

Guide to Judiciary Policy

Vol 7: Defender Services

Pt A: Guidelines for Administering the CJA and Related Statutes

Appx 2C: Procedures for Interim Payments to Counsel In Non-Death Penalty Cases

1. The district court issues a Memorandum Order to counsel, outlining payment procedures and specifically addressing payment for actual expenses, travel, and compensation of counsel. **See:** Sample Memorandum Order, below.
2. If excess compensation is anticipated, written approval of the procedure must be obtained from the chief judge of the circuit or his or her delegate prior to issuance of the order.
3. Once it is issued, a copy of the Memorandum Order should be furnished to the CJA claims coordinator.
4. [Form CJA 20](#) should be submitted with full documentation of all expenses claimed on the voucher.
5. Assign a number to each voucher processed for payment.
6. Item 19 of [Form CJA 20](#) must be completed to indicate the time period covered by the voucher and whether it is for the final payment or for an interim payment.
7. If the court has selected OPTION A of the Sample Memorandum Order, the final voucher should:
 - (a) set forth in detail the time and expenses claimed for the entire case;
 - (b) reflect all compensation and reimbursement previously received;
 - (c) show the net amount remaining to be paid; and
 - (d) be approved by the chief judge of the circuit or his or her delegate if the total claim for the case is in excess of the statutory limits.

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8. If the court has selected OPTION B of the Sample Memorandum Order and established intervals for the submission of cumulative vouchers for the balance of amounts withheld from the interim vouchers, each cumulative voucher should:

- (a) be labeled "Cumulative Voucher";
- (b) set forth in detail the time and expenses claimed for the pre-established time interval;
- (c) reflect all compensation and reimbursement previously received during the pre-established time interval;
- (d) show the net amount remaining to be paid; and
- (e) be approved by the chief judge of the circuit or his or her delegate.

**Sample Memorandum Order
(To Be Used in Non-Death Penalty Cases)**

Memorandum to All Counsel Appointed Under the Criminal Justice Act (CJA) 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, under the *Guide to Judiciary Policy* (Guide), Volume 7, Part A, § 230.73.10, the following procedures for interim payments will apply during the course of your representation in this case:

1. Submission of Vouchers

Counsel should submit to the court clerk, twice each month, an interim [Form CJA 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 should 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 should 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 should reflect all compensation claimed and reimbursable expenses incurred from the date of appointment to _____, and should be submitted no later than _____; thereafter, the vouchers should be submitted twice each month according to the schedule outlined above. Counsel should complete Item 19 on the form for each interim voucher. Each interim voucher should be assigned a number when processed for payment. Interim vouchers should be submitted in accordance with this schedule even though little or no compensation or expenses are claimed for the respective period. All interim vouchers should be supported by detailed and itemized time and expense statements. Guide, Volume 7A, § 230 outlines the procedures and rules for claims by CJA attorneys and should be followed on 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 should 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 should set forth in detail the time and expenses claimed for the entire case, including all appropriate documentation. Counsel should 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 should 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 should be labeled as such and should 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 should 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.

2. Reimbursable Expenses

Counsel may be reimbursed for out-of-pocket expenses reasonably incurred incident to the representation. While the statute and applicable rules and regulations do not place a monetary limit on the amount of expenses that can be incurred, counsel should incur no single expense item in excess of \$ _____ without prior approval of the court. Such approval may be sought by filing an *ex parte* application with the clerk stating the nature of the expense, the estimated dollar cost and the reason the expense is necessary to the representation. An application seeking such approval may be filed *in camera*, if necessary. Upon finding that the expense is reasonable, I will authorize

counsel to incur it. Recurring expenses, such as telephone toll calls, photocopying and photographs, which aggregate more than \$ _____ on one or more interim vouchers are not considered single expenses requiring court approval.

With respect to travel outside of the city/county of _____ for the purpose of consulting with the client or the client's former counsel, interviewing witnesses, etc., the \$ _____ rule should be applied in the following manner. Travel expenses, such as air fare, mileage, parking fees, meals and lodging, can be claimed as itemized expenses. Therefore, if the reimbursement for expenses relating to a single trip will aggregate an amount in excess of \$ _____, the travel should receive prior approval of the court.

The following additional guidelines may be helpful to counsel:

- (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. Counsel and persons providing services under the CJA are encouraged to contact the clerk for air travel authorization 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, 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 Guidance

Answers to questions concerning appointment under the Criminal Justice Act can generally be found in (1) [18 U.S.C. § 3006A](#); (2) the Plan of the United States District Court for _____, available through the clerk, and (3) the Guide, Vol 7A (Guidelines for Administering the CJA and Related Statutes), published by the

Administrative Office of the U.S. Courts and also available through the clerk. Should these references fail to provide the desired clarification or direction, counsel should address their inquiries directly to me or my staff.

United States District Judge

Date

Approved:

Chief Judge of the United
States Court of Appeals for the
_____ Circuit

Date