

**ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS**

WASHINGTON, D. C. 20544

Date: 9/17/13

GUIDE TO JUDICIARY POLICY

TRANSMITTAL 07-007 VOLUME/PART 7A CHAPTER(S) 3

TO: All United States Judges
Circuit Executives
Federal Public/Community Defenders
District Court Executives
Clerks, United States Courts of Appeals
Clerks, United States District Courts
Senior Staff Attorneys
CJA Panel Attorney District Representatives
Circuit Librarians

FROM: Judge John D. Bates 

RE: DEFENDER SERVICES

This transmittal provides notice of changes to the *Guide to Judiciary Policy*, Vol. 7 (Defender Services), Pt. A (Guidelines for Administering the CJA and Related Statutes):

[Chapter 3 – Authorization and Payment for Investigative, Expert, or Other Services](#)

Section 320.40.20(d) was revised to reflect that it is the Department of Justice's responsibility to pay the costs of travel and subsistence expenses for the defendant and the defendant's attorney to attend a deposition. The Department approved this policy change in accordance with the 2002 amendment of Fed. R. Crim. P. 15. The significant changes are detailed in the Redline Comparison below.

Questions regarding this transmittal may be directed to the AO Office of Defender Services, Legal and Policy Branch Duty Day Attorney, at 202-502-3030.

REDLINE COMPARISON REFLECTING CHANGES

§ 320 Authorization of Investigative, Expert, and Other Services

[. . .]

§ 320.40 Fact Witnesses and Depositions

[. . .]

§ 320.40.20 Depositions

Depositions are covered by [Fed. R. Crim. P., Rule 15](#), rather than 18 U.S.C. § 3503 (repealed).

- (a) Expenses incurred in the taking of fact witness depositions (notarial fees, interpreters, transcripts, etc.) are paid by the DOJ, regardless of which party requested the deposition.
- (b) The costs of attendance of fact witnesses for either party at the deposition are paid by the DOJ under Rule 17 (b).
- (c) The costs of attendance of expert witnesses for the defense at the deposition are paid under the CJA.
- (d) Reasonable travel and subsistence eExpenses incident to attendance of counsel and the defendant at the deposition are paid by the DOJ (1) if the government is the requesting party; CJA if the depositions are at the instance of the defense, or (2) if the defendant is the requesting party and is unable to bear the deposition expenses, based on resources that would be used to determine financial eligibility for appointed counsel. However, it should be noted that the presence of the defendant is not essential to defense depositions since the confrontation clause only requires the defendant's presence if the depositions are intended to be used against the defendant.

[. . .]