

Guide to Judiciary Policy

Vol. 7: Defender Services

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§ 310 In General

§ 310.10 Availability

§ 310.10.10 Overview

- (a) Investigative, expert, or other services necessary to adequate representation, as authorized by subsection (e) of the Criminal Justice Act (CJA) ([18 U.S.C. § 3006A](#)), are available to persons who are eligible under the CJA, including persons who have retained counsel but who are found by the court to be financially unable to obtain the necessary services.
- (b) In this connection, a person with retained counsel is financially unable to obtain the necessary services if the person's resources are in excess of the amount needed to provide the person and the person's dependents with the necessities of life, provide defendant's release on bond, and pay a reasonable fee to the person's retained counsel, but are insufficient to pay for the necessary services.

§ 310.10.20 Retained Counsel and Fee Arrangements

- (a) In responding to requests for services under [18 U.S.C. § 3006A\(e\)](#) by a person represented by retained counsel, the court should inquire into the fee arrangement between the retained attorney and the client.
- (b) If the court finds the fee arrangement unreasonable in relation to fees customarily paid to qualified practitioners in the community for services in criminal matters of similar duration and complexity, or that it was made with a gross disregard of the defendant's trial expenses, the court may order the retained attorney to pay out of such fees all or such part of the costs and expenses as the court may direct.
- (c) The procedure outlined in the [Guide, Vol. 7A, § 210.40.40](#) applies to such persons who are financially able to pay some, but unable to pay all, the costs of necessary services.

§ 310.10.30 Pro Se Representation

- (a) Persons who are eligible for representation under the CJA, but who have elected to proceed pro se, may, upon request, be authorized to obtain investigative, expert, and other services in accordance with [18 U.S.C. § 3006A\(e\)](#).
- (b) The court should authorize subsection (e) services for pro se litigants and review and approve resulting claims in the same manner as is its practice with respect to requests made by CJA panel attorneys. However, in

matters for which appointment of counsel is discretionary under [18 U.S.C. § 3006A\(a\)\(2\)](#), the court should make a threshold determination that the case is one in which the interests of justice would have required the furnishing of representation.

- (c) Although a federal defender organization may be requested to provide administrative assistance to pro se litigants who wish to arrange for subsection (e) services, the investigative, paralegal or other services or resources of the organization should ordinarily be employed only when the organization is appointed as counsel of record, responsible for the conduct of the litigation.

§ 310.20 Limitations

§ 310.20.05 Engaging Relatives for Compensable Services

- (a) Prior to engaging any relative (as the term is defined in [5 U.S.C. § 3110](#)) to perform CJA compensable services, other than as associate counsel in the same law firm (**see:** [Guide, Vol. 7A, § 230.53.10](#)), counsel should first provide notification of the relationship and potential services to the presiding judicial authority.
- (b) The court may, in the interest of justice, and upon finding that timely procurement of necessary services could not await prior notification, approve payment for such services up to the dollar threshold for obtaining services without prior authorization under [18 U.S.C. § 3006A\(e\)\(2\)](#) and the [CJA Guidelines \(Guide, Vol. 7A, § 310.20.30\)](#).

§ 310.20.10 With Prior Authorization

- (a) With prior authorization, compensation for investigative, expert, and other services is limited to the amounts in the following table for CJA-compensable work performed on or after the effective date. For guidelines applicable to capital cases, **see:** [Guide, Vol. 7A, § 660.10.40](#) and [§ 660.20](#).

§ 310.20.10(a) Waivable Case Compensation Maximums for Investigative, Expert, and Other Services		
If services were performed between...	The compensation maximum is ...	Authority
01/01/16 to present	\$2,500	Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, enacted on Dec. 18, 2015.

§ 310.20.10(a) Waivable Case Compensation Maximums for Investigative, Expert, and Other Services		
If services were performed between...	The compensation maximum is ...	Authority
05/27/10 to 12/31/15	\$2,400	Federal Judiciary Administrative Improvements Act of 2010, Pub. L. No. 111-174, enacted on May 27, 2010.
12/8/04 to 5/26/10	\$1,600	Omnibus Appropriations Act, Fiscal Year 2005, Pub. L. No. 108-447, H.R. 4818, enacted December 8, 2004.
11/14/86 to 12/7/04	\$1,000	Pub. L. No. 99-651, 1986 HR 3004, enacted November 14, 1986.

- (b) The waivable case compensation maximum amounts apply per organization or individual, exclusive of reimbursement for expenses reasonably incurred, and per individual authorization to perform said service, except with regard to capital cases. **See:** [Guide, Vol. 7A, § 660.20](#).
- (c) A separate authorization should be obtained for each type of service for each person served, and for each defendant served, and for each case.
- (d) While the service provider may be compensated separately for each person served, care should be taken to ensure that duplicate charges are not being made for the same services.
- (e) If, under [18 U.S.C. § 3006A\(e\)](#), such services are rendered by members of an organization such as a corporation, unincorporated association, or partnership (other than those created under [18 U.S.C. § 3006A\(g\)](#)), in their capacities as members of that organization, compensation is deemed to have been earned by the organization and is paid to it only once, per CJA client served, in an amount not to exceed the statutory maximum, exclusive of reimbursement for expenses reasonably incurred.

§ 310.20.20 Waiving the Case Compensation Maximums

- (a) Payment in excess of the case compensation limit for services authorized prior to the performance thereof may be made when certified by the court or U.S. magistrate judge and approved by the chief judge of the circuit (or an active or senior circuit judge to whom excess compensation approval authority has been delegated) as being necessary to provide fair compensation for services of an unusual character or duration.

- (b) If it can be anticipated that the compensation will exceed the statutory maximum, advance approval should be obtained from the court and the chief judge of the circuit (or the active or senior circuit judge to whom excess compensation approval authority has been delegated). **See:** [Appx. 3A \(Sample Request for Advance Authorization for Investigative, Expert, or Other Services\)](#).

§ 310.20.30 Without Prior Authorization

- (a) [18 U.S.C. § 3006A\(e\)\(2\)\(A\)](#) authorizes the obtaining of investigative, expert, and other services, without prior authorization but subject to subsequent review, providing the cost of the services obtained does not exceed the amounts listed in the following table, plus expenses reasonably incurred. For information regarding obtaining investigative, expert, and other services in capital cases, **see:** [Guide, Vol. 7A, § 660](#).

§ 310.20.30(a) Limitations on Services Without Prior Authorization		
If services were performed between...	The compensation maximum is ...	Authority
05/27/10 to present	\$800	Federal Judiciary Administrative Improvements Act of 2010, Pub. L. No. 111-174, enacted on May 27, 2010.
12/8/04 to 5/26/10	\$500	Omnibus Appropriations Act, Fiscal Year 2005, Pub. L. No. 108-447, H.R. 4818, enacted December 8, 2004.
11/14/86 to 12/7/04	\$300	Pub. L. No. 99-651, 186 H.R. 3004, enacted November 14, 1986.

- (b) The limitation noted above in § 310.20.30(a) may be waived, however, if the presiding judge or U.S. magistrate judge (if the services were rendered in a case disposed of entirely before the U.S. magistrate judge), in the interest of justice, finds that timely procurement of necessary services could not await prior authorization. **See:** [18 U.S.C. § 3006A\(e\)\(2\)\(B\)](#).

§ 310.20.40 Periodic Increases to the Waivable Case Compensation Maximums

The Federal Judiciary Administrative Improvements Act of 2010, Pub. L. No. 111-174, enacted on May 27, 2010, amended the CJA to increase the waivable case compensation amounts listed in [§ 310.20.10](#) and [§ 310.20.30](#) simultaneously with any subsequent, cumulative adjustments under [5 U.S.C. § 5303](#) in the rates of pay under the General Schedule (currently calculated based on the determination of the annual Employment Cost Index adjustment), rounded to the nearest hundred dollars. The

Administrative Office will provide notice when new threshold amounts are effective under this provision.

§ 310.30 *Ex Parte* Applications

Ex parte applications for services other than counsel under [18 U.S.C. § 3006A\(e\)](#) must be heard *in camera*, and must not be revealed without the consent of the defendant. The application must be placed under seal until the final disposition of the case in the trial court, subject to further order of the court. Maintaining the secrecy of the application prevents the possibility that an open hearing may cause defendants to reveal their defense. Appointed counsel may not be required to submit evidence of a prior attempt to enter into a stipulation with the U.S. attorney as a prerequisite to obtaining services under 18 U.S.C. § 3006A(e). The court may encourage counsel to enter into stipulations, in the interest of expedition and economy, without, however, disclosing the contents or otherwise compromising the secret nature of the *ex parte* application.

§ 310.40 Claims for Services Other than Counsel

All claims for services other than counsel, under [18 U.S.C. § 3006A\(e\)](#), should include the following:

- (a) a statement as to the type of, dates of, and time expended for, the services provided;
- (b) an explanation of the fee arrangement (e.g., hourly rate, *per diem* rate, etc.);
- (c) an itemized statement of all expenses for which reimbursement is claimed; and
- (d) supporting documentation, where practicable, for all expenses of lodgings and subsistence, and for any expenses in excess of \$50.

§ 310.50 Forms for the Authorization and Payment for Services Other than Counsel

Forms for the authorization and payment for services other than counsel, together with instructions for the execution and distribution thereof, can be found on the [judiciary's public website](#).

§ 310.60 Interim Payments

§ 310.60.10 Non-Death Penalty Cases

- (a) Where it is considered necessary and appropriate in a specific case, the presiding trial judge may arrange for periodic or interim payments to an

individual whose services are obtained under [18 U.S.C. § 3006A\(e\)](#). For instructions on the procedures for effecting interim payments to persons other than counsel, as well as a sample memorandum order on this subject which provides for two alternative payment methods, **see:** [Appx. 3B \(Procedures for Interim Payments to Service Providers in Non-Death Penalty Cases\)](#).

- (b) The payment options provided in Appx. 3B are designed to strike a balance between the interest in relieving [subsection \(e\)](#) service providers 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 Administrative Office of the U.S. Courts' (AO) Defender Services Office.

§ 310.60.20 Death Penalty Cases

Presiding judicial officers are urged to permit interim payment in death penalty cases. Because the CJA compensation maximums for investigative, expert, and other services set out in [§ 310.20.10\(a\)](#) do not apply in capital cases, different procedures and memorandum orders must be used in those cases. **See:** [Guide, Vol. 7A, § 660.20](#). These procedures and sample memorandum orders are also set forth in [Appx. 3C \(Procedures for Interim Payments to Service Providers in Capital Proceedings\)](#).

§ 310.65 Proration of Claims

§ 310.65.10 In General

- (a) If services were provided for more than one CJA representation, the time spent in common, including travel time, must be represented on the voucher forms by:
- prorating the service time among the representations on separate vouchers; or
 - billing the entire service time on a voucher pertaining to one of the representations

The supporting materials to the vouchers must explain the method of billing and, when applicable, cross-reference the other CJA representations (**see:** [§ 310.65.20](#)).

- (b) When a service provider incurs travel or other expenses applicable to more than one CJA representation, the entire amount of the expenses must be billed on one voucher.

Time or expenses “spent in common” includes work performed simultaneously or within the same unit of time, or expenses incurred, for more than one representation (e.g., travel for more than one client). Double billing of time or expenses is prohibited (e.g., billing the same travel time or expenses applicable to more than one representation on more than one voucher).

- (c) A “CJA representation” is one in which the attorney is:
- a federal public or community defender providing representation under the CJA or related statutes, or
 - a CJA panel attorney or other attorney or entity authorized to obtain services for a particular representation under the CJA or related statutes.

Reference to a “voucher” in this section includes invoices submitted to a federal public or community defender organization for work performed for that entity.

For information regarding the overlap of billing time periods in the interpreter context specifically, **see:** [§ 320.15.30](#).

§ 310.65.20 Cross-Referencing Vouchers

- (a) Whenever a service provider submits a voucher, as provided by this section, that includes time spent in common, if the time is prorated then each CJA representation must be cross-referenced on the supporting documentation to each voucher. If the time is billed to one representation, the other representations must be cross-referenced on the supporting documentation to that voucher. However, to ensure that an appointed attorney does not receive inappropriate information as to another attorney’s use of the service provider, the CJA representations that are cross-referenced should not be identified by name and case number if the work was performed for an attorney other than the one who will be certifying the voucher, although the number of other representations should be listed.
- (b) After the attorney certifies the service provider’s voucher, the service provider, upon the request of the court’s designated CJA voucher review personnel, must provide the name, case number, and any other identifying information for such representations.

§ 310.65.30 Prorating Time Limitation

Proration of time among CJA representations must not result in a service provider billing a larger amount than would have been billed if all the time was assigned to one voucher.

§ 310.65.40 Application of the Case Compensation Maximum

Where compensation is claimed on a voucher for time spent in common on more than one CJA representation, the compensation will be applied to the pre-authorized and case compensation maximum amounts for the representation on that voucher.

§ 310.65.50 Time Spent in Common with Non-CJA Representations

- (a) If the service provider is billing under the CJA for time or expenses, including travel, that were spent in common for a purpose other than a CJA representation, the service provider must report such information so that the court can determine whether, in fairness to the provider, the time or expenses should be apportioned and the provider compensated for the time or expenses reasonably attributable to the CJA.

Note: There is no apportionment between a contract court interpreter's work for a court unit and the CJA, **see:** [§ 320.15.30](#).

- (b) The service provider should explain the rationale for billing under the CJA, and the court may conduct a further inquiry.
- (c) In determining whether time or expenses spent in common for a purpose other than a CJA representation should be apportioned, the court should consider:
- the time or expenses reasonably expended in the performance of the service provider's duties under the CJA in relation to the time and expenses expended furthering other purposes;
 - the significance to the representation of the duties performed or expenses incurred; and
 - the likelihood that the service provider would have performed the services or incurred the expenses under the CJA in the absence of the other purposes.

§ 310.70 Review of Vouchers

Absent extraordinary circumstances, judges should act upon claims for compensation for investigative, expert, or other services within 30 days of submission.

§ 320 Authorization of Investigative, Expert, and Other Services

§ 320.10 Investigators

When necessary to an adequate representation as described above, the court may authorize, under [18 U.S.C. § 3006A\(e\)](#), the services of an investigator.

§ 320.15 Interpreters

§ 320.15.10 Terms of Compensation

- (a) Interpreting services provided under the CJA may be compensated:
 - according to the terms and conditions set forth in the court interpreter services contract;
 - on an hourly rate basis; or
 - on another appropriate basis.
- (b) Interpreters should be compensated consistently throughout the district or, if applicable, in individual court locations.

§ 320.15.20 Reviewing the Rate of Compensation

- (a) In determining the reasonableness of rates paid to interpreters under the CJA, courts should utilize either:
 - (1) the half- and full-day rates established by the Director for contract court interpreters performing in-court services; or
 - (2) an hourly rate. The half- and full-day rates (prorated hourly) or the hourly overtime rate should be used as a guidepost for the reasonableness of the hourly rate.
- (b) Justification should be submitted to the presiding judicial officer if compensation is sought for an interpreter by a method different from or in an amount in excess of presumptive or maximum rates adopted by a court.
- (c) Appointed counsel may negotiate rates with the interpreter consistent with the guidance contained in this section.

§ 320.15.30 Overlap of Billing Time Periods

- (a) Contract court interpreters must not bill or receive funds from any other federal court unit, federal public defender, community defender organization, or other attorneys or entities obtaining interpreting services under the CJA or related statutes for any services rendered during the same half- or full-day for which the contract court interpreter is being compensated pursuant to the court interpreter services contract. **See:** [Guide, Vol. 5, § 220.30.20](#). Thus, an interpreter retained by the court under the court contract for a one-half or full-day period may not bill the CJA for any work performed during that same half-day or full-day period even if the court no longer requires the interpreter's services.

- (b) An interpreter billing on a half- or full-day rate basis, hourly basis, or other unit of time under the CJA must not charge any other federal court unit, federal public defender, community defender, CJA panel attorney, or other person or entity otherwise authorized by the court to obtain the services of an interpreter under the CJA or related statutes for any services rendered within the same time period.
- (c) When an interpreter is invoicing under the CJA on a half-day rate basis and works one half-day for a court unit and another half-day for a CJA representation, or is invoicing two separate half-days for different CJA representations, then the first half-day should be billed at the half-day rate and the second at the difference between the half-day and full-day rates, unless otherwise negotiated.
- (d) It is permissible to prorate compensation among more than one CJA representation (but expenses must be invoiced to one CJA representation) or to apportion compensation, including expenses, between a CJA representation and a non-CJA purpose (not including a federal court unit).
See: [§ 310.65](#).

§ 320.20 Psychiatrists, Psychologists

§ 320.20.10 Type of Examinations

[Chapter 313 of Title 18](#), as amended by the Insanity Defense Reform Act of 1984 (Chapter IV of the Comprehensive Crime Control Act of 1984), provides for **court-directed** psychiatric or psychological examination of individuals in connection with the various proceedings to determine mental condition authorized under that chapter. The functions of these separate proceedings are to determine:

- (a) the mental competency of a defendant to stand trial ([18 U.S.C. § 4241](#));
- (b) insanity at the time of the offense ([18 U.S.C. § 4242](#));
- (c) the mental condition of an acquitted person hospitalized following a finding of not guilty only by reason of insanity ([18 U.S.C. § 4243](#));
- (d) the present mental condition of a convicted defendant ([18 U.S.C. § 4244](#));
- (e) the present mental condition of an imprisoned person who objects to transfer to a treatment facility ([18 U.S.C. § 4245](#)); and
- (f) the present mental condition of a hospitalized person due for release ([18 U.S.C. § 4246](#)).

In addition, mental condition examinations may be conducted for purposes other than those specified in [18 U.S.C. chapter 313](#), e.g., to aid the defendant in preparing a defense.

§ 320.20.20 Source of Payment

- (a) CJA funds are used to pay for psychiatric and related services obtained in accordance with [18 U.S.C. § 3006A\(e\)](#) upon a determination that the services are “necessary for an adequate defense.” These are “defense” services, where the defendant selects the expert and controls the disclosure of the expert’s report.
- (b) It is important to note that psychiatrists and related experts may be used in many circumstances in which payment is made from a source **other** than the CJA appropriation. In these situations the court or the government selects the expert and persons other than the defendant also have access to the expert’s report. The Department of Justice (DOJ) generally pays for these “non-defense” services. The chart in [§ 320.20.60](#) summarizes payment responsibility for the various circumstances in which psychiatric and related services are utilized.

§ 320.20.30 Limitation of Amount

The limitations contained in [§ 310.20](#) apply to compensation claims submitted by “defense” psychiatrists and related experts, to be paid out of the CJA appropriation. For information regarding “dual purpose” examinations, **see:** [§ 320.20.50](#).

§ 320.20.40 Procedures for Payment

- (a) CJA Appropriation – Defense Services
 - (1) [Form CJA 21 \(Authorization and Voucher for Expert and Other Services\)](#) should be used for all payments for “defense” services in non-capital cases.
 - (2) [Form CJA 31 \(Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher for Expert and Other Services\)](#) should be used for all payments for “defense” services in death penalty cases.
 - (3) The form CJA 21 or CJA 31 should clearly describe the purpose of the expert’s service.
 - (4) If separate vouchers are submitted for examination and testimony, they should be cross-referenced by voucher number.

(b) DOJ

Compensation claims for psychiatric and related services to be paid for by the DOJ should be referred to the U.S. attorney or assistant U.S. attorney.

§ 320.20.50 Dual Purpose Examinations

- (a) On occasion, a psychiatrist or related expert will be asked to examine an individual for both a “defense” purpose and a “non-defense” purpose. In these cases, the defense has waived the confidentiality of the “defense” portion of the examination. In such dual purpose examinations, for the convenience of the expert providing the service, the entire compensation claim may be submitted on [Form CJA 21](#), or, in a death penalty proceeding, [Form CJA 31](#). The CJA will pay the expert the total amount approved and obtain reimbursement to the CJA appropriation from the DOJ for one-half of the cost. As a result of the AO’s need to seek reimbursement from the DOJ, claims submitted for dual purpose examinations must be accompanied by separate court orders that indicate:
- who requested the examination;
 - the specific purpose(s) of the examination;
 - to whom the examination is directed; and
 - to whom copies of the report are to be given.
- (b) The limitation in [§ 320.20.30](#) applies to 50 percent of the claim for a dual purpose examination in which a portion of the examination is for “defense” purposes.
- (c) In some “dual purpose” examinations both portions of the examination are chargeable to the same payment source. For instance, if the examination included evaluation of competency to stand trial under [18 U.S.C. § 4241](#) and evaluation of sanity at the time of the offense under [18 U.S.C. § 4242](#), the DOJ would be responsible for both portions of the examination and the entire compensation claim should be submitted to the U.S. attorney or assistant U.S. attorney.

§ 320.20.60 Summary Chart: Responsibility for Payment of Psychiatric and Related Expert Services		
Type of Service	CJA	DOJ
(a) To determine mental competency to stand trial, under 18 U.S.C. § 4241		

§ 320.20.60 Summary Chart: Responsibility for Payment of Psychiatric and Related Expert Services		
Type of Service	CJA	DOJ
(1) Examination costs		Yes, regardless of which party requests, including examination on court's own motion
(2) Testimony costs for examiner if called at hearing		Yes, regardless of which party calls
(3) Testimony costs for examiner if called at trial	If witness appears on behalf of defense	If witness appears on behalf of government
(b) To determine existence of insanity at time of offense, under 18 U.S.C. § 4242		
(1) Examination costs		Yes
(2) Testimony costs for examiner if called at trial		Yes, regardless of which party calls
(c) To determine existence of insanity at time of offense, under CJA subsection (e)		
(1) Examination costs	Yes	
(2) Testimony costs for examiner if called at trial	Yes	
(d) To determine mental condition of hospitalized person found not guilty only by reason of insanity, under 18 U.S.C. § 4243		
(1) Examination costs		Yes
(2) Testimony costs for examiner if called at hearing		Yes, regardless of which party calls
(e) To determine mental condition of convicted person suffering from mental disease or defect, under 18 U.S.C. § 4244		
(1) Examination costs		Yes
(2) Testimony costs for examiner if called at hearing		Yes, regardless of which party calls
(f) To determine mental condition of imprisoned person, under 18 U.S.C. § 4245		

<p align="center">§ 320.20.60 Summary Chart: Responsibility for Payment of Psychiatric and Related Expert Services</p>		
Type of Service	CJA	DOJ
(1) Examination costs		Yes, including costs of additional examiner selected by imprisoned person in accordance with 18 U.S.C. § 4247(b)
(2) Testimony costs for examiner if called at hearing		Yes, regardless of which party calls, including additional examiner selected by imprisoned person in accordance with 18 U.S.C. § 4247(b)
(g) To determine mental condition of hospitalized person due for release, under 18 U.S.C. § 4246		
(1) Examination costs		Yes, including costs of additional examiner selected by hospitalized person in accordance with 18 U.S.C. § 4247(b)
(2) Testimony costs for examiner if called at hearing		Yes, regardless of which party calls, including additional examiner selected by hospitalized person in accordance with 18 U.S.C. § 4247(b)
(h) Examination of a person in custody as a material witness		Yes, under all circumstances
(i) Examination and testimony costs for expert witnesses not appointed under 18 U.S.C. §§ 4241, 4242, 4243, 4244, 4245, 4246	If requested by the defense	If requested by the government, or if appointed as an independent expert on court's own motion under Fed. R. Evid. 706

§ 320.30 Transcripts

§ 320.30.10 Authorization and Payment

- (a) For panel attorneys, the preferred method for payment of transcripts authorized by the court is for the court reporter or reporting service to claim compensation directly on a [Form CJA 24 \(Authorization and](#)

[Voucher for Payment of Transcript](#)). Alternatively, the panel attorney may pay for the court-authorized transcript and obtain reimbursement as an “out-of-pocket expense,” using Form CJA 24. **See:** [Guide, Vol. 7A, § 230.63.20](#). Regardless of which method is used, the limitations set forth in [§ 310.20](#) and the \$7,500 limitation set forth in [Guide, Vol. 7A, Ch. 6](#) are inapplicable with regard to the cost of transcripts.

- (b) In a direct appeal in a case in which counsel is assigned under the CJA, neither the CJA nor [28 U.S.C. § 753\(f\)](#) requires the signing of a pauper’s oath or certification by the court that the appeal is not frivolous in order to obtain a transcript.
- (c) For procedures regarding federal defender organization transcript payments, **see:** [Guide, Vol. 7A, § 430.10](#).

§ 320.30.20 Accelerated Transcript Costs

Routine apportionment of **accelerated** transcript costs among parties in CJA cases is prohibited. The following resolution was adopted by the Judicial Conference in March 1980, and modified in September 1986:

That the furnishing of accelerated transcript services in criminal proceedings should be discouraged; however, recognizing that there are some circumstances in which such transcript services are necessary and required by either the prosecution or the defense, or both, accelerated transcript services may be provided.

That in those cases where accelerated transcript services are provided, the party from whom the request or order emanates shall pay for the original, and if the requesting or ordering party is other than defense counsel appointed under the Criminal Justice Act, the CJA counsel shall be entitled to a copy at the copy rate.

That the present practice, in some districts, of routinely apportioning the total cost of accelerated transcript services equally among the parties should be abandoned.

See: [JCUS-SEP 86](#), p. 90.

§ 320.30.30 Commercial Duplication in Multi-Defendant Cases

- (a) In multi-defendant cases involving CJA defendants, no more than one transcript should be purchased from the court reporter on behalf of CJA defendants. One of the appointed counsel or the clerk of court should arrange for the duplication, at commercially competitive rates, of enough copies of the transcript for each of the CJA defendants for whom a transcript has been approved. The cost of such duplication will be

charged to the CJA appropriation. This policy would not preclude the furnishing of duplication services by the court reporter at the commercially competitive rate.

- (b) In individual cases involving requests for **accelerated** transcripts, the court may grant an exception to the policy set forth in (a) of this subsection based upon a finding that application of the policy will unreasonably impede the delivery of accelerated transcripts to persons proceeding under the CJA. Such finding should be reflected on the transcript voucher.

§ 320.30.40 Standards for Transcripts of Other than Federal Court Proceedings

In negotiating agreements and contracts for providing transcripts of other than federal court proceedings, including, for example, transcription or translation of wiretap recordings, it is recommended that the standards for the size and format of a page be the same as those used for transcripts of federal court proceedings.

§ 320.40 Fact Witnesses and Depositions

§ 320.40.10 Fees and Expenses of Fact Witnesses

- (a) Generally speaking, fees and expenses of fact witnesses for defendants proceeding under the CJA are paid by the DOJ. **See:** [Fed. R. Crim. P., Rule 17\(b\)](#); [28 U.S.C. § 1825](#).
- (b) Section 1825 of 28 U.S.C. specifically provides for the payment of witness fees by the DOJ in all federal criminal proceedings, and in proceedings for a writ of habeas corpus or in proceedings under section 2255 of that title upon certification of a federal public defender or assistant federal public defender, or clerk of court upon the affidavit of other counsel appointed under the CJA.
- (c) If advance witness travel funds are required, the court should issue the subpoena order, so stating, to authorize the travel advance by the marshal. These expenses will not be paid from CJA funds.

§ 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 expenses incident to attendance of counsel and the defendant at the deposition are paid by the DOJ (1) if the government is the requesting party, 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.

§ 320.40.30 Travel Expenses, Subsistence, and Fees of Counsel in Habeas Corpus Cases

In habeas corpus and [28 U.S.C. § 2255](#) cases, the court may order the state or the government to pay the “expenses of travel and subsistence and fees of counsel” to attend the taking of a deposition at the request of the state or government. **See:** [Rules Governing §§ 2254 and 2255 Cases in U.S. District Courts, Rule 6](#).

§ 320.50 Guardian Ad Litem

§ 320.50.10 Proceedings Involving Juveniles

A guardian ad litem appointed under [18 U.S.C. § 5034](#) is not eligible for compensation under the CJA or any other authority. Any person who is appointed as both counsel and guardian ad litem in one case under § 5034 should prorate time spent fulfilling the duties of these two offices. Only time spent as counsel on a case is compensable and should be reflected on the CJA claim.

§ 320.50.20 Prisoner Transfer Proceedings

A guardian ad litem appointed in proceedings to verify consent of a minor or incompetent prisoner to transfer from the United States to a foreign country is eligible for compensation under the CJA under [18 U.S.C. § 4109\(b\)](#). **See:** [Guide, Vol. 7A, § 230.23.20\(d\)](#) on compensation limits and [Guide, Vol. 7B \(International Prisoner Transfer Proceedings\)](#).

§ 320.60 Commercial Computer-Assisted Legal Research Services

- (a) The court may authorize counsel to obtain computer-assisted legal research services, where the research is performed by employees of a commercial legal research firm or organization rather than by appointed counsel, provided that the total amount charged for computer-assisted

legal research services is reasonable. Requests by counsel for authority to obtain such computer-assisted legal research services should include: a brief explanation of the need for the research services; and an estimate of the charges.

- (b) Claims for compensation for such services should be submitted on [Form CJA 21 \(Authorization and Voucher for Expert and Other Services\)](#), or, in a death penalty proceeding, [Form CJA 31 \(Death Penalty Proceeding: Ex Parte Request for Authorization and Voucher for Expert and Other Services\)](#). For information concerning reimbursement for the cost of direct use, by appointed counsel, of computer-assisted legal research services, see: [Guide, Vol. 7A, § 230.63.30](#).

§ 320.70 Other Services and Computer Hardware and Software

§ 320.70.10 Other Services

In addition to investigators, psychiatrists, psychologists, and reporters, services other than counsel may include, but are not necessarily limited to:

- interpreters;
- computer systems and automation litigation support personnel and experts;
- paralegals and legal assistants, including law students;
- neurologists and other medical experts; and
- laboratory experts in such areas as ballistics, fingerprinting, and handwriting.

§ 320.70.20 Notarial and Stenographic Expenses

The use of CJA funds is authorized to pay expenses of eligible defendants for stenographic and notarial expenses required to perpetuate and authenticate testimony of expert witnesses for such defendants.

§ 320.70.30 Extraordinary Office Expenses

- (a) CJA attorneys are expected to use their own office resources, including secretarial help, for work on CJA cases. See: [Guide, Vol. 7A, § 230.66.10](#).
- (b) However, unusual or extraordinary expenses of these types may be considered “other services necessary for an adequate defense” and may be paid from CJA funds under [18 U.S.C. § 3006A\(e\)](#).

- (c) In determining whether the expense is unusual or extraordinary, consideration should be given to whether the circumstances from which the need arose would normally result in an additional charge to a fee-paying client over and above that charged for overhead expenses. **See:** [Decision of the Comptroller General, B-139703, Feb. 28, 1974, 53 Comp. Gen. 638.](#)

§ 320.70.40 Computer Hardware, Software, or Litigation Support Services

(a) Overview

- (1) Providing an adequate defense may require CJA panel attorneys to utilize computer hardware, software, or litigation support services not typically available in a law office. In such cases, following the standards in [§ 320.70.30](#), counsel may apply to the court for authorization of CJA funds for the acquisition of such property or services.
- (2) Before seeking court approval for any computer hardware or software with a cost exceeding the limitations in [§ 310.20.30\(a\)](#), or for the utilization of computer systems, litigation support products, services, personnel, or experts with an expected combined cost exceeding \$10,000, appointed counsel must consult the National Litigation Support Team in the Defender Services Office, Administrative Office of the United States Courts (phone number: 510-637-3500) for guidance. Counsel must inform the court in writing of the Defender Services Office's advice and recommendation regarding counsel's proposed expenditure. **See also:** [Appx. 3D \(Sample Order Authorizing the Acquisition of Computer \[Hardware and/or Software\] under the CJA\).](#)

(b) Acquisition of Computer Hardware and/or Software

- (1) The request for acquisition of the computer hardware and/or software, or for the procurement of litigation support services should be submitted on a [Form CJA 21 \(Authorization and Voucher for Expert and Other Services\)](#), or, in a death penalty proceeding, [Form CJA 31 \(Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher for Expert and Other Services\)](#).
- (2) Property purchased with CJA funds is the property of the United States and remains so after the case is completed.
- (3) When property is purchased, counsel must provide the Defender Services Office with a copy of the following documents to ensure the property is properly accounted for: a copy of the court's order

approving the request; a copy of the completed [Form CJA 21](#) (or [Form CJA 31](#)); the purchase order from the vendor and any receiving documents, such as a copy of the packing slip or the company's invoice.

- (4) Because computer hardware or storage devices being used by counsel may contain confidential or privileged information, all case-related materials must be removed before the hardware is returned as described below. Unless otherwise required by the court or by law, counsel should retain copies, electronic or otherwise, of the case-related materials for the client's file.

Note: When large amounts of electronic information are placed on drives or storage devices purchased with CJA funds, counsel may apply to the court to retain the drive or an alternative drive as the most cost-effective and efficient method for preserving the data.

- (5) Upon the completion of the case, counsel must contact the National Litigation Support Team in the Office of Defender Services at (510) 637-3500 for instructions on returning any software, and directions for deleting case-related material from any hardware and returning it to the National Litigation Support Team for the permanent removal of case-related material. If appointed counsel has acquired software, then counsel should provide all accounting information for the software, including any serial numbers, activation codes, or other identifying information, and remove the software from his or her machines. If appointed counsel acquired computer hardware, it must be returned in good condition.

§ 320.70.50 Paralegals, Legal Assistants, and Other Non-Secretarial Support

- (a) For services of paralegals, legal assistants, and other non-secretarial professional support personnel employed by appointed counsel, the court will determine a reasonable hourly compensation rate that may not exceed the lesser of the rate paid to counsel under the CJA or the rate typically charged by counsel to a fee-paying client for such services.
- (b) Authorizing compensation at such rates should result in greater efficiency and lower costs for the CJA program than would occur if counsel performed and charged for these services.

§ 320.80 Reimbursement of Expenses

§ 320.80.10 Determination of Reasonableness

In determining the reasonableness of expenses of persons furnishing investigative, expert, or other services, claimants and the court should be guided by the provisions of

these Guidelines regarding reimbursement of expenses of counsel. **See:** [Guide, Vol. 7A, § 230.63](#) and [§ 230.66](#). Gross receipts or other taxes levied on fees for expert services rendered under the CJA are not reimbursable expenses.

§ 320.80.20 Government Travel Rates

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, investigators and other service providers must contact the clerk of court and obtain prior approval from the presiding judicial officer.

§ 320.90 Record Keeping

- (a) Investigative, expert, and other service providers must maintain contemporaneous time and attendance records for all work billed by them, as well as expense records.
- (b) Such records are subject to audit and must be retained for three years after approval of the appointed counsel's or the service provider's final voucher, whichever is later, for a representation.