Guide to Judiciary Policy

Vol 7: Defender Services

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Topic Links for *Guide* Volume 7 (Defender Services)

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Guide to Judiciary Policy

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§ 110 Defender Services Program

§ 110.10 Mission

The mission of the Defender Services program is to ensure that the right to counsel guaranteed by the Sixth Amendment, the Criminal Justice Act (18 U.S.C. § 3006A) (CJA), and other congressional mandates is enforced on behalf of those who cannot afford to retain counsel and other necessary defense services. By fulfilling its mission, the Defender Services program helps to:

- maintain public confidence in the nation's commitment to equal justice under law; and
- ensure the successful operation of the constitutionally based adversary system of justice by which both federal criminal laws and federally guaranteed rights are enforced.

§ 110.20 Goals

The Defender Services program has four goals:

Goal 1: Provide timely assigned counsel services to all eligible persons.
Goal 2: Provide appointed counsel services that are consistent with the best practices of the legal profession.

Goal 3: Provide cost-effective services.
Goal 4: Protect the independence of the defense function performed by assigned counsel so that the rights of individual defendants are safeguarded and enforced.

§ 110.30 Authority

(a) The Defender Services program operates under the statutory authority of the CJA and related statutes.

- Adequate Representation of Defendants (18 U.S.C. § 3006A)
- Counsel and Witnesses in Capital Cases (18 U.S.C. § 3005)
- Counsel for Financially Unable Defendants (18 U.S.C. § 3599)
- General Rules for Civil Forfeiture Proceedings (18 U.S.C. § 983(b))

(b) Under 18 U.S.C. § 3006A(h), the Judicial Conference of the United States is authorized to issue rules and regulations governing the operation of district plans created to furnish representational services (including counsel and investigative, expert, and other services necessary for adequate representation) to financially eligible persons. Volume 7A of the *Guide* is a compendium of Judicial Conference policy adopted pursuant to that authority.

§ 120 Purpose

This volume sets forth Judicial Conference policy on:

- appointment of counsel under the CJA and related statutes;
- payment of private “panel” attorneys;
- authorization and payment for services other than counsel in federal criminal representations; and
- policies specific to federal defender organizations.

§ 130 Applicability

The guidance contained in this volume applies to the providers of services under the CJA, federal courts, judiciary personnel, and all others responsible for the operation of any aspect of the Defender Services program.

§ 140 Criminal Justice Act (CJA) forms

The CJA forms are posted on the public judiciary website.

§ 150 Contact Information

For inquiries about the policies contained in Volume 7A of the *Guide*, contact the AO Defender Services Office, Legal and Policy Division Duty Day Attorney at 202-502-3030 or via email at ods_lpb@ao.uscourts.gov.

Guide to Judiciary Policy

Vol. 7: Defender Services
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Last substantive revision (Transmittal 07-009) November 3, 2015
Last revised (updated case compensation maximums) January 28, 2016

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§ 210 Representation under the CJA

§ 210.10 District Plans

§ 210.10.10 Overview

(a) Each district court, with the approval of the judicial council of the circuit, is required to have a plan for furnishing representation for any person financially unable to obtain adequate representation. **See:** 18 U.S.C. § 3006A(a).

(b) "Representation under each plan shall include counsel and investigative, expert, and other services necessary for adequate representation." **See:** 18 U.S.C. § 3006A(a).

(c) The Criminal Justice Act (CJA), 18 U.S.C. § 3006A(a), mandates that each district plan provide for representation in the circumstances set forth in § 210.20 and specify how such representation will be delivered as provided in § 210.10.20.

(d) A Model Criminal Justice Act Plan (Model Plan) is included as Appx. 2A.

§ 210.10.20 Attorneys Who May Be Appointed Under the CJA

(a) Each district plan must include a provision for private attorneys. "Private attorneys shall be appointed in a substantial proportion of the cases." **See:** 18 U.S.C. § 3006A(a)(3).

(b) The district plan may include, in addition to a provision for private attorneys, either of the following or both:

- attorneys furnished by a bar association or a legal aid agency; or
- attorneys furnished by a defender organization established according to the provisions of 18 U.S.C. § 3006A(g).

See: 18 U.S.C. § 3006A(a)(3).

§ 210.10.30 Counsel's Obligation to Advise the Court of Client's Ability to Pay

Each plan should contain a provision to the effect:

> If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with the client's representation, and the source of the attorney's information is not protected as a privileged communication, counsel will advise the court.

§ 210.20 Proceedings Covered by and Compensable under the CJA

§ 210.20.10 Mandatory Appointments

The CJA, 18 U.S.C. § 3006A(a)(1), requires that representation **must** be provided for any financially eligible person who is:

(a) charged with a felony or with a Class A misdemeanor;

(b) a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031 (**see:** 18 U.S.C. § 5034 (on appointment of counsel); Guide, Vol. 7A, § 320.50 (on appointment of a guardian ad litem));

(c) charged with a violation of probation;

(d) under arrest, when such representation is required by law;

(e) entitled to appointment of counsel in parole proceedings;

[**Note:** The reference to representation at parole proceedings was deleted from the CJA according to the November 1, 1987 repeal of 18 U.S.C. chapter 311. However, the savings provisions of the Sentencing Reform

Act of 1984, as amended by the United States Parole Commission Extension Act of 2013 (Pub. L. No. 113-47 (October 31, 2013)), state that existing law pertaining to parole will remain effective for 31 years after November 1, 1987, with regard to persons specified in the savings provisions, and certain laws relating to parole will remain effective until the expiration of the sentence received by other persons specified in the savings provisions. This includes laws governing the right to counsel in parole proceedings.]

(f) charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release (e.g., *Guide to Judiciary Policy*, Vol. 8G (Criminal Monetary Penalties (Monograph 114)), Ch. 6);

(g) subject to a mental condition hearing under 18 U.S.C. chapter 313 (**see:** Guide, Vol. 7A, § 220.30(f) and § 230.23.20(i)(5));

(h) in custody as a material witness;

(i) entitled to appointment of counsel under the sixth amendment to the Constitution, or faces loss of liberty in a case and federal law requires the appointment of counsel;

[**Note:** This provision obviates the need for future amendments to the CJA each time the right to counsel may be extended to new situations by judicial decision or federal statutes.]

(j) seeking to set aside or vacate a death sentence in proceedings under 28 U.S.C. § 2254 or § 2255; or

(k) is entitled to appointment of counsel in connection with prisoner transfer proceedings under 18 U.S.C § 4109.

For applicable case compensation limits, **see:** § 230.23.20.

§ 210.20.20 Discretionary Appointments

(a) Whenever the U.S. magistrate judge or the court determines that the interests of justice so require, representation **may** be provided for any financially eligible person who is:

(1) charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized; or

(2) seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 (**but see:** Guide, Vol. 7A, § 210.20.10(j) on the mandatory appointment of

counsel in death penalty habeas corpus cases and § 220.45 on the requirement for appointment of counsel for an evidentiary hearing);

(b) Counsel may be appointed under the CJA for a person charged with civil or criminal contempt who faces loss of liberty.

(c) Upon application of a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, counsel may be appointed where there is 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.

(d) Counsel may be appointed for financially eligible persons proposed by the U.S. attorney for processing under a "pretrial diversion" program.

(e) Counsel may be appointed for persons held for international extradition under 18 U.S.C. chapter 209.

For applicable case compensation limits, **see:** § 230.23.20.

§ 210.20.30 Ancillary Matters

(a) Representation may be furnished for financially eligible persons in "ancillary matters appropriate to the proceedings" under 18 U.S.C. § 3006A(c).

(b) In determining whether a matter is ancillary to the proceedings, the court should consider whether the matter, or the issues of law or fact in the matter, arose from, or are the same as or closely related to, the facts and circumstances surrounding the principal criminal charge.

(c) In determining whether representation in an ancillary matter is appropriate to the proceedings, the court should consider whether such representation is reasonably necessary to accomplish, among other things, one of the following objectives:

(1) to protect a Constitutional right;

(2) to contribute in some significant way to the defense of the principal criminal charge;

(3) to aid in preparation for the trial or disposition of the principal criminal charge;

(4) to enforce the terms of a plea agreement in the principal criminal charge;

(5) to **preserve** the claim of the CJA client to an interest in real or personal property subject to a civil forfeiture proceeding under 21 U.S.C. § 881, 19 U.S.C. § 1602 or similar statutes, which property, if recovered by the CJA client, may be considered for reimbursement under 18 U.S.C. § 3006A(f) and Guide, Vol. 7A, § 210.40.30; or

(6) to effectuate the return of real or personal property belonging to the CJA client which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the CJA client, may be considered for reimbursement under 18 U.S.C. § 3006A(f) and Guide, Vol. 7A, § 210.40.30.

(d) The scope of representation in the ancillary matter should extend only to the part of the ancillary matter that relates to the principal criminal charge and to the **correlative objective sought** to be achieved in providing the representation (e.g., a CJA defendant in a criminal stock fraud case should be represented by CJA counsel at the defendant's deposition in a parallel civil fraud action for the limited purpose of advising the defendant concerning the defendant's Fifth Amendment rights).

(e) Representation in an ancillary matter is compensable as part of the representation in the principal matter for which counsel has been appointed and is not considered a separate appointment for which a separate compensation maximum would be applicable under § 230.23.10(g).

(f) A private panel attorney appointed under the CJA may obtain, through an *ex parte* application to the court, a preliminary determination that the representation to be provided in an ancillary matter is appropriate to the principal criminal proceeding and compensable under 18 U.S.C. § 3006A(c) and this guideline. However, failure to obtain such a preliminary determination does not bar the court from approving compensation for representation in an ancillary matter provided that the services and compensation related thereto are justified in a memorandum submitted by the attorney to the court at the conclusion of the principal criminal matter and the presiding judicial officer finds that such representation was appropriate.

§ 210.20.40 Civil Forfeiture Proceedings

(a) 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 18 U.S.C.

§ 3006A in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

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

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

§ 210.20.50 Proceedings Not Covered by or Compensable under the CJA

Cases or proceedings which are not covered by or compensable under the CJA include the following:

(a) Petty offenses (Class B or C misdemeanors or infractions), except where confinement is authorized by statute and the court or U.S. magistrate judge determines that appointment of counsel is required in the interest of justice. **See:** § 210.20.20(a)(1).

(b) Corporate defendant cases.

(c) Prisoners bringing civil rights actions under 42 U.S.C. § 1983. Care should be taken to ensure that a prisoner is not denied the appointment of counsel due to the mislabelling of the prisoner's action as "civil rights" when the proceedings could also be considered as seeking relief under 28 U.S.C. § 2254.

(d) Administrative proceedings before the U.S. Citizenship and Immigration Services (USCIS), removal or deportation proceedings before the Immigration Court, review of the Immigration Court's decision by the Board of Immigration Appeals, and judicial review by the federal courts of appeals of petitions for review from these administrative decisions. **But see:** § 210.20.30 (ancillary matters) and § 210.20.20(a)(2) (habeas corpus cases).

§ 210.20.60 Civil Actions to Protect Federal Jurors' Employment

(a) Although not an appointment under the authority of the CJA, Congress has annually included statutory language in the appropriation for the federal judiciary's Defender Services account to authorize "the compensation of attorneys appointed to represent jurors in civil actions for the protection of their employment, as authorized by 28 U.S.C. § 1875(d)."

(b) In these cases, the court appoints counsel under the standard set forth in 28 U.S.C. § 1875(d)(1), which does not require a finding of financial eligibility.

(c) The court will appoint a private attorney, who may be a member of the CJA panel and should have employment law experience. A federal defender should not be appointed.

(d) The court should use Form CJA 20 (Appointment of and Authority to Pay Court-Appointed Counsel) for the appointment and pay counsel "to the extent provided by [the CJA]," 28 U.S.C. § 1875(d)(1), and the CJA Guidelines.

(e) The court may, as authorized by 28 U.S.C. § 1875(d)(2), order a defendant employer to pay the fees and expenses of counsel appointed under 28 U.S.C. § 1875(d)(1); in such event, the court should follow the reimbursement procedures in Guide, Vol. 7A, § 230.40.

§ 210.30 Composition and Management of the Panel of Private Attorneys (CJA Panel)

§ 210.30.10 Overview

(a) The CJA Panel must be designated or approved by the court. **See:** 18 U.S.C. § 3006A(b).

(b) The membership of the panel should be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members receive an adequate number of appointments to maintain their proficiency in criminal defense work and thereby provide a high quality of representation.

(c) Members should serve at the pleasure of the court.

(d) A Model Plan for the Composition, Administration and Management of the CJA Panel is included as Appx. 2B.

§ 210.30.20 Selection of Panel Members

In part, 18 U.S.C. § 3006A(b) provides that:

> Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

§ 210.30.30 *Pro Hac Vice* Appointments

(a) If the district judge presiding over the case, or the chief judge if a district judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA panel, is in

the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting the attorney's appointment, the attorney may be admitted to the CJA panel *pro hac vice* and appointed to represent the CJA defendant.

(b) Consideration for preserving the integrity of the panel selection process suggests that *pro hac vice* appointments should be made only in exceptional circumstances.

(c) The attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify the attorney for admission to the district's CJA panel in the ordinary course of panel selection.

§ 210.30.40 Centralization of Panel Administration and Management

Administration and management of the CJA Panel should be centralized in one organizational element (such as the clerk's office or, where appropriate, the federal defender organization) to ensure that counsel is appointed as expeditiously as possible, appointments are equitably distributed, and information on availability of counsel is maintained.

§ 210.30.50 Distribution of Appointments

(a) Appointments should be made in a manner which results in both a balanced distribution of appointments and compensation among members of the CJA Panel, and quality representation for each CJA defendant.

(b) These objectives can be accomplished by making appointments on a rotational basis, subject to the court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations.

§ 210.40 Determining Financial Eligibility for Representation Under the CJA

§ 210.40.10 Timely Appointment of Counsel

A person financially eligible for representation should be provided with counsel as soon as feasible after being taken into custody, when first appearing before the court or U.S. magistrate judge, when formally charged, or when otherwise entitled to counsel under the CJA, whichever occurs earliest.

§ 210.40.20 Fact-Finding

(a) The determination of eligibility for representation under the CJA is a judicial function to be performed by the court or U.S. 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.

(c) Other officers or employees of the court (e.g., 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.

(d) Relevant information bearing on the person's financial eligibility should be reflected on Form CJA 23 (Financial Affidavit) and the form must be completed and executed before a judicial officer or employee.

(e) Employees of law enforcement agencies or U.S. attorney offices should not participate in the completion of the Form CJA 23 (Financial Affidavit) or seek to obtain information from a person requesting the appointment of counsel concerning the person's eligibility.

(f) 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. For guidance on counsel's obligation to advise the court about the client's ability to pay, **see:** § 210.10.30.

(g) The prosecution and other interested entities may present to the court information concerning the person's eligibility, but the judicial inquiry into financial eligibility must 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 under the Victim/Witness Protection Act or other purposes not related to the appointment of counsel. Such determinations, if appropriate, must be made at other stages of the proceedings in which the person seeking counsel is a party.

§ 210.40.30 Standards for Eligibility

(a) A person is "financially unable to obtain counsel" within the meaning of 18 U.S.C. § 3006A(b) if the person's net financial resources and income are insufficient to obtain qualified counsel. In determining whether such insufficiency exists, consideration should be given to:

(1) the cost of providing the person and his dependents with the necessities of life, and

(2) 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 release on bond.

(b) Any doubts as to a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected at a later time.

(c) At the time of determining eligibility, the court or U.S. magistrate judge should inform the person of the penalties for making a false statement, and of the obligation to inform the court and the appointed attorney of any change in financial status.

(d) 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 person's financial condition, in order to make a final determination concerning whether the person 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 person to reimburse the CJA appropriation for such costs. **See:** § 230.40.

(e) Future earnings should not be considered or subject to a reimbursement order; however, other income or after-acquired assets which will be received within 180 days after the date of the court's reimbursement order may be available as a source of reimbursement.

§ 210.40.40 Partial Eligibility

If a person's net financial resources and income anticipated prior to trial are in excess of the amount needed to provide the person and that person's 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 CJA and should direct the person to pay the available excess funds to the clerk of the court at the time of such appointment or from time to time thereafter.

(a) Such funds must be held subject to the provisions of 18 U.S.C. § 3006A(f).

(b) 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.

(c) With respect to the disposition of such funds, **see:** § 230.40.

§ 210.40.50 Family Resources

The initial determination of eligibility should be made without regard to the financial ability of the person's family unless the family indicates willingness and financial ability to retain counsel promptly. At or following the appointment of counsel, the judicial officer may inquire into the financial situation of the person's spouse (or parents, if the

person is a juvenile) and if such spouse or parents indicate their willingness to pay all or part of the costs of counsel, the judicial officer may direct deposit or reimbursement.

§ 210.50 Criminal Justice Act (CJA) 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 (subsequently renamed the Committee on Defender Services), that every district incorporate in its plan a requirement that the standard forms, approved by the Conference, be used. **See:** JCUS-JAN 65, p. 6. Copies of the pertinent forms may be found on the public judiciary website.

§ 220 Appointment of Counsel

§ 220.10 Timely Appointment of Counsel

As noted in § 210.40.10, a person financially eligible for representation should be provided with counsel as soon as feasible after being taken into custody, when first appearing before the court or U.S. magistrate judge, when formally charged, or when otherwise entitled to counsel under the CJA, whichever occurs earliest.

§ 220.15 Forms for the Appointment of Counsel

Forms for the appointment of counsel, together with instructions for their use, may be found on the public judiciary website.

§ 220.18 Notification of Relationship

Prior to appointment, counsel should notify the presiding judicial authority if counsel is aware that he or she is related (as the term is defined in 5 U.S.C. § 3110) to any attorney on the same representation, or any attorney being considered for appointment. If appointment of related counsel is made prior to notification, counsel should provide notification as soon as practicable.

§ 220.20 Duration of Appointment

In part, 18 U.S.C. § 3006A(c) provides that:

> A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the U.S. magistrate judge or the court through appeal, including ancillary matters appropriate to the proceedings.

§ 220.25 Continuity of Representation

(a) If the attorney appointed by the U.S. magistrate judge is to continue to represent the defendant in the district court, no additional appointment by the district court should be made, except on appeal from a judgment rendered by the U.S. magistrate judge in a misdemeanor case.

(b) Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari are considered applicable to the case before the U.S. court of appeals and should be included on the voucher for services performed in that court.

(c) An order extending Appointment on Appeal (Form CJA 20) should be executed for each appellant for whom counsel was appointed by a U.S. district judge or magistrate judge for representation at the trial level. In a federal capital prosecution, or a proceeding under 28 U.S.C. § 2254 or § 2255 challenging a death sentence, the appointment should be made on a Form CJA 30 (Death Penalty Proceedings: Appointment of and Authority to Pay Court-Appointed Counsel).

(d) Absent special circumstances, whenever a case is transferred to another district, such as under Federal Rules of Criminal Procedure Rules 20, 21, and 40, appointment of counsel should be made in the transferee district.

§ 220.30 New Appointments Following Earlier Representations

A new appointment on Form CJA 20 should be made for each person represented in the following proceedings:

(a) new trial after motion, mistrial, reversal, or remand on appeal;

(b) probation revocation proceedings;

(c) appeal, including interlocutory appeals;

(d) bail appeals to a court of appeals;

(e) extraordinary writs;

(f) mental condition hearings under:

(1) 18 U.S.C. § 4243 (Hospitalization of a Person Found Not Guilty only by Reason of Insanity);

(2) 18 U.S.C. § 4245 (Hospitalization of an Imprisoned Person Suffering From Mental Disease or Defect); and

(3) 18 U.S.C. § 4246 (Hospitalization of a Person Due for Release but Suffering From Mental Disease or Defect). **See also:** Guide, Vol. 7A, § 230.23.20.

Note: The chart below explains when a mental condition hearing is considered a new appointment or part of the case in chief.

§ 220.30(f) Insanity Defense Reform Act of 1984			
U.S. Code Section	**Type of Hearing**	**New Case**	**Part of Case in Chief**
18 U.S.C. § 4241(a)	Motion to determine competence to stand trial.	No	Yes
18 U.S.C. § 4241(e)	Hearing to determine whether person temporarily hospitalized as a result of incompetence to stand trial has recovered competence.	No	Yes
18 U.S.C. § 4243(c)	Hearing to determine whether release of person found not guilty by reason of insanity would create substantial risk of injury to person or property.	Yes	No
18 U.S.C. § 4243(f)	Hearing to determine whether person hospitalized following finding of not guilty by reason of insanity may be released conditionally or unconditionally. Also hearing to modify or eliminate conditions of release.	Yes Yes	No No
18 U.S.C. § 4243(g)	Hearing on revocation of conditional release imposed under § 4243(f)	Yes	No
18 U.S.C. § 4244(a)	Hearing to determine present mental condition of convicted defendant prior to sentencing.	No	Yes
18 U.S.C. § 4245(a)	Hearing to determine whether imprisoned person suffering from mental disease or defect should be hospitalized.	Yes	No
18 U.S.C. § 4246(a)	Hearing to determine whether a hospitalized person due for release is presently suffering from a mental disease or defect so that release would create a substantial risk of injury to persons or property.	Yes	No

§ 220.30(f) Insanity Defense Reform Act of 1984			
U.S. Code Section	**Type of Hearing**	**New Case**	**Part of Case in Chief**
18 U.S.C. § 4246(e)	Hearing to determine whether a person whose hospitalization was extended following a hearing under § 4246(a) may be released or conditionally released.	Yes	No
18 U.S.C. § 4246(f)	Hearing on revocation of conditional release imposed under § 4246(e).	Yes	No

§ 220.35 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:** Guide, Vol. 7A, § 440.

§ 220.40 Appointment of Counsel to Represent More Than One Individual in a Particular Case

(a) Unless good cause is shown or in the absence of a waiver on the record by the defendants, in a criminal prosecution involving more than one defendant, or where separate charges arising out of the same or similar transactions are concurrently pending against two or more defendants, separate counsel should normally be appointed for each defendant. If an attorney is appointed to represent more than one person, a separate order of appointment must be entered with respect to each person.

(b) An attorney who represents joint defendants may be compensated for services up to the statutory maximum for each person represented, unless the case involves extended or complex representation, in which case the attorney may be entitled to additional compensation above the statutory maximum rate. **See:** § 230.50 (Proration of Claims) and § 230.23.10(c).

§ 220.45 Appointment of Counsel in Habeas Corpus and Proceedings Under 28 U.S.C. § 2255

While the Rules Governing Section 2254 Cases in the U.S. District Courts and the Rules Governing Section 2255 Proceedings in the U.S. District Courts mention the appointment of counsel only with regard to discovery and evidentiary hearings, the CJA, 18 U.S.C. § 3006A(a)(2)(B), permits discretionary appointment at any stage of the proceedings, in the interest of justice. **See:** Guide, Vol. 7A, § 210.20.20(a)(2). In addition, 18 U.S.C. § 3599(a)(1) **requires** the appointment of one or more attorneys in death penalty federal habeas corpus cases. **See:** Guide, Vol. 7A, § 620.10.

§ 220.50 Waiver of Counsel

A waiver of assigned counsel by a defendant should be in writing. If the defendant refuses to sign the waiver, the court or U.S. magistrate judge should certify thereto. No standard form has been prescribed for this purpose

§ 220.55 Standby Counsel

§ 220.55.10 Overview

(a) 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.

(b) In some cases, however, the court or U.S. magistrate judge may find it necessary to appoint "standby" counsel to be available to assist a pro se defendant in that defendant's 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.

§ 220.55.20 Standby Counsel Services Accepted by a Pro Se Defendant

(a) The CJA provides that "[u]nless the [financially eligible] person **waives representation** by counsel. . .[the court] shall appoint counsel to **represent** him." 18 U.S.C. § 3006A(b).

(b) 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.

(c) 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.

§ 220.55.30 Standby Counsel Appointed Under the Court's Inherent Authority

(a) In circumstances in which standby counsel is appointed 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 must be in the capacity of an "expert or consultant" under 5 U.S.C. § 3109.

(b) Accordingly, an appointment under 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 according to CJA hourly rates and case compensation maximums.

(c) The Administrative Office of the U.S. Courts' (AO) Defender Services 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 under 18 U.S.C. § 3006A(c) may be terminated.

§ 220.60 Termination of Appointment

In any case in which appointment of counsel has been made under the CJA and the court subsequently finds that the person is financially able to obtain counsel, such appointment should be terminated using Form CJA 7 (Order Terminating Appointment of Counsel and/or Authorization for Distribution of Available Private Funds).

§ 230 Compensation and Expenses of Appointed Counsel

§ 230.10 Forms for Compensation and Reimbursement of Expenses

Forms for the compensation and reimbursement of expenses to appointed counsel, together with instructions for their use, may be found on the public judiciary website. A copy of all supporting documents that itemize or expand the amounts shown on the face of Form CJA 20 must be attached.

§ 230.13 Time Limits

(a) Vouchers should 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 comply 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.

§ 230.16 Hourly Rates and Effective Dates in Non-Capital Cases

(a) Except in federal capital prosecutions and in death penalty federal habeas corpus proceedings, compensation paid to appointed counsel for time expended in court or out of court or before a U.S. magistrate judge may

not exceed the rates in the following table. For information on compensation of counsel in federal capital cases and death penalty federal habeas corpus proceedings, **see:** Guide, Vol. 7A, § 630.

§ 230.16(a) Non-Capital Hourly Rates	
If services were performed between...	**The maximum hourly rate is...**
01/01/2016 to present	$129
01/01/2015 through 12/31/2015	$127
03/01/2014 through 12/31/2014	$126
09/01/2013 through 02/28/2014	$110
01/01/2010 through 08/31/2013	$125
03/11/2009 through 12/31/2009	$110
01/01/2008 through 03/10/2009	$100
05/20/2007 through 12/31/2007	$94
01/01/2006 through 05/19/2007	$92
05/01/2002 through 12/31/2005	$90

(b) For rates applicable to services performed prior to May 1, 2002 for non-capital cases, please contact the AO's Defender Services Office, Legal and Policy Division Duty Day Attorney, at 202-502-3030 or via email at DSO_LPD@ao.uscourts.gov.

§ 230.20 Annual Increase in Hourly Rate Maximums

Under 18 U.S.C. § 3006A(d)(1), the Judicial Conference is authorized to increase annually all hourly rate maximums by an amount not to exceed the federal pay comparability raises given to federal employees. Hourly rate maximums will be adjusted automatically each year according to 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.

§ 230.23 Case Compensation Maximums

§ 230.23.10 Applicability and Exclusions

(a) In General

All compensation limits apply to each attorney in each case.

(b) Federal Death Penalty Cases and Federal Capital Habeas Corpus Proceedings

The case compensation limits are not applicable in federal death penalty cases and federal capital habeas corpus proceedings. **See:** Guide, Vol. 7A, § 630.10.20.

(c) Excess Compensation Vouchers

(1) As further explained in § 230.23.40, the CJA places limitations on the general authority of presiding judicial officers to unilaterally approve attorney compensation.

(2) Payments above case compensation limits referred to in § 230.23.20 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 or senior circuit judge.

(3) 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:** § 230.23.40.

(d) Limitations Inapplicable to Expense Reimbursement

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. For an explanation of reimbursable out-of-pocket expenses, **see**: § 230.63. **But see:** § 230.46 (Prior Authorization for Appointed Counsel to Incur Expenses).

(e) 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.

(f) More than One Counsel

In difficult cases in which the court finds it necessary to appoint more than one attorney, the limitations apply separately to each attorney.

(g) Ancillary Matters

Representation in ancillary matters is compensable as part of the representation in the principal matter for which counsel has been appointed, and is not considered a separate appointment for which a separate compensation maximum would apply.

(h) Increases to the Maximum Compensation Rate

Under 18 U.S.C. § 3006A(d)(2), the attorney case compensation maximums increase "simultaneously" with aggregate changes in the maximum attorney hourly compensation rate. Current case maximum amounts are set forth below in § 230.23.20.

§ 230.23.20 Current Attorney Case Compensation Maximums

For work performed on or after January 1, 2016, the case compensation maximums are as follows:

§ 230.23.20 Current Attorney Case Compensation Maximums	
If the case is a...	**the case maximum is...**
(a) Felony (except federal capital prosecutions)	$10,000 for trial court level $7,200 for appeal
(b) Misdemeanors (including petty offenses (class B or C misdemeanors or infractions) as set forth in 18 U.S.C. § 3006A(a)(2)(A))	$2,900 for trial court level $7,200 for appeal
(c) Proceedings under 18 U.S.C. § 4106A (in connection with paroled prisoners transferred to the United States)	$2,100 for representation before the U.S. Parole Commission $7,200 for appeal
(d) Proceedings under 18 U.S.C. § 4107 or § 4108 (for counsel and guardians ad litem providing services in connection with prisoner transfer proceedings). **Note:** For information on appointment of counsel or guardians ad litem under 18 U.S.C. § 4109, **see:** Guide, Vol. 7B (International Prisoner Transfer Proceedings).	$2,900 for each consent verification proceeding
(e) Pre-Trial Diversion	$10,000 if offense alleged by the U.S. attorney is a felony $2,900 if offense alleged by the U.S. attorney is a misdemeanor
(f) Proceedings under 18 U.S.C. § 983 (for services provided by counsel appointed under 18 U.S.C. § 983(b)(1) in connection with certain judicial civil forfeiture proceedings)	$10,000 for trial court level $7,200 for appeal

§ 230.23.20 Current Attorney Case Compensation Maximums	
If the case is a...	**the case maximum is...**
(g) Non-Capital Post-Conviction Proceedings under 28 U.S.C. § 2241, § 2254 or § 2255	$10,000 for trial court level $7,200 for appeal
(h) Proceedings to Protect Federal Jurors Employment under 28 U.S.C. § 1875	$10,000 for trial court level $7,200 for appeal
(i) Other Representations Required or Authorized by the CJA **Note:** This category includes but is not limited to the following representations: (1) probation violation; (2) 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); (3) parole proceedings under 18 U.S.C. chapter 311 (repealed) (**but see:** note at Guide, Vol. 7A, § 210.20.10(a)(5)). (4) material witness in custody; (5) mental condition hearings under 18 U.S.C. chapter 313 (except for hearings under 18 U.S.C. § 4241 and § 4244, which are considered part of the case in chief with no separate compensation maximums applying. (For a chart detailing the treatment for the purpose of compensation of representation at each hearing under 18 U.S.C. chapter 313, **see:** Guide, Vol. 7A, § 220.30(f)); (6) civil or criminal contempt (where the person faces loss of liberty); (7) 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 before or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of	$2,100 for trial court level $2,100 for each level of appeal

§ 230.23.20 Current Attorney Case Compensation Maximums	
If the case is a...	**the case maximum is...**
liberty); and (8) international extradition (under 18 U.S.C. chapter 209).	

§ 230.23.30 History of Case Compensation Maximums

For work performed prior to January 1, 2016, the case compensation maximums are as follows:

§ 230.23.30 History of Case Compensation Maximums						
The case maximum if a case is a...	**And services were completed...**					
	12/8/2004-10/12/2008	**10/13/2008-3/10/2009**	**3/11/2009-12/31/2009**	**1/1/2010-2/28/2014**	**3/1/2014-12/31/2014**	**1/1/2015-12/31/2015**
Felony (including pre-trial diversion of alleged felony)	$7,000	$7,800	$8,600	$9,700	$9,800	$9,900
Misdemeanor (including pre-trial diversion of alleged misdemeanor)	$2,000	$2,200	$2,400	$2,800	$2,800	$2,800
Proceeding under 18 U.S.C.§ 4106A	$1,500	$1,700	$1,800	$2,100	$2,100	$2,100
Proceeding under 18 U.S.C. § 4107 or § 4108 (for each verification proceeding)	$2,000	$2,200	$2,400	$2,800	$2,800	$2,800
Proceeding under 18 U.S.C. § 983	$7,000	$7,800	$8,600	$9,700	$9,800	$9,900
Post-conviction proceeding under 28 U.S.C. § 2241, § 2254 or § 2255	$7,000	$7,800	$8,600	$9,700	$9,800	$9,900
Proceeding under 28 U.S.C. § 1875	$7,000	$7,800	$8,600	$9,700	$9,800	$9,900
Appeal from felony, misdemeanor, proceeding under 18 U.S.C. § 4106A, 18 U.S.C. § 983, post-conviction proceeding under 28 U.S.C. § 2241, § 2254 or § 2255, and 28 U.S.C. § 1875	$5,000	$5,600	$6,100	$6,900	$7,000	$7,100

§ 230.23.30 History of Case Compensation Maximums						
The case maximum if a case is a...	**And services were completed...**					
	12/8/2004-10/12/2008	**10/13/2008-3/10/2009**	**3/11/2009-12/31/2009**	**1/1/2010-2/28/2014**	**3/1/2014-12/31/2014**	**1/1/2015-12/31/2015**
Other representation required or authorized by the CJA (including, but not limited to probation, supervised release hearing, material witness, grand jury witness)	$1,500	$1,700	$1,800	$2,100	$2,100	$2,100
Appeal of other representation	$1,500	$1,700	$1,800	$2,100	$2,100	$2,100

For inquiries concerning case compensation maximums, contact the AO's Defender Services Office, Legal and Policy Division Duty Day Attorney, at 202-502-3030 or via email at DSO_LPD@ao.uscourts.gov.

§ 230.23.40 Waiving Case Compensation Maximums

(a) Overview

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 U.S. magistrate judge and approved by the chief judge of the circuit (or by an active or senior circuit judge to whom excess compensation approval authority has been delegated).

(b) Extended or Complex Cases

The approving judicial officer should first 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."

(c) Determining Fair Compensation

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.

§ 230.26 Case Budgeting

§ 230.26.10 Overview

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 300 times the prevailing CJA panel attorney non-capital hourly rate, rounded up to the nearest thousand, for appointed counsel and services other than counsel for an individual CJA defendant).

§ 230.26.20 Case Budgeting Procedures

(a) 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.

(b) Case budgeting forms (Forms CJA 28A – CJA 28H), together with instructions for their use, may be found on the public judiciary website.

(c) Case budgets should be submitted *ex parte* and filed and maintained under seal.

(d) For general information on case budgeting principles relating to capital cases, **see:** Guide, Vol. 7A, § 640.

§ 230.26.30 Investigative, Expert, and Other Services

(a) Recognizing that investigative, expert, and other services may be required before there is an opportunity for counsel to prepare a case budget or for

the court to approve it, courts should act upon requests for services where prompt authorization is necessary for adequate representation.

(b) Courts, in examining the case budget, may reconsider amounts authorized for services before the budget's approval; however, courts must not rescind prior authorization where work has already been performed.

§ 230.30 Supporting Memorandum Justifying Compensation Claimed

(a) 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, when called for by local rule, standing order, or by the presiding judicial officer.

(b) Claim for More than the Case Compensation Maximum

(1) In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel will submit with the voucher a detailed memorandum supporting and justifying counsel's claim that:

- the representation given was in an extended or complex case (**see:** § 230.23.40(b)), and
- the excess payment is necessary to provide fair compensation (**see:** § 230.23.40(c)).

(2) Upon preliminary approval of such claim, the presiding judicial officer should furnish to the chief judge of the circuit a memorandum containing the recommendation and a detailed statement of reasons.

§ 230.33 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.

§ 230.36 Notification of Proposed Reduction of CJA Compensation Vouchers

(a) The CJA provides that the reviewing judge must 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:

- prior notice of the proposed reduction with a brief statement of the reason(s) for it, and
- an opportunity to address the matter.

(b) Notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.

(c) 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.

§ 230.40 Payments by a Defendant

(a) An attorney appointed under the CJA may not accept a payment from or on behalf of the person represented without authorization by a U.S. district, circuit, or magistrate judge on Form CJA 7.

(b) If such payment is authorized, it should be deducted from the fee to be approved by the court under 18 U.S.C. § 3006A(d). The combined payment to any one attorney for compensation from both the person represented and the CJA is subject to applicable dollar limitations, unless excess compensation is approved under 18 U.S.C. § 3006A(d)(3).

(c) When the court determines that a person who received representation under the CJA was financially ineligible for those services at the time they were rendered, and directs that the person reimburse the government, the payment should be made by check or money order to the clerk of court for deposit into the Treasury. Such funds will be credited to the Defender Services appropriation.

(d) Under 18 U.S.C. § 3006A(f), a judicial officer is not authorized to require reimbursement as a condition of probation, and the Judicial Conference position is that reimbursement of the cost of representation under the CJA should not be made a condition of probation under any other authority. **See:** JCUS-MAR 85, p. 31.

§ 230.43 Approval Authority of U.S. Magistrate Judges

U.S. magistrate judges may only approve vouchers for services rendered in connection with a case disposed of entirely before the U.S. magistrate judge.

§ 230.46 Prior Authorization for Appointed 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.

§ 230.50 Proration of Claims

(a) When a defendant is charged in one indictment with severable counts, one voucher should be submitted and one maximum applied under 18 U.S.C. § 3006A(d)(2), whether or not the counts are severed for trial.

(b) 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 18 U.S.C. § 3006A(d)(2), for each indictment, whether or not the indictments are consolidated for trial.

(c) Where single counsel is appointed to represent multiple defendants, separate vouchers should be submitted, and a separate maximum applied under 18 U.S.C. § 3006A(d)(2), for each defendant represented.

(d) Whenever appointed counsel submit separate vouchers, as provided by this section, 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 supporting materials to the vouchers. Time spent exclusively on any one indictment or case must properly be charged on the voucher for that indictment or case.

(e) 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 on behalf of more than one client). Double billing of time or expenses is prohibited (e.g., billing the same travel time or expenses to more than one representation).

(f) While time spent in common on more than one CJA representation must be prorated, the entire amount of travel or other expenses applicable to more than one CJA representation must be billed to one representation. The supporting materials to the voucher on which the expenses are billed must cross-reference the other CJA representations.

(g) If the attorney 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 attorney must report such information so that the court can determine whether, in fairness to counsel, the time or expenses should be apportioned and the attorney compensated for the time or expenses reasonably attributable to the CJA.

(1) The attorney should explain the rationale for billing under the CJA, and the court may conduct a further inquiry.

(2) 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 attorney's duties under the CJA in relation to the time or expenses expended furthering other purposes;
- the significance to the CJA representation of the duties performed or expenses incurred; and
- the likelihood that the attorney would have performed the services or incurred the expenses under the CJA in the absence of the other purposes.

(h) Proration of time among CJA representations must not result in an appointed counsel billing a larger amount than would have been billed if all the time was assigned to one representation.

§ 230.53 Compensation of Co-Counsel

§ 230.53.10 Without Separate Appointment

(a) Unless separately appointed in accordance with § 230.53.20(b) or Guide, Vol. 7A, § 620.10, co-counsel or associate attorneys may not be compensated under the CJA.

(b) However, an appointed counsel may claim compensation for services furnished by a partner or associate or, with prior authorization by the court, counsel who is not a partner or associate, within the maximum compensation allowed by the CJA, separately identifying the provider of each service.

§ 230.53.20 With Appointment

(a) In an extremely difficult case where the court finds it in the interest of justice to appoint an additional attorney, each attorney is eligible to receive the maximum compensation allowable under the CJA.

(b) The finding of the court that the appointment of an additional attorney in a difficult case was necessary and in the interest of justice must appear on the Order of Appointment. For appointment of more than one attorney in capital cases, **see:** Guide, Vol. 7A, § 620.10.

§ 230.56 Substitution of Counsel

If an attorney is substituted for an attorney previously appointed for a defendant in the same case, the total compensation paid to both attorneys may not exceed the statutory

maximum for one defendant, unless the case involves extended or complex representation. In such cases, vouchers for attorney's services will 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.

§ 230.60 Attorney Compensation for Travel Time

(a) Compensation must be approved for time spent in necessary and reasonable travel.

(b) Ordinarily, compensable 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 and would include travel time returning directly to the claimant's office from said destination.

(c) Compensation for travel time is paid at a rate not to exceed the rate provided in 18 U.S.C. § 3006A(d) for "time reasonably expended out of court."

§ 230.63 Reimbursable Out-of-Pocket Expenses

§ 230.63.10 Overview

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 18 U.S.C. § 3006A(e) are not considered out-of-pocket expenses.

§ 230.63.20 Reimbursement for Transcripts

(a) Generally, court reporters or reporting services which furnish court authorized transcripts in CJA cases claim and receive compensation for their services on the Form CJA 24 (Authorization and Voucher for Payment of Transcript). **See:** Guide, Vol. 7A, § 320.30. 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 18 U.S.C. § 3006A(d)(1). However, unlike most reimbursable expenses, which should be claimed on the Form CJA 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 Form CJA 24.

(b) The cost of transcribing depositions in criminal cases is the responsibility of the Department of Justice under Rule 17(b) of Fed. R. Crim. P.

Exception: When the witness is a defense expert, the expert is paid out of CJA funds (53 Comp. Gen. 638 (1974)).

§ 230.63.30 Computer-Assisted Legal Research

(a) 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.

(b) 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).

(c) If the amount claimed is more than $500 or if it includes costs for downloading or printing, counsel should include a brief statement of justification.

§ 230.63.40 Travel Expenses

(a) Travel by privately owned automobile should be claimed at the mileage rate currently prescribed for federal judiciary employees who use a private automobile for conduct of official business. Parking fees, ferry fares, and bridge, road, and tunnel tolls may also be claimed. Transportation other than by privately owned automobile should be claimed on an actual expense basis.

(b) Per diem in lieu of subsistence is not allowable, since the CJA 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.

(c) 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.

(d) 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.

§ 230.63.50 Interim Reimbursement for Expenses

(a) Where it is considered necessary and appropriate in a specific case, the presiding judge or U.S. magistrate judge may, in consultation with the AO's Defender Services Office, arrange for interim reimbursement to counsel of extraordinary and substantial expenses incurred in providing representation in a case.

(b) Interim reimbursement should be authorized when counsel's reasonably-incurred out-of-pocket expenses for duplication of discovery materials made available by the prosecution exceed $500.

§ 230.63.60 Reimbursement for Expenses Incurred Defending Malpractice Allegations

(a) Courts are authorized to reimburse panel attorneys for expenses reasonably incurred in defending actions alleging malpractice in furnishing representational services under the CJA. **See:** 18 U.S.C. § 3006A(d)(1), as amended by the Federal Courts Improvement Act of 2000, Pub. L. No. 106-518, which covers expenses incurred on or after its effective date of Nov. 13, 2000.

(b) The total reimbursement must 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.

(c) In determining reasonable attorney fees for this purpose, CJA rates are inapplicable.

(d) 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, is not reimbursable.

(e) No reimbursement will 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.

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

§ 230.63.70 Other Reimbursable Expenses

Other reimbursable expenses include:

- telephone toll calls;
- telegrams;
- photographs; and
- copying (except printing — **see:** § 230.66.40).

§ 230.66 Non-Reimbursable Expenses

§ 230.66.10 General Office Overhead

(a) General office overhead includes general office expenses that would normally be reflected in the fee charged to the client. The statutory fee is intended to include compensation for these general office expenses.

(b) Except in extraordinary circumstances (**see:** Guide, Vol. 7A, § 320.70.30), whether work is performed by counsel or other personnel, the following expenses associated with CJA representation are not reimbursable:

- personnel;
- rent;
- telephone service; and
- secretarial.

§ 230.66.20 Items and Services of Personal Nature

(a) The cost of items of a personal nature purchased for or on behalf of the person represented are not reimbursable under the CJA. Such items include:

- purchasing new clothing or having clothing cleaned;
- getting a haircut;
- furnishing cigarettes, candy or meals, etc.

(b) The cost of services of a personal nature and expenses incidental thereto which cannot be considered legal representation are not compensable under the CJA. Such services include:

- assisting the defendant in the disposition of the defendant's 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.

§ 230.66.30 Filing Fees

Attorneys are not required to pay a filing fee in a CJA case, 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.

§ 230.66.40 Printing and Copying of Briefs

(a) The expense of printing briefs, regardless of the printing method utilized, is not reimbursable.

(b) The cost of photocopying or similar copying service is reimbursable.

§ 230.66.50 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 Fed. R. Crim. P. Rule 17 and 28 U.S.C. § 1825.

§ 230.66.60 Taxes

Taxes paid on attorney compensation received under CJA, whether based on income, sales or gross receipts, are not reimbursable expenses.

§ 230.70 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 U.S. court of appeals, and should be included on the voucher for services performed in that court.

§ 230.73 Interim Payments to Counsel

§ 230.73.10 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 counsel.

(b) Appx. 2C (Procedures for Interim Payments to Counsel in Non-Death Penalty Cases) contains instructions on the procedures for effecting interim payments to counsel, and a sample memorandum order on this subject that provides for two alternative payment methods.

(c) The payment options provided in Appx. 2C 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.

(d) Other interim payment arrangements which effectuate this balance may be devised in consultation with the AO's Defender Services Office.

§ 230.73.20 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 Appx. 2D (Procedures for Interim Payments to Counsel in Death Penalty Cases).

§ 230.76 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 are subject to audit and must be retained for three years after approval of the final voucher for an appointment.

§ 230.80 Annual Report of Attorney Compensation Exceeding 1,000 Hours

Not later than three months after the end of each fiscal year, the AO's Defender Services Office will prepare reports listing all attorneys who have claimed compensation of more than 1,000 hours of services in the preceding fiscal year. The chief judge of each court of appeals and each district court will receive a copy of the report regarding attorneys within that district or circuit.

Guide to Judiciary Policy

Vol. 7: Defender Services
Pt. A: Guidelines for Administering the CJA and Related Statutes

Ch. 3: Authorization and Payment for Investigative, Expert, or Other Services

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Last substantive revision (Transmittal 07-007) September 17, 2013
Last revised (updated case compensation maximums) January 28, 2016

§ 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		

§ 320.20.60 Summary Chart: Responsibility for Payment of Psychiatric and Related Expert Services		
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.

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Ch. 4: Defender Organizations

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Appendices

Appx. 4A Community Defender Organization: Grant and Conditions
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§ 410 Overview

§ 410.10 Statutory Authority

(a) Subsection (g) of the Criminal Justice Act (CJA) (18 U.S.C. § 3006A(g)), as amended, is intended to provide an option for the establishment of a public defender organization or community defender organization. A district, or part of a district in which at least 200 persons annually require the appointment of counsel, may establish a defender organization. Two adjacent districts or parts of districts may aggregate the number of persons required to be represented to establish eligibility.

(b) If an eligible court desires to provide for representation by a public defender organization or a community defender organization as provided under 18 U.S.C. § 3006A(g), then 18 U.S.C. § 3006A(a) of the CJA applies. The CJA directs each district court to place in operation its own plan for furnishing representation under the terms of the CJA, after the approval of the plan by the judicial council of the circuit court of appeals and under rules and regulations established by the Judicial Conference of the United States.

(c) It is intended that all provisions of the CJA be administered efficiently and economically. 18 U.S.C. § 3006A(g) is intended to provide an option in the plan for the establishment of a public defender organization or community defender organization. Only one such organization should be approved for any district or part of a district in the absence of a clearly demonstrated showing of the need and feasibility of more than one such organization. It is the sense of the Judicial Conference that competitive organizations in the area should be avoided. The statute prohibits the authorization of more than one federal public defender organization within a single judicial district.

§ 410.20 Judicial Conference Policy

The Judicial Conference has recommended that the CJA be amended to:

(a) Eliminate the requirement that a district receive at least 200 CJA appointments annually in order to qualify for the establishment of a federal public defender organization or a community defender organization; and

(b) Require that a federal public defender organization or community defender organization be established in all judicial districts, or combination of districts, where:

- such an organization would be cost effective;
- more than a specified number of appointments is made each year; or
- the interests of effective representation otherwise require establishment of such an office.

See: JCUS-MAR 93, p. 23; JCUS-SEP 95, p. 25.

§ 420 Types of Defender Organizations

§ 420.10 Federal Public Defender Organizations

§ 420.10.10 Appointment of the Federal Public Defender

The federal public defender is appointed by the circuit court of appeals for a term of four years, unless sooner removed. Upon the expiration of the term a federal public defender may, by a majority vote of the judges of the court of appeals, continue to perform the duties of the office until a successor is appointed, or until one year after the expiration of such defender's term, whichever is earlier.

§ 420.10.20 Appointment of Federal Public Defender Organization Staff

(a) The federal public defender organization consists of one or more full-time salaried attorneys. The federal public defender may appoint:

- full-time attorneys in such number as may be approved by the court of appeals of the circuit; and
- other personnel as approved by the Director of the Administrative Office of the United States Courts (AO).

(b) The federal public defender and staff are subject to the provisions of 5 U.S.C. § 2104 and § 2105.

§ 420.10.30 Compensation of Federal Public Defender and Staff

(a) The circuit court of appeals determines the compensation of the federal public defender, which may not exceed the compensation received by the U.S. attorney for the same district. In determining the rate of compensation of the federal public defender, the court of appeals will take into account the:

- size of the office;
- number of employees required; and
- responsibilities of the public defender and staff as compared with the same requirements and responsibilities of the U.S. attorney and staff.

(b) The federal public defender determines the compensation of assistant defenders and other personnel, which may not exceed the compensation paid to attorneys and other personnel of similar qualifications, experience, and responsibilities in the office of U.S. attorney for the same district.

§ 420.10.40 Appointment of a Committee to Assess the Qualifications of Federal Public Defender Candidates and of the Federal Public Defender for Reappointment

(a) In view of the intent of Congress to insulate the federal public defender from the involvement of the district court before which the defender principally practices, the recruitment and screening of candidates for the office of federal public defender and the evaluation of federal public defender performance prior to reappointment should be a function of the court of appeals rather than the district court.

(b) In carrying out this responsibility, the chief judge of the court of appeals should appoint a committee to assess the performance and potential for future performance of the federal public defender candidates or incumbent federal public defender. The committee should consist of persons knowledgeable in federal criminal defense issues, but should not include probation, pretrial services, law enforcement, or prosecutorial personnel.

§ 420.10.50 Committee Selection of the Federal Public Defender

(a) In recruiting and selecting candidates for the office of federal public defender, the committee should seek attorneys with the following qualifications:

(1) a member in good standing in the bar of the state in which the candidate is admitted to practice;

(2) a minimum of five years criminal practice experience, preferably with significant federal criminal trial experience, which demonstrates an ability to provide zealous representation of consistently high quality to criminal defendants;

(3) the ability to effectively administer the office;

(4) a reputation for integrity; and

(5) a commitment to the representation of those unable to afford counsel.

(b) The committee should solicit the views of those in a position to evaluate the performance of the candidates, including, but not limited to judges and U.S. magistrate judges of courts in which the candidate has practiced.

(c) A national vacancy notification effort consistent with equal employment opportunity standards should be undertaken in connection with the recruitment of candidates for vacant federal public defender positions. The AO Defender Services Office should be contacted for advice and financial support in this regard.

(d) The committee should screen applications and submit the names of three to five candidates ranked in order of preference to the district court for comment and recommendation. Pursuant to the provision of the CJA requiring the court of appeals to consider the recommendation of the district court or courts to be served, the recommendations of the district court must be included in the committee's report to the court of appeals, along with the committee's response to the district court's comments and recommendations, where appropriate.

(e) When a candidate is selected, the AO Defender Services Office should be notified promptly of the nominee so that it may initiate any background investigation requested by the court of appeals.

§ 420.10.60 Reappointment of the Federal Public Defender

(a) The committee should assess the following before deciding whether the reappointment of an incumbent federal public defender is warranted:

- quality of representation;
- level of commitment and service to clients; and
- administrative efficiency of the federal defender office.

In this process, it should solicit the views of those in a position to evaluate the performance of the federal public defender and the quality of the services provided by the federal public defender organization, including, but not limited to, judges and U.S. magistrate judges of courts served by the organization.

(b) The federal public defender should be given an opportunity to respond to adverse comments, including adverse comments that would not influence the decision to reappoint, so that the defender may benefit from constructive criticism. The committee will not disclose the identity of any person who requests confidentiality, but will provide the defender with a general description of the source and nature of the comments.

(c) The committee's report and assessment, including any recommendations from the district court to be served, should be considered by the court of appeals in determining whether to appoint or reappoint a particular individual as the federal public defender.

§ 420.20 Community Defender Organizations

(a) A community defender organization must be a nonprofit defense counsel service. The organization's stated purposes must include implementation of the aims and purposes of the CJA. Its bylaws must demonstrate that it is an organization with a professional and fiscal responsibility capable of

providing adequate representation under the CJA. The bylaws must be set forth in the plan for the district authorizing a community defender organization. It may operate either on the fee system or through grants to be approved by the Judicial Conference.

(b) If a community defender organization that has been approved under the plan for the district court applies for any grant, it must do so on a form prepared by the Director of the AO for the use of the Judicial Conference in considering applications for such grants. The receipt and use of grant funds are subject to the conditions set forth in Appx. 4A (Community Defender Organization: Grant and Conditions). Community defender organizations must agree to and accept these conditions before grant payments are issued.

(c) A Model Code of Conduct for Federal Community Defender Employees is set forth in Appx. 4B. Unless a variance from one or more of the Model Code's provisions is sought from, and approved by, the AO Defender Services Office, the community defender organization's board of directors must adopt the Model Code of Conduct as set forth in Appx. 4B and make it applicable to all of the community defender organization's employees. **See:** Clause 22 of Appx. 4A (Community Defender Organization: Grant and Conditions).

§ 430 Transcripts, Investigative, Expert, and Other Services

§ 430.10 Payment of Transcripts

(a) All defender organizations have general authorization to procure transcripts, provided that total expenditures for transcripts do not exceed the funding available in the budget object code (BOC) for transcripts.

(b) The limitations in Guide, Vol. 7A, § 310.20 are inapplicable to the cost of transcripts and do not apply to federal public or community defender organizations.

(c) The general authorization provided above includes supplemental funds provided for the transcripts or funds transferred to the transcripts BOC from other BOCs.

(d) Once the federal public or community defender has obligated all funds in the transcripts BOC, it will be necessary to transfer funds from other BOCs, or to seek supplemental funds to cover additional expenditures.

§ 430.20 Payment of Investigative, Expert, and Other Services

(a) All defender organizations have general authorization to procure investigative, expert and other services as contemplated under 18 U.S.C. § 3006A(e), as amended, provided that total expenditures for the BOCs that comprise investigative, expert and other services do not exceed the funding available in those BOCs.

(b) The limitations set forth in Guide, Vol. 7A, § 310.20 do not apply to federal public or community defender organizations.

(c) The general authorization provided above includes supplemental funds provided in the investigative, expert and other services BOCs, or funds transferred to those BOCs.

(d) Once the federal public or community defender has obligated all funds in any of the investigative, expert and other services BOCs, it will be necessary to transfer funds from other BOCs or to seek supplemental funds to cover additional expenditures.

§ 440 Assignment of Cases

To ensure the effective supervision and management of the organization, federal public defenders and community defenders should be responsible for the assignment of cases within their own offices. Accordingly, appointments by the court or U.S. magistrate judge 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.

§ 450 Apportionment of Cases Between Defender Organizations and the Panel

(a) Recognizing that federal defender organizations consistently furnish high-quality representation to CJA defendants and provide a cost-effective alternative to representation by CJA panel attorneys, the Judicial Conference has recommended that courts take steps to increase the number of cases assigned to federal defender organizations. (JCUS-MAR 93, pp. 13-14).

(b) In districts currently served by a defender organization these steps should include:

(1) approval of additional assistant federal defender staff in appropriate circumstances; and

(2) review and adjustment of district appointment procedures.

§ 460 Participation as *Amicus Curiae*

Under governing court rules, federal public defenders and community defenders may participate as *amicus curiae*:

(a) in federal court at the invitation of the court;

(b) in death penalty habeas corpus cases; or

(c) on behalf of a client as an ancillary matter appropriate to the proceedings.

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§ 530 Disclosure of Information on Payments to Service Providers

§ 540 History of the Disclosure Policy

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§ 510 General Principles

§ 510.10 Overview

This chapter sets forth the policy on the public disclosure of information pertaining to activities under the Criminal Justice Act (CJA) (18 U.S.C. § 3006A) and related statutes. Because of amendments to the CJA and related statutes, different procedures may apply depending on the type and date of the information.

§ 510.20 Freedom of Information Act Inapplicable

Neither the Freedom of Information Act (5 U.S.C. § 552) nor the Privacy Act (5 U.S.C. § 552a) applies to the judiciary, and neither is applicable to requests for release to the

public of records and information pertaining to activities under the CJA and related statutes.

§ 510.30 Limitations on Disclosure

Generally, such information which is not otherwise routinely available to the public should be made available unless it:

(a) is judicially placed under seal;

(b) could reasonably be expected to unduly intrude upon the privacy of attorneys or defendants;

(c) could reasonably be expected to compromise defense strategies, investigative procedures, attorney work product, the attorney-client relationship or privileged information provided by the defendant or other sources; or

(d) otherwise adversely affect the defendant's right to the effective assistance of counsel, a fair trial, or an impartial adjudication.

See: 5 U.S.C. § 552(b).

§ 510.40 CJA Information Placed Under Seal

Upon request, or upon the court's own motion, documents pertaining to activities under the CJA and related statutes maintained in the clerk's open files, which are generally available to the public, may be judicially placed under seal or otherwise safeguarded until after all judicial proceedings, including appeals, in the case are completed and for such time thereafter as the court deems appropriate. Interested parties should be notified of any modification of such order.

§ 510.50 Information in the Custody of the Administrative Office

Requests for release of information pertaining to activities under the CJA and related statutes in the custody of the Administrative Office (AO) will be disposed of in accordance with internal directives of that office.

§ 520 Disclosure of Information on Payments to Attorneys

§ 520.10 Timing

The CJA, as amended in 1998, mandates disclosure of amounts paid to court appointed attorneys **upon the court's approval of the payment.**

§ 520.20 Documents

(a) To satisfy the requirements of the CJA, courts may release copies of the payment vouchers (the top sheets of completed forms CJA 20 or CJA 30), redacted or unredacted, depending on the stage of the particular case and the statutory considerations involved.

(b) **Documentation submitted in support of, or attached to, payment claims is not covered by the CJA and need not be disclosed at any time.**

§ 520.30 Notice

(a) Before approving payments, courts are required to provide reasonable notice of disclosure to counsel to allow the counsel to request the redaction of specific information based on the considerations set forth in 18 U.S.C. § 3006A(d)(4)(D) and Guide, Vol. 7A, § 520.50.

(b) To comply with this notice requirement, it is recommended that, contemporaneously with the issuance to counsel of the forms CJA 20 or CJA 30, courts give appointed counsel a copy of Form CJA 19 (Notice to Court Appointed Counsel of Public Disclosure of Attorney Fee Information).

§ 520.40 Attorney Payments Approved Before or During Trial

(a) **After redacting any detailed information provided to justify the expenses**, the court will make available to the public a copy of the voucher showing **only the amounts approved for payment**.

(b) On the completion of trial, an unredacted copy of the voucher may be released, depending on whether an appeal is being pursued and whether the court determines that one or more of the interests listed in Guide, Vol. 7A, § 520.50 require the redaction of information.

§ 520.50 Attorney Payments Approved After Trial Where Appellate Review is Not Being Pursued or Has Concluded

The court will make an unredacted copy of the payment voucher available to the public **unless** it determines that one or more of the interests set forth in 18 U.S.C. § 3006A(d)(4)(D) and listed below justify limiting disclosure to the amounts approved for payment.

(a) the protection of any person's Fifth Amendment right against self-incrimination;

(b) the protection of the defendant's Sixth Amendment right to effective assistance of counsel;

(c) the defendant's attorney-client privilege;

(d) the work product privilege of the defendant's counsel;

(e) the safety of any person; or

(f) any other interest that justice may require (with the exception that for death penalty cases where the underlying alleged criminal conduct took place on or after April 19, 1995, the amount of the fees shall not be considered a reason to limit disclosure).

§ 520.60 Attorney Payments Approved After Trial Where Appellate Review is Being Pursued

The court will make available to the public only the amounts approved for payment **unless** it finds that **none** of the interests listed above in § 520.50 will be compromised.

§ 520.70 Attorney Payments Approved After the Appeal is Completed

The court will make an unredacted copy of the payment voucher available to the public **unless** it determines that one or more of the interests listed above in § 520.50 justify limiting disclosure to only the amounts approved for payment.

§ 530 Disclosure of Information on Payments to Service Providers

(a) The CJA and related statutes expressly provide for disclosure to the public of the amounts paid for representation with respect to cases commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996. The timing of the disclosure must be consistent with the principles set forth in § 510.

(b) For capital cases, disclosure must be after the disposition of the petition.

§ 540 History of the Disclosure Policy

(a) The Fiscal Year 1998 Judiciary Appropriations Act amended 18 U.S.C. § 3006A(d)(4) to require amounts paid to attorneys under the CJA be made publicly available pursuant to a specific process. The amendment applied to cases filed on or after January 25, 1998 and included a two-year sunset provision. Public Law No. 105-119, Nov. 26, 1997. To

conform to the amendment, the Judicial Conference approved in March 1999 revisions to paragraph 5.01B of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures* (Legacy *Guide*). **See:** JCUS-MAR 99, pp. 15-16.

Note: These amendments are now incorporated into Guide, Vol. 7A, § 520 and § 530.

(b) In March 2000, the Judicial Conference agreed to retain the revised guideline after the scheduled sunset, with the following minor revisions: (a) to show that for cases filed on or after January 25, 2000, the guideline will no longer be statutorily based; and (b) to reflect a further amendment to 18 U.S.C. § 3006A(d)(4), enacted as part of the Fiscal Year 2000 Judiciary Appropriations Act (Public Law No. 106-113, 113 Stat. 1501), which states that in death penalty cases where the underlying alleged criminal conduct took place on or after April 19, 1995, the amount of the fees shall not be considered a reason justifying limited disclosure of payments to attorneys. JCUS-MAR 00, pp. 16-17.

(c) For Payments to **Providers of Services other than Counsel** in Cases Commenced **on or after** April 24, 1996, **and** for Payments to **Attorneys** in Cases Commenced **on or after** April 24, 1996 **but before** January 25, 1998:

(1) The Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, amended the CJA (18 U.S.C. § 3006A), and the Anti-Drug Abuse Act of 1988 (ADAA) (codified in part at 21 U.S.C. § 848(q), recodified in 2005 as 18 U.S.C. § 3599), expressly to provide for disclosure to the public of the amounts paid for representation with respect to cases commenced, and appellate proceedings in which an appeal is perfected, **on or after** April 24, 1996.

(2) With respect to noncapital cases, the CJA, as amended, 18 U.S.C. § 3006A(d)(4) and (e)(4), provided that the amounts paid under those subsections in any case "shall be made available to the public."

(3) With respect to capital cases, the ADAA, as amended, 21 U.S.C. § 848(q)(10)(C) (now 18 U.S.C. § 3599(g)(3)), provided that the amounts paid under that paragraph in any case "shall be disclosed to the public, after the disposition of the petition."

(4) Judicial Conference policy required that the timing of disclosure be consistent with the principles stated in Guide, Vol. 7A, § 510.

(d) For All Payments in Cases Commenced **Before** April 24, 1996:

The general principles regarding the release of information stated in § 510 governed.

Guide to Judiciary Policy

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Last substantive revision (Transmittal 07-008) February 28, 2014
Last revised (updated case compensation maximums) January 28, 2016

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Appendix

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§ 610 Overview

§ 610.10 Statutory Authority and Applicability

(a) The appointment and compensation of counsel and the approval and payment of persons providing investigative, expert, and other services in federal capital cases is governed by 21 U.S.C. § 848(q), which was amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214, and recodified as 18 U.S.C. § 3599.

(b) The pertinent provisions of the AEDPA are applicable to capital cases commenced, and appellate proceedings in which an appeal is perfected, on or after the date of enactment of the AEDPA (April 24, 1996).

(c) This chapter retains guidelines applicable to cases that pre-date the AEDPA, and adds, where appropriate, guidelines for cases subject to the AEDPA.

(d) Unless otherwise specified, provisions in this chapter apply to all capital cases.

§ 610.20 Judicial Conference Recommendations

Detailed recommendations on the appointment and compensation of counsel in federal death penalty cases were adopted by the Judicial Conference, upon recommendation of the Defender Services Committee, on September 15, 1998 (JCUS-SEP 98, pp. 67-74). The recommendations were contained in the May 1998 report entitled *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Spencer Report). The Defender Services Committee approved the initial Spencer report, including the commentary that accompanied the recommendations. In September 2010, following a comprehensive update of the report's contents, the Defender Services Committee endorsed revised commentary to the 1998 recommendations. The recommendations and the accompanying revised commentary are set forth in Appx. 6A (Recommendations Concerning the Cost and Quality of Defense Representation (Updated Spencer Report, September 2010)) of Part A of this volume. The updated 2010 report, which includes additional information, is available on the judiciary's public website.

§ 610.30 Contact Information

Questions about the appointment and compensation of counsel and the approval and payment of investigative, expert, and other service providers in federal capital cases should be directed to the Administrative Office of the U.S. Courts' (AO) Defender Services Office, Legal and Policy Division Duty Day Attorney, at 202-502-3030 or via email at DSO_LPD@ao.uscourts.gov.

§ 620 Appointment of Counsel in Capital Cases

§ 620.10 Number of Counsel

§ 620.10.10 Federal Death Penalty Cases

(a) As required by 18 U.S.C. § 3005, at the outset of every capital case, courts should appoint two attorneys, at least one of whom is experienced in and knowledgeable about the defense of death penalty cases.

(b) Under 18 U.S.C. § 3599(a)(1), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in a capital case.

(c) While courts should not appoint more than two attorneys unless exceptional circumstances and good cause are shown, appointed counsel may, with prior court authorization, use the services of attorneys who work in association with them, provided that the employment of such additional counsel (at a reduced hourly rate) diminishes the total cost of representation or is required to meet time limits.

§ 620.10.20 Habeas Corpus Proceedings

(a) Under 18 U.S.C. § 3599(a)(2), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 or § 2255 is **entitled** to appointment of one or more qualified attorneys.

(b) Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two attorneys.

§ 620.15 Notification of Relationship

Prior to appointment, counsel should notify the presiding judicial authority if counsel is aware that he or she is related (as the term is defined in 5 U.S.C. § 3110) to any attorney on the same representation, or any attorney being considered for appointment. If appointment of related counsel is made prior to notification, counsel should provide notification as soon as practicable.

§ 620.20 Appointment of State Public Defenders or Legal Aid Attorneys

(a) The judicial officer may appoint an attorney, if qualified under Guide, Vol. 7A, § 620.60, who is furnished by a state or local public defender organization or by a legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief.

(b) Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed *pro hac vice* according to the Guide, Vol. 7A, § 210.30.

(c) Such appointments should be made when the court determines that they will provide the most effective representation. In making this determination, the court should take into consideration whether the attorney represented the person during prior state court proceedings.

§ 620.30 Procedures for Appointment of Counsel in Federal Death Penalty Cases

(a) In appointing counsel in federal death penalty cases, 18 U.S.C. § 3005 requires the court to consider the recommendation of the federal defender, or, if no such organization exists in the district, of the AO's Defender Services Office.

(b) In fulfilling this responsibility, the federal defender organization or AO's Defender Services Office should consult with counsel (if counsel has already been appointed or retained) and the court regarding the facts and

circumstances of the case to determine the qualifications which may be required to provide effective representation.

(c) In evaluating the qualifications of counsel considered for appointment, the federal defender organization or AO's Defender Services Office should consider the:

(1) minimum experience standards set forth in 18 U.S.C. § 3599(b)–(d), 18 U.S.C. § 3005, and other applicable laws or rules;

(2) qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases;

(3) recommendations of other federal public and community defender organizations, and local and national criminal defense organizations;

(4) proposed counsel's commitment to the defense of capital cases; and

(5) availability and willingness of proposed counsel to accept the appointment and to represent effectively the interests of the client.

(d) Courts should ensure that all attorneys appointed in federal death penalty cases are well qualified, by virtue of their prior defense experience, training, and commitment, to serve as counsel in this highly specialized and demanding litigation.

(e) Ordinarily, "learned counsel" (**see:** 18 U.S.C. § 3005) should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high-quality representation.

§ 620.40 Federal Death Penalty Cases: Special Considerations in the Appointment of Counsel on Appeal

Ordinarily, the attorneys appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial. In appointing counsel the court should, among other relevant factors, consider the:

(a) attorney's experience in federal criminal appeals and capital appeals;

(b) general qualifications identified in the Guide, Vol. 7A, § 620.30; and

(c) attorney's willingness, unless relieved, to serve as counsel in any post-conviction proceedings that may follow the appeal.

§ 620.50 Federal Death Penalty Cases: Special Considerations in the Appointment of Counsel in Post-Conviction Proceedings

In appointing post-conviction counsel in a case where the defendant is sentenced to death, courts should consider the attorney's experience in federal post-conviction proceedings and in capital post-conviction proceedings, as well as the general qualifications identified in § 620.30 and § 620.60.20.

§ 620.60 Attorney Qualification Requirements Under 18 U.S.C. § 3599 in Federal Death Penalty Cases and Habeas Corpus Proceedings

§ 620.60.10 Appointment of Counsel Before Judgment

Under 18 U.S.C. § 3599(b), at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years' experience in the actual trial of felony prosecutions in that court. Under 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

§ 620.60.20 Appointment of Counsel After Judgment

Under 18 U.S.C. § 3599(c), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years' experience in the handling of appeals in felony cases in the court.

§ 620.60.30 Attorney Qualification Waiver

Under 18 U.S.C. § 3599(d), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

§ 620.70 Continuity of Representation

(a) In the interest of justice and judicial and fiscal economy, unless precluded by a conflict of interest, presiding judicial officers are urged to continue the appointment of state post-conviction counsel, if qualified under Guide, Vol. 7A, § 620.60, when the case enters the federal system.

(b) Under 18 U.S.C. § 3599(e), unless replaced by an attorney similarly qualified under Guide, Vol. 7A, § 620.60 by counsel's own motion or upon motion of the defendant, counsel "shall represent the defendant

throughout every subsequent stage of available judicial proceedings," including:

- pretrial proceedings;
- trial;
- sentencing;
- motion for a new trial;
- appeals;
- applications for writ of certiorari to the Supreme Court of the United States;
- all post-conviction processes;
- applications for stays of execution and other appropriate motions and procedures;
- competency proceedings; and
- proceedings for executive or other clemency.

§ 630 Compensation of Appointed Counsel in Capital Cases

§ 630.10 Hourly Rates and Inapplicability of Compensation Maximums

§ 630.10.10 Hourly Rates

Under 21 U.S.C. § 848(q)(10)(A), recodified in 18 U.S.C. § 3599(g)(1), the presiding judicial officer will set the hourly compensation at a rate not to exceed the following amounts, for appointed counsel in 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:

§ 630.10.10(a) Capital Hourly Rates	
If services were performed between...	**The hourly rate maximum is...**
01/01/2016 to present	$183
01/01/2015 through 12/31/2015	$181
03/01/2014 through 12/31/2014	$180
09/01/2013 through 02/28/2014	$163
01/01/2010 through 08/31/2013	$178
03/11/2009 through 12/31/2009	$175
01/01/2008 through 03/10/2009	$170
05/20/2007 through 12/31/2007	$166

§ 630.10.10(a) Capital Hourly Rates	
If services were performed between...	**The hourly rate maximum is...**
01/01/2006 through 05/19/2007	$163
02/01/2005 through 12/31/2005	$160

(b) Annual Increase in Hourly Rate Maximum

(1) Under 18 U.S.C. § 3599(g)(1), the Judicial Conference is authorized to increase annually the hourly rate maximum by an amount not to exceed the federal pay comparability raises given to federal employees.

(2) The Judicial Conference has determined that the hourly rate maximum will be adjusted automatically each year according to any federal pay comparability adjustment, contingent upon the availability of sufficient funds. **See:** JCUS-MAR 02, pp. 13-14.

(3) Newly established rates will apply with respect to services performed on or after their effective dates.

§ 630.10.20 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.

§ 630.20 Adequate Compensation of Counsel

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:** Guide, Vol. 7A, § 620.60), 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.

§ 630.30 Death Eligible Cases Where Death Penalty Is Not Sought

§ 630.30.10 General Considerations

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.

§ 630.30.20 Number of Counsel

(a) The court should, absent extenuating circumstances, make an appropriate reduction in the number of counsel.

(b) In deciding whether there are extenuating circumstances, the court should consider the following factors:

(1) the need to avoid disruption of the proceedings;

(2) whether the decision not to seek the death penalty occurred late in the litigation;

(3) whether the case is unusually complex; and

(4) any other factors that would interfere with the need to ensure effective representation of the defendant.

§ 630.30.30 Compensation Rate

(a) The court should, absent extenuating circumstances, reduce the compensation rate.

(b) In determining whether there are extenuating circumstances, the court should consider the following factors:

(1) the extent to which this representation precludes counsel from taking other work;

(2) the commitment of time and resources counsel has made and will continue to make in the case; and

(3) the need to compensate appointed counsel fairly.

(c) Any reduction in the compensation rate will apply prospectively only.

§ 630.40 Interim Payments to Counsel

It is urged that the court permit interim payment of compensation in capital cases. For information on interim payments to counsel in death penalty cases, **see:** § 230.73.20 and Appx. 2D (Procedures for Interim Payments to Counsel in Death Penalty Cases).

§ 630.50 Timely Review of Vouchers

Absent extraordinary circumstances, judges should act upon panel attorney compensation claims within 30 days of submission.

§ 630.60 Forms

Claims for compensation and reimbursement of expenses for attorneys furnishing services in death penalty proceedings should be submitted on Form CJA 30 (Death Penalty Proceedings: Appointment of and Authority to Pay Court Appointed Counsel).

§ 640 Case Budgeting

§ 640.10 Overview

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.

§ 640.20 Purpose and Procedures

(a) 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.

(b) Case budgets should be submitted *ex parte* and filed and maintained under seal.

(c) Consideration should be given to employing an *ex parte* pretrial conference to facilitate reaching agreement on a litigation budget at the earliest opportunity.

(d) 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.

(e) An approved budget should guide counsel's use of time and resources by indicating the services for which compensation is authorized.

(f) 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.

§ 640.30 Matters for Inclusion in the Capital Case Budget

Matters that may affect the compensation and reimbursement of counsel and payments for investigative, expert, and other services (**see:** Guide, Vol. 7A, § 640.20(d)) include, but are not limited to the following:

(a) The hourly rate at which counsel will be compensated (**see:** § 630.10 and § 630.20);

(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:

(1) 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 (DOJ) determines whether to authorize the death penalty;

(2) 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);

(3) 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 according to § 630.30;

(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:** § 660.40.10 and § 660.60);

(g) The form in which claims for compensation and reimbursement should be submitted (**see:** § 630.60) and the matters that those submissions should address; and

(h) The authorization and payment for investigative, expert, and other services. **See:** § 660.

§ 640.40 Authorization for Investigative, Expert, and Other Services Prior to Submission of Case Budget

(a) Recognizing that investigative, expert, and other services may be required before there is an opportunity for counsel to prepare a case budget or for the court to approve it, courts should act upon requests for services where prompt authorization is necessary for adequate representation.

(b) Courts, in examining the case budget, may reconsider amounts authorized for services prior to the budget's approval; however, courts may not rescind prior authorization where work has already been performed.

§ 650 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.

§ 660 Authorization and Payment for Investigative, Expert, and Other Services in Capital Cases

§ 660.10 In General

§ 660.10.10 Cases Commenced After April 24, 1996 (Post-AEDPA)

(a) 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.

(b) 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.

§ 660.10.20 Cases Commenced Before April 24, 1996 (Pre-AEDPA)

For capital cases commenced, and appellate proceedings in which an appeal was perfected, before April 24, 1996, according to 21 U.S.C. § 848(q)(9) before 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 will authorize the defendant's counsel to obtain such services on behalf of the defendant.

§ 660.10.30 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 § 310.20.30(b).

§ 660.10.40 Applicability of Chapter 3 Guidelines

Except as otherwise specified in § 660, the provisions set forth in the Guide, Vol. 7A, Ch. 3, including § 310.20.30, are applicable to the authorization and payment for investigative, expert, and other services in capital cases.

§ 660.20 Limitations On Payment for Investigative, Expert, and Other Services

§ 660.20.10 Inapplicability of Compensation Maximums

For all capital cases, the compensation maximum amounts for investigative, expert, and other services set forth in the Guide, Vol. 7A, § 310.20.10 are inapplicable.

§ 660.20.15 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, § 620.10.10(c)), 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).

§ 660.20.20 Cases Commenced After April 24, 1996 (Post-AEDPA)

(a) 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, under 18 U.S.C. § 3599)(g)(2), the fees and expenses for investigative, expert, and other services are limited to $7,500 in any case unless:

(1) payment in excess of that amount is certified by the court, or U.S. 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

(2) the amount of the excess payment is approved by the chief judge of the circuit (or an active or senior circuit judge to whom the chief judge has delegated this authority).

(b) The $7,500 limit applies to the total payments for investigative, expert, and other services in a case, not to each service individually.

(c) 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 or senior circuit judge to whom the chief judge has delegated this authority). Accordingly, the court will monitor all payments for investigative, expert, and other services.

(d) 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 or senior circuit judge to whom the chief judge has delegated this authority). **See:** Guide, Vol. 7A, Appx. 3A (Sample Request for Advance Authorization for Investigative, Expert, or Other Services).

(e) Rather than submitting multiple requests, where possible, courts should submit the expert, investigative, and other services portion of the approved case budget to the chief judge of the circuit (or designee of the chief judge) for advance approval. **See:** § 640.

§ 660.20.30 Cases Commenced Before April 24, 1996 (Pre-AEDPA)

For capital cases commenced, and appellate proceedings in which an appeal was perfected, before April 24, 1996, according to 21 U.S.C. § 848(q)(10) before that provision's amendment by the AEDPA, the presiding judicial officer will 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.

§ 660.30 Consulting Services

(a) Where necessary for adequate representation, 18 U.S.C. § 3006A(e) and 18 U.S.C. § 3599(f) authorize the reasonable employment and compensation of expert attorney consultants to provide "**light consultation**" services to appointed and *pro bono* attorneys 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; and
- authorization process to seek the death penalty.

(b) "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.

(c) An expert attorney consultant will not be paid an hourly rate exceeding that which an appointed counsel could be authorized to be paid.

(d) Courts may wish to require that an appointed attorney who seeks to have the court authorize the services of an expert attorney consultant confer with the federal defender, or the AO's Defender Services Office 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.

§ 660.40 Interim Payments to Service Providers

§ 660.40.10 In General

It is urged that the court or U.S. magistrate judge permit interim payment of compensation in capital cases.

§ 660.40.20 Cases Commenced After April 24, 1996 (Post-AEDPA)

(a) 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 the Guide, Vol. 7A, Appx. 3C (Procedures for Interim Payments to Service Providers in Capital Proceedings). For limitations on payment for investigative, expert, and other services with respect to federal death penalty cases and federal capital habeas corpus proceedings, **see:** § 660.20.20.

See also: the case budgeting techniques recommended in § 640.

(b) 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 AO's Defender Services Office.

§ 660.40.30 Cases Commenced Before April 24, 1996 (Pre-AEDPA)

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 the Guide, Vol. 7A, Appx 3C (Procedures for Interim Payments to Service Providers in Capital Proceedings). For procedures governing federal death penalty cases and federal capital habeas corpus proceedings, **see:** § 660.20.30.

§ 660.50 Forms

Claims for compensation and reimbursement of expenses for investigative, expert, or other services in death penalty proceedings should be submitted on Form CJA 31 (Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher for Expert and Other Services).

§ 660.60 Timely Review of Vouchers

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

§ 670 Scheduling of Federal Death Penalty Case Authorization to Control Costs

(a) Within a reasonable period of time after appointment of counsel under 18 U.S.C. § 3005, and only after consultation with counsel for the government and for the defendant (including, as appropriate, in an *ex parte* application or proceeding), the court should establish a schedule for resolution of whether the government will seek the death penalty.

(b) This schedule should include dates for:

(1) the submission by the defendant to the U.S. attorney of any reasons why the government should not seek the death penalty;

(2) the submission by the U.S. attorney to the appropriate officials of the DOJ of a recommendation and any supporting documentation concerning whether the death penalty should be sought; and

(3) filing of a notice under 18 U.S.C. § 3593(a) that the government will seek the death penalty, or notification to the court and the defendant that it will not.

(c) The schedule should be flexible and subject to extension for good cause at the request of either party (again, as appropriate, in an *ex parte* application or proceeding).

(d) The schedule should allow reasonable time for counsel for the parties to discharge their respective duties with respect to the question of whether the death penalty should be sought, with due regard to:

- the factual complexity of the case;
- the status of any continuing investigation of the crimes and related criminal conduct;
- the anticipated or actual progress of discovery;
- the potential for successful plea negotiations; and
- any other relevant factors.

(e) It is also recognized that scheduling extensions may be necessary because the full development of facts related to guilt and aggravating and mitigating factors may continue even after the case is submitted to the DOJ for review.

§ 680 Clemency

§ 680.10 Clemency Representation by Counsel

§ 680.10.10 New Appointments

A new appointment for clemency representation is not necessary since, under 18 U.S.C. § 3599(e), each attorney appointed to represent the defendant for habeas corpus proceedings under 28 U.S.C. § 2254, unless replaced by similarly qualified counsel, "shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant."

§ 680.10.20 Motions to Withdraw

(a) Motions to withdraw from the clemency representation should be brought in the federal district court where the habeas corpus matter was filed.

(b) Upon granting a motion to withdraw, unless the defendant is represented by similarly qualified counsel or representation is waived by the defendant, the court must appoint counsel to represent the defendant for any available clemency proceedings.

§ 680.20 Clemency Vouchers

§ 680.20.10 Issuance of Voucher for Clemency Work

Upon appointment of counsel for habeas corpus proceedings brought under 28 U.S.C. § 2254, the district court should issue appointed counsel two CJA payment vouchers (Form CJA 30 (Death Penalty Proceedings: Appointment of and Authority to Pay Court Appointed Counsel)); one designated for the habeas corpus proceeding and one designated for a potential clemency proceeding.

§ 680.20.20 Processing of Clemency Vouchers

All attorney compensation (Form CJA 30 (Death Penalty Proceedings: Appointment of and Authority to Pay Court Appointed Counsel)) and investigative, expert, or other services vouchers (Form CJA 31 (Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher for Expert and Other Services)) pertaining to the clemency representation should be submitted to the district court, regardless of whether the habeas corpus case is on appeal at the time.

§ 680.30 Budgeting Clemency Work

(a) Consistent with § 640, courts are encouraged to require counsel appointed in 28 U.S.C. § 2254 proceedings to submit a proposed initial clemency budget for court approval that will be subject to modification in light of facts and developments that emerge as the case proceeds.

(b) The district court, in consultation with counsel, should determine when the clemency budget should be submitted — early in the habeas corpus proceedings, or at the beginning of the clemency work. In order to allow sufficient time for clemency preparation, budgeting should occur well in advance of final resolution of the case in the courts.

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Ch. 1: Overview

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§ 110 Purpose

Part B of Volume 7 sets forth regulations promulgated by the Director of the Administrative Office of the U.S. Courts (AO) under 18 U.S.C.§ 4109(a)(2) for the appointment and compensation of counsel in international prisoner transfer proceedings. Part B also provides information and guidance on the appointment and compensation of guardians ad litem in international prisoner transfer proceedings.

§ 120 International Prisoner Transfer Program

(a) The International Prisoner Transfer Program began in 1977, when the United States negotiated the first in a series of treaties that permit the transfer of prisoners from the countries in which they have been convicted and incarcerated to their home countries. **See:** 18 U.S.C. §§ 4100-4115. More than 70 countries and nationalities are now parties to either bilateral or multilateral prisoner transfer treaties with the United States.

(b) Prisoner transfers under the various treaties are available to United States citizens incarcerated abroad as well as to foreign nationals incarcerated within the United States.

(c) Although most inmates who are transferred out of the United States under these treaties are federal prisoners, all 50 states, Puerto Rico, and the Northern Mariana Islands have legislation authorizing them to participate in the International Prisoner Transfer Program.

(d) Prisoner transfer treaties are negotiated principally by the United States Department of State. However, the program itself is administered by the United States Department of Justice (DOJ), Criminal Division, International Prisoner Transfer Unit.

(e) For more information on the program and participating countries, **see:** DOJ Office of Enforcement Operations website.

§ 130 Consent Verification Hearings

(a) United States citizens incarcerated abroad and foreign nationals incarcerated within the United States must obtain approval for a transfer from both the DOJ and the government of the foreign country in which the prisoner is currently incarcerated or to which the prisoner wishes to transfer.

(b) Once the prisoner has obtained the necessary approvals, a consent verification hearing is scheduled. This hearing is mandated by 18 U.S.C. § 4108(a). The purpose of the hearing is to verify that the individual consents to a transfer to his or her home country to complete a sentence of incarceration voluntarily, and with full knowledge of the consequences of the transfer.

(c) The consent verification hearing is held in the country in which the sentence was imposed and is conducted by a U.S. magistrate judge or by a citizen specifically designated by a judge of the United States as defined by 28 U.S.C. § 451. **See:** 18 U.S.C. § 4108(a).

(d) If at the time of the transfer, the offender is under 18 years of age or deemed by the U.S. magistrate judge to be incompetent, consent to the transfer must be given by a parent, guardian, guardian ad litem, or by an appropriate court of the sentencing country. **See:** 18 U.S.C. § 4100(b).

(e) Additional guidance on the procedures for consent verification hearings in international prisoner transfer cases may be obtained from the AO's Judicial Services Office, 202-502-1800.

§ 140 Statutes and Authority

- Transfer to or from foreign countries (18 U.S.C. §§ 4100-4115)
- Right to counsel, appointment of counsel (18 U.S.C. § 4109)
- Transfers from the United States to a foreign country (18 U.S.C. § 4107)
- Transfers to the United States from a foreign country (18 U.S.C. § 4108)
- Jurisdiction of proceedings relating to transferred offenders (18 U.S.C. § 3244)

- Prisoner transfer treaties apply to U.S. military personnel (10 U.S.C. § 955)
- International Prisoner Transfer Program (7 Foreign Affairs Manual 480)

§ 150 Further Guidance

Inquiries concerning the appointment of counsel in international prisoner transfer proceedings should be directed to:

Chief, Defender Services Office
ATTN: Prisoner Transfer Treaty Matters
Administrative Office of the U.S. Courts
One Columbus Circle, NE
Washington, DC 20544
202-502-3030

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§ 210 Appointment of Counsel

§ 220 Appointment of Guardians Ad Litem

§ 230 Determining Financial Eligibility

§ 240 Procedures for Appointments
- § 240.10 Transfers from the United States
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§ 210 Appointment of Counsel

(a) United States citizens incarcerated abroad and foreign nationals incarcerated within the United States who seek an international prisoner transfer have the right to the advice of counsel. Additionally, an offender who is financially unable to obtain an attorney has the right to the appointment of counsel in proceedings to verify consent to transfer. **See:** 18 U.S.C. § 4109(a). Appointed counsel must advise and assist offenders prior to and during the proceedings.

(b) Offenders who seek a transfer have the right to the advice of counsel in proceedings before the United States Parole Commission, and in an appeal from a determination by this Commission. **See:** 18 U.S.C. §§ 4106A and 4109(c). Financially eligible offenders are entitled to the appointment of counsel for such proceedings, under 18 U.S.C. § 3006A.

§ 220 Appointment of Guardians Ad Litem

The appointment and compensation of guardians ad litem in prisoner transfer cases are provided for in 18 U.S.C.§ 4100(b) and § 4109(b).

(a) Guardians ad litem may be appointed to act on behalf of financially eligible minor or incompetent offenders in proceedings to verify their consent to transfer to or from the United States. **See:** 18 U.S.C.§ 4100(b).

(b) Appointment of a guardian ad litem is independent of the appointment of counsel under 18 U.S.C. § 4109.

§ 230 Determining Financial Eligibility

(a) An offender is "financially eligible" for the appointment of counsel or a guardian ad litem within the meaning of 18 U.S.C. § 4109 if his or her net financial resources and income are insufficient to enable the offender to obtain qualified counsel, or to provide for the compensation and travel expenses of a guardian ad litem.

(1) In determining whether such insufficiency exists, consideration must be given to the cost of providing the offender and his or her dependents with the necessities of life.

(2) The determination of eligibility must be made without regard to the financial ability of the offender's family unless the family indicates willingness and financial ability to retain counsel or to provide a guardian ad litem promptly.

(3) Any doubts as to an offender's eligibility must be resolved in his or her favor.

(b) The determination of whether an offender is eligible for appointment of counsel or a guardian ad litem is a function to be performed by the U.S. magistrate judge. Offenders will normally provide information regarding their financial status on Form CJA 23 (Financial Affidavit). Completed forms should be provided to the designated court. Although the court may obtain additional information, whenever practicable, fact-finding should be done prior to the offender's appearance at the consent verification hearing.

(c) For a more detailed explanation of determining financial eligibility under the Criminal Justice Act (CJA), **see:** Guide, Vol. 7A, § 210.40.

§ 240 Procedures for Appointments

§ 240.10 Transfers from the United States

(a) Appointment of counsel and guardians ad litem in connection with transfer proceedings **from** the United States **to** a foreign country under 18 U.S.C. § 4107 are made in accordance with the CJA, 18 U.S.C. § 3006A, and the *Guide to Judiciary Policy*. **See:** 18 U.S.C. § 4109(a)(1).

(b) Form CJA 20 should be used for the appointment and compensation of counsel and guardians ad litem in International Prisoner Transfer Proceedings **from** the United States **to** a foreign country. Such appointments are to be considered an appointment in a misdemeanor case for purposes of compensation under the CJA.

§ 240.20 Transfers to the United States

The Director of the Administrative Office of the U.S. Courts (AO) has delegated authority to the Chief for the AO's Defender Services Office (DSO) to designate counsel and guardians ad litem for appointment in international prisoner transfer proceedings **from** a foreign country **to** the United States. **See:** 18 U.S.C. § 4108 and § 4109(a)(2).

For questions about the appointment of counsel in international prisoner transfer proceedings **from** a foreign country **to** the United States, contact DSO at 202-502-3030.

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Ch. 3: Compensation and Reimbursement of Expenses

§ 310 Federal Public and Community Defenders

§ 320 Private Panel Attorneys and Guardians Ad Litem

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§ 310 Federal Public and Community Defenders

(a) Federal public and community defenders appointed to provide representation in international prisoner transfer proceedings under 18 U.S.C. § 4109(a)(2) and (b) must obtain travel authorizations from the Defender Services Office (DSO) of the Administrative Office of the U.S. Courts (AO), 202-502-3030.

(b) Travel vouchers, with supporting documentation, are to be submitted to the local clerk of court for reimbursement of expenses.

(c) A copy of the paid travel voucher must be forwarded to AO-DSO.

(d) The AO will initiate action to obtain reimbursement of expenses from the U.S. Department of State. **See:** 18 U.S.C. § 4109(a)(2).

§ 320 Private Panel Attorneys and Guardians Ad Litem

(a) Private attorneys and guardians ad litem appointed to provide representation in international prisoner transfer proceedings under 18 U.S.C. § 4107 are compensated in accordance with the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, and the *Guide to Judiciary Policy*. **See:** 18 U.S.C. § 4109(a)(1).

(b) Appointed counsel and guardians ad litem must use the appropriate CJA forms to receive compensation and reimbursement of expenses. The CJA forms, together with instructions for their use, are posted on the public judiciary website.

(c) An appointment in an international prisoner transfer proceeding is considered an appointment in a misdemeanor case for purposes of compensation under the CJA. **See:** 18 U.S.C. § 4109(a)(1).

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