$500 or if it includes costs for downloading or printing, counsel should include a brief statement of justification.

- C. Travel Expenses. Travel by privately owned automobile should be claimed at the rate currently prescribed for federal judiciary employees who use a private automobile for conduct of official business, plus parking fees, ferry fares, and bridge, road, and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis.

Per diem in lieu of subsistence is not allowable, since the Act provides for reimbursement of expenses actually incurred. Therefore, counsel's expenses for meals and lodging incurred in the representation of the defendant would constitute reimbursable "out-of-pocket" expenses. 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 in accordance with existing government travel regulations.

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. To obtain such rates, attorneys must contact the clerk of the court and obtain prior approval from the presiding judicial officer.

- D. Interim Reimbursement for Expenses. Where it is considered necessary and appropriate in a specific case, the presiding judge or United States magistrate judge may, in consultation with the Administrative Office, arrange for interim reimbursement to counsel of extraordinary and substantial expenses incurred in providing representation in a case. Interim reimbursement should be authorized when counsel's reasonably-incurred, out-of-pocket expenses for duplication of discoverable materials made available by the prosecution exceed \$500.

- E. Reimbursement for Expenses Incurred Defending Malpractice Allegations.

The CJA was amended by the Federal Courts Improvement Act of 2000, Pub. L. No. 106-518, to authorize courts to reimburse panel attorneys for expenses reasonably incurred in defending actions alleging malpractice in furnishing representational services under the CJA. The amendment covers expenses incurred on or after its effective date (November 13, 2000). No reimbursement shall be made if a judgment of malpractice is rendered against the attorney; in view of this prohibition, no reimbursement should be provided until the malpractice claim is resolved.

The total reimbursement shall not exceed the deductible amount of counsel's professional liability insurance policy or \$5,000, whichever is less. Expenses qualifying for reimbursement may include, but are not limited to, the costs of transcripts, witness fees and costs, and attorney fees. In determining reasonable attorney fees for this purpose, CJA rates are inapplicable. Reimbursement shall not include compensation for representing oneself in defending the action alleging malpractice, or, if represented by counsel, for time spent assisting that counsel in defending the action.

Reimbursement should be claimed under the expense categories on a CJA Form 20 (or, where the appointment was in a capital matter, CJA Form 30), and supporting documentation should be attached.

- F. Other. This would include items such as telephone toll calls, telegrams, copying (except printing -- see paragraph 2.28 D below) and photographs.

2.28 Non-reimbursable Items. Appointed counsel may not claim reimbursement for the following:

- A. General Office Overhead. General office overhead includes general office expenses which would normally be reflected in the fee charged to the client. The statutory fee is intended to include compensation for these general office expenses. Therefore, except in extraordinary circumstances (see paragraph 3.16), personnel, rent, telephone service, and secretarial expenses associated with CJA representation, whether work is performed by counsel or other personnel, are not reimbursable.
- B. Items and Services of Personal Nature. The cost of items of a personal nature purchased for or on behalf of the person represented, such as purchasing new clothing or having clothing cleaned, getting a haircut, furnishing cigarettes, candy or meals, etc. Also, the cost of services of a personal nature and expenses incidental thereto which cannot be considered legal representation, such as assisting the defendant in the disposition of his or her personal property, arranging for the placement of minor children of the defendant, assisting the defendant in executing the conditions of probation, providing legal assistance in matters unrelated to the litigation of the case, although incidental to the defendant's arrest, etc
- C. Filing Fees. Attorneys should not be required to pay a filing fee in a Criminal Justice Act case inasmuch as such payment and reimbursement thereof is tantamount to the Government billing itself to accomplish a transfer of appropriated funds into the General Fund of the Treasury.

- D. Printing of Briefs. The expense of printing briefs, regardless of the printing method utilized, is not reimbursable; however, the cost of mimeographing, "xeroxing," or similar copying service is reimbursable.
 - E. 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, Fed. R. Crim. P. and 28 U.S.C. §1825.
 - F. Taxes. Taxes paid on attorney compensation received pursuant to CJA, whether based on income, sales or gross receipts, are not reimbursable expenses.
- 2.29 Writ of Certiorari. Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari are considered as applicable to the case before the United States Court of Appeals, and should be included on the voucher for services performed in that court.
- 2.30 Interim Payments to Counsel.
- A. Non-Death Penalty Cases. Where it is considered necessary and appropriate in a specific case, the presiding trial judge may arrange for periodic or interim payments to counsel. Appendix E (pages E-1 through E-6) contains instructions on the procedures for effecting interim payments to counsel, as well as a sample memorandum order on this subject which provides for two alternative payment methods. The payment options provided in the order are designed to strike a balance between the interest in relieving court-appointed attorneys of financial hardships in extended and complex cases, and the practical application of the statutorily imposed responsibility of the chief judge of the circuit to provide a meaningful review of claims for excess compensation. Other interim payment arrangements which effectuate this balance may be devised in consultation with the Office of Defender Services of the Administrative Office of the United States Courts.
 - B. Death Penalty Cases. Presiding judicial officers are urged to permit interim payments in death penalty cases. Since the Anti-Drug Abuse Act of 1988 effectively repealed the CJA hourly rates and case maximums with respect to death penalty cases, a separate set of procedures and a separate memorandum order should be used in those cases. These procedures and a sample memorandum order are set forth in Appendix E, at page E-7.

- 2.31 Record Keeping. Appointed counsel 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, which may be subject to audit, must be retained for three years after approval of the final voucher for an appointment.

6.02 Compensation of Appointed Counsel in Capital Cases.

A. Inapplicability of CJA Hourly Rates and Compensation Maximums.

(1) Hourly Rates.

(a) In General. Pursuant to 21 U.S.C. § 848(q)(10)(A), **with respect to federal death penalty cases and federal capital habeas corpus proceedings commenced, and appellate proceedings in which an appeal was perfected, on or after April 24, 1996**, the presiding judicial officer shall set the hourly compensation rate for appointed counsel in an amount not to exceed \$160 per hour for in-court and out-of-court time (for work performed on or after February 1, 2005 and before January 1, 2006) and \$163 per hour for work performed on or after January 1, 2006 (unless raised by the Judicial Conference in accordance with section 848(q)(10)(A)). (Congress approved the judiciary's request for an hourly rate increase from \$125 to \$160 when it enacted the Omnibus Appropriations Act, Fiscal Year 2005, Pub. L. No. 108-447, 118 Stat. 2809 (2004),¹ and approved a cost-of-living increase to \$163 in the Judiciary Appropriations Act, Fiscal Year 2006, Pub. L. No. 109-115, 119 Stat. 2396 (2005).²

For capital cases commenced, and appellate proceedings in which an appeal was perfected, before April 24, 1996, in accordance with 21 U.S.C. § 848(q)(10) prior to that provision's amendment by the Antiterrorism Act, an attorney appointed to represent a defendant charged with a federal capital crime or seeking to vacate or set aside a death sentence in a proceeding under section 2254 or 2255 of title 28, U.S.C., shall be compensated at a rate and in an amount determined exclusively by the presiding judicial officer to be reasonably necessary to obtain qualified counsel to represent the defendant, without regard to CJA hourly rates or compensation maximums.

(b) Annual Increase in Hourly Rate Maximum. Subsection 848 (q)(10)(A) of the Anti-Drug Abuse Act of 1988 (Title 21, United

¹ See also the Joint Explanatory Statement of the Committee on the Conference, 150 CONG. REC. H10235-01, November 19, 2004, 2004 WL 2658652, and S. REP. NO. 108-344 (2004), 2004 WL 3044802.

² See also H.R. REP. NO. 109-307, at 73, 112, 279 (2005) (Conf. Rep.), 2005 WL 3131557, and S. REP. NO. 109-109, at 196 (2005), 2005 WL 1774046.

States Code), as amended by the Antiterrorism and Effective Death Penalty Act of 1996, authorizes the Judicial Conference to increase annually the hourly rate maximum by an amount not to exceed the federal pay comparability raises given to federal employees, beginning three years after the Act's April 24, 1996 effective date. The hourly rate maximum will be adjusted automatically each year in accordance with any federal pay comparability adjustment, contingent upon the availability of sufficient funds. The new rate will apply with respect to services performed on or after the effective date.

- (2) Inapplicability of Compensation Maximums. There is neither a statutory case compensation maximum for appointed counsel nor provision for review and approval by the chief judge of the circuit of the case compensation amount in capital cases.

B. Attorney Compensation Recommendation.

- (1) In the interest of justice and judicial and fiscal economy, and in furtherance of relevant statutory provisions regarding qualifications of counsel in capital cases (see paragraph 6.01 C), presiding judicial officers are urged to compensate counsel at a rate and in an amount sufficient to cover appointed counsel's general office overhead and to ensure adequate compensation for representation provided.

With respect to federal death penalty cases and federal capital habeas corpus proceedings commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996, the rate of compensation shall not exceed \$163 per hour for in-court and out-of-court time (unless revised by the Judicial Conference in accordance with 21 U.S.C. § 848(q)(10)(A)). (See paragraph 6.02 A(1)(a).)

- (2) If, following the appointment of counsel in a case in which a defendant was charged with an offense that may be punishable by death, it is determined that the death penalty will not be sought, the court should consider the questions of the number of counsel and the rate of compensation needed for the duration of the proceeding.

The court should, absent extenuating circumstances, make an appropriate reduction in the number of counsel. In deciding whether there are extenuating circumstances, the court should consider the following factors:

- (a) the need to avoid disruption of the proceedings;

- (b) whether the decision not to seek the death penalty occurred late in the litigation;
- (c) whether the case is unusually complex; and
- (d) any other factors that would interfere with the need to ensure effective representation of the defendant.

In addition, the court should, absent extenuating circumstances, reduce (only prospectively) the compensation rate. In determining whether there are extenuating circumstances, the court should consider the following factors:

- (a) the extent to which this representation precludes counsel from taking other work;
- (b) the commitment of time and resources counsel has made and will continue to make in the case; and
- (c) the need to compensate appointed counsel fairly.

- C. Interim Payments to Counsel. It is urged that the court permit interim payment of compensation in capital cases. (See generally paragraph 2.30 B concerning interim payments to counsel in death penalty cases.)
- D. Forms. Claims for compensation and reimbursement of expenses for attorneys furnishing services in death penalty proceedings should be submitted on CJA Form 30, "Death Penalty Proceedings: Appointment of and Authority to Pay Court Appointed Counsel."
- E. Review of Vouchers. Absent extraordinary circumstances, judges should act upon panel attorney compensation claims within 30 days of submission.
- F. Case Budgeting in Federal Capital Habeas Corpus Proceedings and Federal Death Penalty Cases. Courts are encouraged to require appointed counsel to submit a proposed initial litigation budget for court approval that will be subject to modification in light of facts and developments that emerge as the case proceeds. Case budgets should be submitted *ex parte* and filed and maintained under seal.
 - (1) The budget should serve purposes comparable to those of private retainer agreements by confirming both the court's and the attorney's expectations regarding fees and expenses.

- (2) Consideration should be given to employing an *ex parte* pretrial conference in order to facilitate reaching agreement on a litigation budget at the earliest opportunity.
- (3) The budget should be incorporated into a sealed initial pretrial order that reflects the understandings of the court and counsel regarding all matters affecting counsel compensation and reimbursement and payments for investigative, expert and other services, including but not limited to the following matters:
 - (a) The hourly rate at which counsel will be compensated (see paragraphs 6.02 A and B);
 - (b) In capital habeas corpus cases: the best preliminary estimate that can be made of the cost of all services (counsel, expert, investigative, and other) for the entire case (in its discretion, the court may determine that defense counsel should prepare budgets for shorter intervals of time);
 - (c) In federal death penalty cases:
 - i. Prior to prosecution decision to seek death penalty authorization: the best preliminary estimate that can be made of the cost of all services (counsel, expert, investigative, and other) likely to be needed through the time that the Department of Justice determines whether to authorize the death penalty;
 - ii. After prosecution decision to seek death penalty authorization: the best preliminary estimate that can be made of the cost of all services (counsel, expert, investigative, and other) likely to be needed through the guilt and penalty phases of the trial (in its discretion, the court may determine that defense counsel should prepare budgets for shorter intervals of time);
 - iii. Death penalty not sought: as soon as practicable after a decision not to seek the death penalty, the number of appointed counsel and hourly rate of compensation should be reviewed in accordance with subparagraph 6.02 B(2);

(d) Agreement that counsel will advise the court of significant changes (counsel, expert, investigative, and other) to the estimates contained in the order;

(e) Agreement on a date on which a subsequent *ex parte* case budget pretrial conference will be held;

(f) Procedure and schedules for submission, review, and payment of interim compensation vouchers (see paragraphs 6.02 C and E);

(g) The form in which claims for compensation and reimbursement should be submitted (see paragraph 6.02 D) and the matters that those submissions should address; and

(h) The authorization and payment for investigative, expert, and other services (see paragraph 6.03).

(4) An approved budget should guide counsel's use of time and resources by indicating the services for which compensation is authorized. Case budgets should be re-evaluated when justified by changed or unexpected circumstances, and should be modified by the court where good cause is shown.

(5) Recognizing that investigative, expert, and other services may be required before counsel has an opportunity to prepare a case budget or the court to approve it, courts should act upon requests for services where prompt authorization is necessary for adequate representation. Courts, in examining the case budget, may reconsider amounts authorized for services prior to the budget's approval; however, courts shall not rescind prior authorization where work has already been performed.

G. Case Management in Federal Capital Habeas Corpus Proceedings. Judges are encouraged to employ the case-management techniques used in complex civil litigation to control costs in federal capital habeas corpus cases.

6.03 Authorization and Payment for Investigative, Expert and Other Services in Capital Cases.

A. In General. **With respect to federal death penalty cases and federal capital habeas corpus proceedings commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996,** upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, the court should authorize the defendant's attorneys to obtain such services. No *ex parte* request for investigative, expert, or other services in such cases may be considered

unless, a proper showing is made by counsel concerning the need for confidentiality.

For capital cases commenced, and appellate proceedings in which an appeal was perfected, before April 24, 1996, in accordance with 21 U.S.C. § 848(q)(9) prior to that provision's amendment by the AEDPA, upon a finding in *ex parte* proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or sentence, the presiding judicial officer shall authorize the defendant's counsel to obtain such services on behalf of the defendant.

For all capital cases, upon a finding that timely procurement of necessary investigative, expert or other services could not await prior authorization, the presiding judicial officer may authorize such services *nunc pro tunc* consistent with paragraph 3.02 B.

Except as otherwise specified in paragraph 6.03, the provisions set forth in Chapter III are applicable to the authorization and payment for investigative, expert, and other services in capital cases.

- B. AEDPA Limitation: Inapplicability to Pre-AEDPA Cases. For all capital cases, the compensation maximum set forth in paragraph 3.02 A of these guidelines is inapplicable.

With respect to federal death penalty cases and federal capital habeas corpus proceedings commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996, pursuant to 21 U.S.C. § 848(q)(10)(B), the fees and expenses for investigative, expert, and other services are limited to \$7,500 in any case unless payment in excess of that amount is certified by the court, or United States magistrate judge if the services were rendered in connection with a case disposed of entirely before such magistrate judge, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit (or an active circuit judge to whom the chief judge has delegated this authority). The \$7,500 limit applies to the total payments for investigative, expert, and other services in a case, not to each service individually.

Once payments for investigative, expert, and other services total \$7,500, then additional payments must be approved by the chief judge of the circuit (or an active circuit judge to whom the chief judge has delegated this authority). Accordingly, the court shall monitor all payments for investigative, expert, and other services.

If it can be anticipated that the payments for investigative, expert, and other services will exceed the statutory maximum, advance approval should be obtained from the court and the chief judge of the circuit (or an active circuit judge to whom the chief judge has delegated this authority). See sample form, Appendix C. Rather than submitting multiple requests, where possible, courts should submit the expert, investigative and other services portion of the approved case budget (see paragraph 6.02 F) to the chief judge of the circuit (or his or her designee) for advance approval.

For capital cases commenced, and appellate proceedings in which an appeal was perfected, before April 24, 1996, in accordance with 21 U.S.C. § 848(q)(10) prior to that provision's amendment by the AEDPA, the presiding judicial officer shall set compensation for investigative, expert, and other services in an amount reasonably necessary to obtain such services, without regard to CJA or AEDPA maximum limitations.

- C. Consulting Services in Federal Capital Habeas Corpus Cases and in Federal Death Penalty Cases. Where necessary for adequate representation, subsection (e) of the CJA and 21 U.S.C. § 848(q)(9) authorize the reasonable employment and compensation of expert attorney consultants to provide “light consultation” services to appointed and *pro bono* lawyers in federal capital habeas corpus cases and in federal death penalty cases in such areas as records completion, determination of need to exhaust state remedies, identification of issues, review of draft pleadings and briefs, authorization process to seek the death penalty, etc. “Light consultation” services are those that a lawyer in private practice would typically seek from another lawyer who specializes in a particular field of law, as opposed to “heavy consultation” services, which include, but are not limited to, reviewing records, researching case-specific legal issues, drafting pleadings, investigating claims, and providing detailed case-specific advice to counsel, if such tasks take a substantial amount of time.

An expert attorney consultant shall not be paid an hourly rate exceeding that which an appointed counsel could be authorized to be paid.

Courts may wish to require that an appointed counsel who seeks to have the court authorize the services of an expert attorney consultant confer with the federal defender, or the Administrative Office’s Office of Defender Services if there is no federal defender in the district or if the federal defender has a conflict of interest, regarding who could serve as an expert attorney consultant.

- D. Interim Payments to Persons Providing Investigative, Expert and Other Services. It is urged that the court or United States magistrate judge permit interim payment of compensation in capital cases.

With respect to federal death penalty cases and federal capital habeas corpus proceedings commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996, 21 U.S.C. § 848(q)(10)(B), as amended, provides a \$7,500 payment maximum for the total cost of fees and expenses for investigative, expert, and other services. A special set of procedures for effecting interim payments, including a special memorandum order, must be used in these cases. These procedures and a sample memorandum order are set forth in Appendix F, beginning on page F-11. (See also the case budgeting techniques recommended in paragraph 6.02 F.) Other interim payment arrangements which effectuate a balance between the interest in relieving service providers of financial hardships and the practical application of the statutorily imposed responsibility of the chief judge of the circuit to provide a meaningful review of claims for excess payment may be devised in consultation with the Office of Defender Services of the Administrative Office of the United States Courts.

For capital cases commenced, and appellate proceedings in which an appeal was perfected, before April 24, 1996, there are no expert services maximums. A separate set of procedures for effecting interim payments, including a separate memorandum order, must be used in those cases. These procedures and sample memorandum order are set forth in Appendix F, beginning on page F-7.

- E. Forms. Claims for compensation and reimbursement of expenses for investigative, expert or other services in death penalty proceedings should be submitted on CJA Form 31, "Death Penalty Proceedings: *Ex Parte* Request for Authorization and Voucher for Expert and Other Services."
- F. Review of Vouchers. Absent extraordinary circumstances, judges should act upon claims for compensation for investigative, expert, or other services within 30 days of submission.

S A M P L E
(To be used in non-death penalty cases)

Memorandum to All Counsel Appointed Under the Criminal Justice Act in the Case of

Number _____

RE: Interim Payments for Representation of Counsel

Because of the expected length of the trial in this case, and the anticipated hardship on counsel in undertaking representation full-time for such a period without compensation, pursuant to paragraph 2.30 A of the Guidelines for the Administration of the Criminal Justice Act, the following procedures for interim payments shall apply during the course of your representation in this case:

1. Submission of Vouchers

Counsel shall submit to the court clerk, twice each month, an interim CJA Form 20, "Appointment of and Authority to Pay Court Appointed Counsel." Compensation earned and reimbursable expenses incurred from the first to the fifteenth days of each month shall be claimed on an interim voucher submitted no later than the twentieth day of each month, or the first business day thereafter. Compensation earned and reimbursable expenses incurred from the sixteenth to the last day of each month shall be claimed on an interim voucher submitted no later than the fifth day of the following month, or the first business day thereafter. The first interim voucher submitted shall reflect all compensation claimed and reimbursable expenses incurred from the date of appointment to _____, and shall be submitted no later than _____; thereafter, the vouchers shall be submitted twice each month according to the schedule outlined above. Counsel shall complete Item 19 on the form for each interim voucher. Each interim voucher shall be assigned a number when processed for payment. Interim vouchers shall be submitted in accordance with this schedule even though little or no compensation or expenses are claimed for the respective period. All interim vouchers shall be supported by detailed and itemized time and expense statements. Chapter II, Part C of the Guidelines for the Administration of the Criminal Justice Act outlines the procedures and rules for claims by CJA attorneys and should be followed regarding each voucher.

I will review the interim vouchers when submitted, particularly with regard to the amount of time claimed, and will authorize compensation to be paid for 80 percent of the approved number of hours. This compensation will be determined by multiplying 80 percent of the approved number of hours by the applicable rate. I will also authorize for payment all reimbursable expenses reasonably incurred.

[Select OPTION A or B]

OPTION A

At the conclusion of the representation, each counsel shall submit a final voucher seeking payment of the 20 percent balance withheld from the earlier interim vouchers, as well as payment for representation provided during the final interim period. The final voucher shall set forth in detail the time and expenses claimed for the entire case, including all appropriate documentation. Counsel shall reflect all compensation and reimbursement previously received on the appropriate line of the final voucher, as well as the net amount remaining to be paid at the conclusion of the case. After reviewing the final voucher, I will submit it to the chief judge of the circuit or his or her delegate for review and approval.

OPTION B

Every _____ months, counting from the submission date for the first interim voucher, until the conclusion of the representation, counsel shall submit a cumulative interim voucher seeking payment of the outstanding 20 percent balance withheld from all earlier interim compensation paid out during the preceding _____-month interval, as well as payment for representation provided during the last interim period of the interval. The cumulative interim voucher shall be labeled as such and shall set forth in detail the time and expenses claimed for the entire interval, including all appropriate documentation. Counsel should reflect all compensation and reimbursement previously received on the appropriate line of the cumulative interim voucher, as well as the net amount remaining to be paid at the end of the interval. After reviewing the cumulative interim voucher, I will submit it to the chief judge of the circuit, or his or her delegate, for review and approval. At the conclusion of the representation, each counsel shall submit a final cumulative voucher seeking payment of the 20 percent balance withheld from the interim vouchers processed during the final interval, as well as payment for representation provided during the last interim period of the interval.

S A M P L E
(To be used in non-death penalty cases)

Memorandum to All Persons Providing Services Pursuant to Subsection (e) of the Criminal Justice Act,
18 U.S.C. §3006A, in the Case of

Number

RE: Interim Payments for Services Other Than Counsel

Because of the expected length of the trial in this case, and the anticipated hardship on persons providing services pursuant to subsection (e) of the Criminal Justice Act for such a period without compensation, in accordance with paragraph 3.06 A of the Guidelines for the Administration of the Criminal Justice Act, the following procedures for interim payments shall apply during the period of time in which you provide services in connection with this case:

1. Submission of Vouchers

Persons providing services under subsection (e) shall submit to the court clerk, twice each month, an interim CJA Form 21, "Authorization and Voucher for Expert and Other Services." Compensation earned and reimbursable expenses incurred from the first to the fifteenth days of each month shall be claimed on an interim voucher submitted no later than the twentieth day of each month, or the first business day thereafter. Compensation earned and reimbursable expenses incurred from the sixteenth to the last day of each month shall be claimed on an interim voucher submitted no later than the fifth day of the following month, or the first business day thereafter. The first interim voucher submitted shall reflect all compensation claimed and reimbursable expenses incurred from the date on which your services were first retained to _____, and shall be submitted no later than _____; thereafter, the vouchers shall be submitted twice each month according to the schedule outlined above. Claimants shall complete Item 17 of each interim voucher submitted. Each voucher shall be assigned a number when processed for payment. Interim vouchers shall be submitted in accordance with this schedule even though little or no compensation or expenses are claimed for the respective period. All interim vouchers shall be supported by detailed and itemized time and expense statements. Chapter III of the Guidelines for the Administration of the Criminal Justice Act outlines the procedures and rules for claims by persons providing services pursuant to subsection (e) and should be followed regarding each voucher.

I will review the interim vouchers when submitted, particularly with regard to the amount of time claimed, and will authorize compensation to be paid for 80 percent of the approved number of hours. This compensation will be determined by multiplying 80 percent of the approved number of hours by the applicable rate. I will also authorize for payment all reimbursable expenses reasonably incurred.

[Select OPTION A or B]

OPTION A

At the conclusion of the period during which you provide services in this case, you shall submit a final voucher seeking payment of the 20 percent balance withheld from the earlier interim vouchers, as well as payment for services rendered during the final interim period. The final voucher shall set forth in detail the time and expenses claimed for the entire case, including all appropriate documentation. A statement should be attached to the voucher which reflects all compensation and reimbursement previously received, as well as the net amount remaining to be paid at the conclusion of the case. After reviewing the final voucher, I will submit it to the chief judge of the circuit, or his or her delegate, for review and approval.

OPTION B

Every _____ months, counting from the submission date for the first interim voucher, until the conclusion of the services, claimants shall submit a cumulative interim voucher seeking payment of the outstanding 20 percent withheld from all earlier interim compensation paid out during the preceding _____-month interval, as well as payment for services rendered during the last interim period of the interval. The cumulative interim voucher shall be labeled as such and shall set forth in detail the time and expenses claimed for the entire interval, including all appropriate documentation. A statement shall be attached to the cumulative interim voucher, which reflects all compensation and reimbursement previously received, as well as the net amount remaining to be paid at the end of the interval. After reviewing the cumulative interim voucher, I will submit it to the chief judge of the circuit, or his or her delegate, for review and approval. At the conclusion of the period during which you provide services in this case, you shall submit a final cumulative voucher seeking payment of the 20 percent balance withheld from the interim vouchers processed during the final interval, as well as payment for services rendered during the last interim period of the interval.

2. Reimbursable Expenses

Persons providing services pursuant to subsection (e) may be reimbursed for out-of-pocket expenses reasonably incurred incident to the rendering of services.

The following guidelines may be helpful:

18 U.S.C. § 3006A(e) and 21 U.S.C. § 848(q)(9) and (q)(10)(B), and should be followed regarding each voucher.

I will review the interim vouchers when submitted, particularly with regard to the amount of time claimed, and will authorize compensation to be paid for 80 percent of the approved number of hours. This compensation will be determined by multiplying 80 percent of the approved number of hours by the applicable rate. I will also authorize for payment all reimbursable expenses reasonably incurred.

[Select OPTION A or B]

OPTION A

At the conclusion of the period during which you provide services in this case, you shall submit a final voucher seeking payment of the 20 percent balance withheld from the earlier interim vouchers, as well as payment for services rendered during the final interim period. The final voucher shall set forth in detail the time and expenses claimed for the entire case, including all appropriate documentation. A statement should be attached to the voucher which reflects all compensation and reimbursement previously received, as well as the net amount remaining to be paid at the conclusion of the case. After reviewing the final voucher, the court, or magistrate judge if the services were rendered in connection with a case disposed of entirely before the magistrate judge, will submit it to the chief judge of the circuit, or his or her delegate, for review and approval. The court or magistrate judge will certify that the total payment amount is necessary to provide fair compensation for services of an unusual character or duration. If the total payment for a service provider does not exceed \$7,500, and if it is anticipated that the combined payments for all providers of investigative, expert, and other services will not exceed \$7,500, then I will approve the final voucher.

OPTION B

Every _____ months, counting from the submission date for the first interim voucher, until the conclusion of the services, claimants shall submit a cumulative interim voucher seeking payment of the outstanding 20 percent balance withheld from all earlier interim compensation paid out during the preceding _____-month interval, as well as payment for services rendered during the last interim period of the interval. The cumulative interim voucher shall be labeled as such and shall set forth in detail the time and expenses claimed for the entire interval, including all appropriate documentation. A statement shall be attached to the cumulative interim voucher, which reflects all compensation and reimbursement previously received, as well as the net amount remaining to be paid at the end of the interval. At the conclusion of the period during which you provide services in this case, you shall submit a final cumulative voucher seeking payment of the 20 percent balance withheld from the interim vouchers processed during the final interval, as well as payment for services rendered during the last interim period of the interval. After reviewing the cumulative interim voucher, the court, or United States magistrate judge if the services were rendered in

connection with a case disposed of entirely before the United States magistrate judge, will submit it to the chief judge of the circuit, or his or her delegate, for review and approval. The court or United States magistrate judge will certify that the total payment amount is necessary to provide fair compensation for services of an unusual character or duration. If the total payment for a service provider does not exceed \$7,500, and if it is anticipated that the combined payments for all providers of investigative, expert, and other services will not exceed \$7,500, then I will approve the final cumulative voucher seeking payment of the 20 percent balance withheld from the interim vouchers processed during the final interval, as well as payment for services rendered during the last interim period of the interval.

2. Reimbursable Expenses

Persons providing services pursuant to 18 U.S.C. § 3006A(e) and 21 U.S.C. § 848(q)(9) and (q)(10)(B), may be reimbursed for out-of-pocket expenses reasonably incurred incident to the rendering of services.

The following guidelines may be helpful:

a. Case related travel by privately owned automobile should be claimed at the rate of _____ cents per mile, plus parking fees, ferry fares, and bridge, road and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis. Air travel in "first class" is prohibited. For service providers requiring air travel, counsel are encouraged to contact the clerk for authorization to travel at government rates.

b. Actual expenses incurred for meals and lodging while traveling outside of the city/county of _____ in the course of this representation must conform to the prevailing limitations placed upon travel and subsistence expenses for federal judiciary employees in accordance with existing government travel regulations. For specific details concerning high cost areas, counsel should consult the clerk.

c. Telephone toll calls, telegrams, photocopying, and photographs can all be reimbursable expenses if reasonably incurred. However, general office overhead, such as rent, secretarial help, and telephone service, is not a reimbursable expense, nor are items of a personal nature. In addition, expenses for service of subpoenas on fact witnesses are not reimbursable, but rather are governed by Fed. R. Crim. P. 17 and 28 U.S.C. §1825.

3. Further questions or guidance

Answers to questions concerning services provided pursuant to 18 U.S.C. § 3006A and 21 U.S.C. § 848(q), as amended, can generally be found in (1) these statutes; (2) the Plan of the United States District Court for the _____ District of _____, available through the clerk; and (3) the *CJA Guidelines*, published by the Administrative Office of the U.S.

INDEX

	<u>Chapter/Page</u>
Accelerated Transcript	III-10
<i>Amicus Curiae</i> participation of federal public and community defenders in federal court	IV-7
Ancillary matters:	
Compensation limit	II-16
Definition of	II-5,6
<i>Ex parte</i> application	II-6
Preliminary determination	II-6
Scope of representation	I-3; II-6
Appeals:	
Bail appeals	II-10
Compensation limit	II-16-17
Filing fees	I-7; II-22
Interlocutory appeals	II-10
New appointment	II-10
Writ of certiorari	II-23
Appointment/Evaluation of federal public defender and staff	I-9,10; IV-2-4
Appointments (see also Cases covered/not covered by the Act):	
Appointment of co-counsel	II-9
Federal death penalty cases and habeas corpus proceedings ..	I-11,12; VI-1,2; App. I
Appointment of counsel to represent more than one individual in a particular case	II-9
Continuity of representation	II-9,10
Federal death penalty cases and federal capital habeas corpus proceedings	I-11-14; VI-1-4; App. I
Federal defender organizations	I-2; II-3,4
Forms for	II-7,10,11; App. A
New appointment, types of proceedings	II-10
Out-of-district attorney	II-3
<i>Pro hac vice</i> admission to panel	II-3
Standby counsel	II-11
Substitution of counsel	I-3; II-19
Termination of	II-11
Transfer of case to another district	II-10

Appointments (continued)	
Under 18 U.S.C. § 983 (b)(1) in certain judicial civil forfeiture proceedings	I-14; II-7
Waiver of counsel	I-2; II-11
Arrested person	I-1; II-1
Assets, duty to disclose client's	II-3
Associates of appointed counsel	II-9
Bail appeals	II-10
Bar associations, attorneys furnished by	I-2; II-3
Briefs, printing of	II-23
Capital cases	I-11-14; VI-1-12; App. I
Case budgeting in federal capital habeas corpus proceedings and federal death penalty cases	II-17; VI-7-9; App. I
Case budgeting in high-cost non-capital representations.	II-17
Cases covered by the Act (see also Compensation limits):	
Ancillary matters	I-3; II-5,6
Appeals	II-10
Arrest	I-1; II-1
Bail appeals	II-10
Judicial civil forfeiture proceedings under 18 U.S.C. § 981 (b)(1) (certain proceedings)	I-14; II-7
Civil forfeiture proceedings (ancillary matters) pursuant to 21 U.S.C. § 881, 19 U.S.C. § 1602, or similar statutes	II-6
Civil or criminal contempt with loss of liberty	I-1; II-5
Deferred prosecution (pretrial diversion)	II-5
Extraordinary writs	II-10
Felony	I-1; II-1
Grand jury witness	II-5
Habeas corpus	I-2; II-2,10; VI-1,2,5-12
International extradition	II-5
Juvenile delinquency	I-1; II-1
Material witness in custody	I-1; II-2

Cases covered by the Act (continued):

Mental condition proceeding	I-1; II-2,10
Misdemeanor	I-2; II-1,2
Narcotic Addict Rehabilitation Act	I-1; II-2
Parole proceedings	I-1; II-1
Petty offense with confinement authorized	I-2; II-2
Pretrial diversion	II-5
Prisoner transfer proceedings under chapter 306 of title 18	I-1; II-2,14; Section B
Probation violation	I-1; II-1
Proceedings under 18 U.S.C. §4106A (see also: Parole proceedings)	I-4; II-15
Sixth Amendment requirement	I-1; II-2
Standby counsel	II-11
Supervised Release	I-1; II-1
Witnesses before a grand jury, court, Congress, or federal agency or commission	II-5

Cases not covered by the Act:

Civil actions to protect jurors' employment (see 28 U.S.C. § 1875)	II-4,5
Civil rights cases by prisoners	II-4
Corporate defendant cases	II-4
Deportations, administrative proceedings before INS.	II-5
Guardian ad litem	III-13
Petty offense with no confinement authorized	II-4

Certiorari, writ of II-23

Civil actions to protect jurors' employment (see 28 U.S.C. § 1875) II-4,5,15

Civil forfeiture proceedings (ancillary matters)
pursuant to 21 U.S.C. § 881, 19 U.S.C. § 1602,
or similar statutes II-6

Civil rights cases by prisoners II-4

Claims (see Compensation claims)

Claims (see Suits alleging malpractice or negligence
in furnishing representational services)

Community defender organizations I-10; II-12; IV-5

Compensation claims for counsel (see also

Investigative, expert and other services):

Approval by United States magistrate judges	II-18
Associates of appointed counsel	II-9
Case budgeting and management in federal capital habeas corpus proceedings and federal death penalty cases	VI-7-9; App. I
Case budgeting in high-cost non-capital representations.. ..	II-17
Excess claims	I-4; II-17
Expenses (see Expenses)	
Forms for payment	II-7,10,11; App. A
Hourly rates	I-3,4; II-12,13
Authority for annual increases	I-3; II-13
Death penalty cases and capital habeas corpus proceedings	I-12; VI-5-7; App. I
Interim payment	II-23; App. E; App. F
Death penalty cases	II-23; VI-7; App. E; App. F
Judicial civil forfeiture proceedings under 18 U.S.C. § 983 (b)(1)	I-14; II-7
Limits on amount (see Compensation limits)	
Memorandum in support of claim	II-17
Multiple indictments	II-19
Out-of-pocket expenses (see Expenses)	
Proration of claims	II-19
Reduction of claims	II-18
Standby counsel	II-11
Substitution of counsel	II-19
Time limits for submission of claims	II-12
Travel time and expenses	II-21

Compensation limits for counsel:

Ancillary matters	II-16
Appeals	I-4; II-10,14,15
Civil or criminal contempt with loss of liberty	II-15
Death penalty cases and capital habeas corpus proceedings	II-13,17,19,23; VI-5-7; App. I
Deferred prosecution (pretrial diversion)	II-14
Felony	II-14
Grand jury witness	II-16
Habeas corpus	II-13
International extradition	II-16
Judicial civil forfeiture proceedings under 18 U.S.C. § 983 (b)(1)	I-14; II-14
Material witness in custody	II-15
Mental condition proceedings	II-15; App. H
Misdemeanor	II-14

Compensation limits for counsel (continued):	
Other representations	II-15,16
Parole violation or revocation	II-15
Petty offense	II-14
Pretrial diversion	II-14
Prisoner transfer proceedings under	
18 U.S.C. §4106A, 4107 and 4108	II-14
Probation violation	II-15
Proceedings under 18 U.S.C. §4106A	I-4; II-14
Standby counsel	II-11
Witnesses before a grand jury, court, Congress, or federal agency or commission	II-16
Compensation of federal public defender and staff	IV-2
Compensation of paralegals and legal assistants, including law students.	III-15
Computer-assisted legal research:	
Use by appointed counsel	II-20
Performed by commercial legal research firm	III-13
Computer hardware and/or software:	
Application to court to acquire with CJA funds	III-14
Consultation with Office of Defender Services	III-14
Model order authorizing acquisition of	App. C
Computer systems and automation litigation support personnel and experts:	
Application to court to acquire with CJA funds	III-14
Consultation with Office of Defender Services	III-14
Consulting services in federal capital habeas corpus proceedings and federal capital prosecutions.	VI-11
Contempt, civil or criminal	II-5,15
Continuity of representation	II-9,10
Corporate defendant cases	II-4

Court of appeals:	
Compensation limit	I-4; II-14-16
Filing fee	I-6; II-23
New appointment	II-10
Writ of certiorari	II-23
Court reporters and reporting services	III-10,11
Criminal Justice Act panel (see also District plans):	
Administration, composition and management	I-2; II-3,4
Distribution of appointments	II-4
Model Plan for the Composition, Administration and Management of the Panel of Private Attorneys Under the CJA	App. G
Out-of-district attorney, admission of	II-3
<i>Pro hac vice</i> admission to	II-3
<i>Criminal Monetary Penalties: A Guide to the Probation Officer's Role,</i> Monograph 114, Chap. VI	II-1
Death penalty cases and capital habeas corpus proceedings	I-11-14; VI-1-12; App. I
Defender organizations:	
Assignment of cases to	I-2; II-3; IV-6
Assistance to <i>pro se</i> litigants	III-2
Expert and other services	IV-5,6
Statutory authority for	I-9; IV-1
Types of	
Community defender organizations	I-10; IV-5
Federal public defender organizations	I-9,10; IV-1-4
Deferred prosecution (pretrial diversion)	II-5,14
Delegation of excess compensation approval authority	I-4; II-16; III-2
Death penalty cases and capital habeas corpus proceedings	I-13; VI-10
Depositions:	
Expert witnesses	III-12
Fact witnesses	III-12
Disclosure of client's financial status	II-3

Disclosure of payment information I-5,6,14; V-1-4, App. A

District plans:

- Advance authorization by court to incur expenses II-18
- Duty to disclose client's assets II-3
- Model CJA Plan II-1,4; App. G
- Model Plan for the Composition, Administration and Management of the Panel of Private Attorneys Under the CJA II-4; App. G
- Modification of I-2
- Option for attorneys furnished by bar association or legal aid agency I-2; II-3
- Option for attorneys furnished by defender organization I-2; II-3
- Provision for private attorneys I-2; II-3
- Requirement for I-1; II-1
- Standard forms II-7

Doubts about eligibility II-8

Dual purpose examinations III-6,7

Eligibility:

- Defendant's financial status as contained on CJA Form 23 II-7; App. A
- Determination by federal judge or magistrate judge II-7
- Doubts about II-8
- Erroneous determination II-8
- Fact-finding by other officers of the court II-7
- Family's financial status II-9
- Partial II-8; III-1
- Reimbursement from defendant I-3,8; II-8,18
- Standard for II-8
- U.S. Attorney and law enforcement officers II-7,8

Ex parte applications in ancillary matters II-6

Ex parte applications for services other than counsel I-7; III-3

- Death penalty cases and capital habeas corpus proceedings I-13; VI-9,10

Ex parte submissions for case budgets in:

- Federal capital habeas corpus proceedings and federal death penalty cases VI-7-9

Ex parte submissions for case budgets in: (continued)

High-cost non-capital representations	II-17
Excess compensation claims	I-4,8; II-16; III-2; App. A; App. E; App. F
Death penalty cases and capital habeas corpus proceedings	I-13; VI-10; App. A; App. E; App. F
Expenses:	
Advance authorization to incur	II-18
Computer-assisted legal research services	II-20; III-13
Defending actions alleging CJA panel attorney malpractice	I-3,4
Depositions	III-12
Experts (see Investigative, expert and other services)	
Fact witnesses	III-12
Forms for reimbursement	II-12; III-3; App. A
Interim reimbursement	II-21; III-4; App. E; App. F
Non-reimbursable items	
Filing fees	II-22
General office overhead	II-22; III-14
Items of a personal nature	II-22
Printing of briefs	II-23
Service of process	II-23
Reimbursable out-of-pocket	II-20,22
Transcript costs	II-20; III-10,11
Travel expenses	II-21
Expert and other services (see Investigative, expert and other services)	
Expert witnesses:	
Depositions	III-12
Expenses of	III-2,12,14
Extradition	II-5,16
Extraordinary writs	II-10
Fact witnesses:	
Depositions	III-12
Fees and expenses of	III-12
Fact-finding for eligibility	II-7,8

Family's financial status II-9

Federal death penalty cases and federal
capital habeas corpus proceedings I-11-14; VI-1-12; App. I

Federal death penalty resource counsel App. I
Federal defender organizations (see Defender organizations)

Felony charge I-1; II-1,14

Filing fees II-22

Financial eligibility (see Eligibility)

Financial status:
Defendant's II-7,8
Family's II-9

Forms:
Appointment of and Authority to Pay
Court Appointed Counsel (CJA 20) II-4,12; App. A
Authorization and Voucher for Expert
and Other Services (CJA 21) III-3; App. A
CJA Forms list App. A
Compensation and reimbursement of
expenses of
Counsel (CJA 20) II-12,20; App. A
Expert and other services (CJA 21) III-3; App. A
Death Penalty Proceedings:
Appointment of and Authority to Pay
Court Appointed Counsel (CJA 30) App. A
Ex Parte Request for Authorization and Voucher for
Expert and Other Services (CJA 31) App. A
Excess compensation claim,
supplemental information statement:
district court (CJA 26) App. A
appeals court (CJA 27) App. A
Financial Affidavit (CJA 23) App. A
Public disclosure of attorney fee information, notice to
court-appointed counsel of (CJA 19) V-1-4; App. A
Standard forms II-7; App. A
Termination of appointment (CJA 7) II-11; App. A
Transcripts (CJA 24) II-20; App. A

Freedom of Information Act (not applicable to CJA information)	V-1
Grand jury witness representation	II-5,16
Grant and Conditions	
Community defender organization	App. D
Gross Receipts Taxes (see Taxes)	
Guardian ad litem	III-13
Habeas corpus proceedings	
Death penalty	I-11-14; VI-1-12; App. I
Generally	I-2; II-2,10
Hourly rates	I-3; II-12,13
Annual increases	I-3; II-12,13
Death penalty cases and capital habeas corpus proceedings	I-13; VI-5-7; App. I
Information (procedures for release of)	V-1-4
Interim Payments:	
Generally	
To counsel	II-23; App. E
To experts	III-4; App. F
Capital Cases	
To counsel	II-23; VI-7; App. E
To experts	III-4; VI-11,12; App. F
Interlocutory appeals	II-10
International extradition	II-5,16
Investigative, expert and other services:	
Advance authorization to incur	I-7; III-2,3
Availability to persons with retained counsel	III-1
Availability to <i>pro se</i> litigants	III-1,2
Case budgeting and management in federal capital habeas corpus proceedings and federal death penalty cases	VI-7-9; App. I
Case budgeting in high cost non-capital representations	II-17
Claims for payment	III-3
Commercial computer-assisted legal research services	III-13

Investigative, expert and other services (continued):

Computer hardware and/or software	
Application to court to acquire with CJA funds	III-14
Consultation with Office of Defender Services	III-14
Model order authorizing acquisition of	App. C
Computer systems and automation litigation support	
personnel and experts	
Application to court to acquire with CJA funds	III-14
Consultation with Office of Defender Services	III-14
Consulting services in death penalty cases and	
capital habeas corpus proceedings	.VI-11
<i>Ex parte</i> application	I-7; III-3
Death penalty cases and capital habeas corpus proceedings	I-13; VI-9,10
Excess compensation claims	I-8; III-2
Death penalty cases and capital habeas corpus proceedings	I-13,14; VI-10,11
Expenses	III-2,12,14,15
Extraordinary office overhead	III-14
Forms for payment	III-3; App. A
Interim payments	III-4; App. F
Death penalty cases	III-4; VI-11,12; App. F
Investigators	III-5
Law students.	III-14
Legal assistants.	III-14,15
Limits on amount	I-8,13,14; III-2,3; VI-10,11
<i>Nunc pro tunc</i> authorization	I-8; III-3
Death penalty cases	VI-10
Paralegals.	III-14,15
Psychiatrists, psychologists	III-5-9
Request for services before case budget prepared or court-approved	.II-17
Transcripts	II-20; III-10,11

Investigators:

Expenses of	III-14,15
Policies regarding	III-5

Jurors, civil actions to protect

employment	II-4,5,15
------------	-----------

Juvenile delinquency cases	I-1; II-1
----------------------------	-----------

Law students	III-14,15
--------------	-----------

Legal aid agency, attorneys furnished by	I-2; II-3
--	-----------

Legal assistants	III-14,15
Limits on compensation (see Compensation limits)	
Magistrate judges (see United States magistrate judges)	
Malpractice or negligence claims:	
Federal defender employees furnishing representational services	I-10,11
CJA panel attorneys furnishing representational services	I-3,4
Material witness representation	I-1; II-2,15
Memorandum in support of claim	II-17
Mental condition proceedings:	
Appointment of counsel	I-1; II-2,10,15
Compensation limit for	
Counsel	II-15; App. H
Experts	III-2,3
Dual purpose examinations	III-6,7
Procedures for payment of experts	III-5,6
Psychiatrists, psychologists	III-5-9
Source of payment for experts	III-5-9
Types of examinations	III-5-9
Misdemeanor charge	I-1,2; II-1,2,14
Model CJA plan	II-1,4; App. G
Model order authorizing acquisition of computer hardware and/or software	App. C
Model Plan for the Composition, Administration and Management of the Panel of Private Attorneys Under the CJA	II-4; App. G
Multiple indictments	II-19
Narcotic Addict Rehabilitation Act (NARA)	II-2
New trial	II-10
Non-reimbursable expenses (see Expenses)	
Non-secretarial, professional support personnel.	III-15

Notarial services	III-12,14
<i>Nunc pro tunc</i> authorization of investigative, expert and other services	III-2,3
Death penalty cases and capital habeas corpus proceedings	VI-10
Office overhead	II-22; III-14
Out-of-district attorneys, admission to panel	II-3
Out-of-pocket expenses (see Expenses)	
Panel (see Criminal Justice Act panel)	
Paralegals	III-14,15
Parole proceedings	I-4; II-1,15
Partial eligibility	II-8; III-1
Payments by defendant (see Reimbursement from defendant)	
Personal nature items supplied to client	II-22
Petty offense cases	I-2; II-2,14
Plans (see District plans)	
Pretrial diversion	II-5,14
Printing of briefs	II-23
Prisoner civil rights cases	II-4
Prisoner transfer proceedings under 18 U.S.C. §§4107, 4108 and 4109	I-1,4; II-2,14; Section B
Privacy Act (not applicable to CJA information)	V-1
Private attorneys	I-2; II-3,4,21
Probation:	
Compensation limit	II-15
<i>Criminal Monetary Penalties: A Guide to the Probation Officer's Role,</i> Monograph 114, Chap. VI	II-1
Reimbursement as a condition of	II-18
Violation or revocation	I-1; II-1,10,15

Process, service of	II-23
<i>Pro hac vice</i> admission to panel	II-3
Proration of claims	II-19
<i>Pro se</i> litigants, services for	III-1,2
Psychiatrists and psychologists:	
Compensation limit	III-6
Dual purpose examinations	III-6,7
Procedures for payment	III-6
Source of payment	III-5-9
Types of examinations	III-5-9
Reduction of claims	II-18
Reimbursable expenses (see Expenses)	
Reimbursement from defendant:	
Condition of probation	II-18
During the proceedings (interim)	II-8
Duty to disclose client's assets	II-3
Family contribution	II-9
Final determination	II-8
Generally	I-8
Procedures	II-18
Reporters and reporting services	II-20; III-10,11
Representation under the Act (see Cases covered/not covered by the Act)	
Retained counsel, services for persons with	III-1
Rules 20, 21 and 40 (appointment of counsel when case is transferred)	II-10
Sales Taxes (see Taxes)	
Service of process	II-23
Services other than counsel (see Investigative, expert and other services)	
Sixth Amendment, appointments under	I-1; II-2

Standard forms	II-7; App. A
Standby counsel	II-11
Statutory requirement, appointment of counsel under	I-1; II-1,2
Stenographic services.....	III-14
Substitution of counsel	II-19
Suits alleging malpractice or negligence in furnishing representational services:	
Federal defender employees	I-10,11
CJA panel attorneys	I-3,4; II-21,22
Supervised release	I-1; II-1,15
Taxes	I-24; III-15
Termination of appointment	I-3; II-11
Time limit for submission of claims	II-12
Transcript costs:	
Accelerated	III-10,11
Apportionment of	III-10,11
Commercial duplication	III-11
Form to use	II-20
Limits on amount	III-10
Payment of	II-20; III-10
Standards for other than federal court proceedings	III-11
Transfer of case to another district	II-10
Travel expenses of counsel	II-21
Travel time of counsel	II-21
United States magistrate judges:	
Approval of compensation claims	I-7,8,13,14; II-18
Reimbursement of expenses in defending actions alleging CJA panel attorney malpractice	I-4
Vouchers (see Compensation claims)	

Waiver of counsel II-11

Witnesses:

- Before a grand jury, court, Congress, or
federal agency or commission II-5,16
- Fees and expenses II-20; III-12
- Material witness in custody I-1; II-2,15
- Travel funds III-12

Writ of certiorari II-23

Writs, extraordinary II-10