

# ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

Date: 12/30/2024

## GUIDE TO JUDICIARY POLICY

TRANSMITTAL 07-017 VOLUME/PART 7A CHAPTER(S) 2, 3, 6

**TO:** Judges, United States Courts of Appeals  
Judges, United States District Courts  
United States Magistrate Judges  
Circuit Executives  
Federal Public/Community Defenders  
District Court Executives  
Clerks, United States Courts of Appeals  
Clerks, United States District Courts  
Chief Probation Officers  
Chief Pretrial Services Officers  
Senior Staff Attorneys  
Circuit Librarians  
Chief Circuit Mediators

**FROM:** Judge Robert J. Conrad, Jr.   
Director

**RE: DEFENDER SERVICES**

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

[Chapter 2: Appointment and Payment of Counsel](#)

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

[Chapter 6: Federal Death Penalty and Capital Habeas Corpus Representations](#)

The revisions incorporate policies adopted by the Judicial Conference in September to encourage greater and more consistent use of interim payments for panel attorneys and service providers in Criminal Justice Act representations. Four obsolete appendices were eliminated as part of this update. The significant changes are detailed in the Redline Comparison below.

Questions regarding this transmittal may be directed to the AO's Defender Services Office at [dso\\_lpd@ao.uscourts.gov](mailto:dso_lpd@ao.uscourts.gov) or 202-502-3030.

## REDLINE COMPARISON REFLECTING CHANGES

[Significant changes in Chapter 2 (Appointment and Payment of Counsel) follow:]

Appx. 2C Procedures for Interim Payments to Counsel in Non-Death Penalty Cases

Appx. 2D Procedures for Interim Payments to Counsel in Death Penalty Cases

### § 230 Compensation and Expenses of Appointed Counsel

[. . .]

#### § 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 the original and substitute attorneys may not exceed the statutory maximum ~~for one defendant~~, unless the case involves extended or complex representation. ~~In such cases, vouchers for~~ For applicable case compensation limits, see: § 230.23.20. Vouchers for the previously appointed attorney's services ~~will not~~may 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.~~consistent with provisions for interim payments. See: § 230.73 (Interim Payments to Counsel).

### § 230.63 Reimbursable Out-of-Pocket Expenses

[. . .]

#### § 230.63.50 Interim Reimbursement for Expenses

- (a) ~~Where it is considered necessary~~Courts and ~~appropriate in a specific case, the presiding judge~~s or U.S. magistrate judge may, in consultation with the AO's Defender Services Office, arrange for their delegate should provide interim reimbursement ~~to counsel of extraordinary and substantial expenses incurred in providing representation in a case to~~counsel at regular intervals in representations exceeding 90 days in duration or \$4,000 in accrued compensation and expense claims.
- (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.~~

### § 230.73 Interim Payments to Counsel

#### § 230.73.10 Non-Death Penalty Cases

- (a) ~~Where it is considered necessary~~Courts and ~~appropriate in a specific case, the presiding trial judge may arrange for periodic~~judges or their delegate should allow interim payments of compensation and of expenses to counsel attorneys under § 230.63.50 at regular intervals in representations exceeding 90 days in duration or \$4,000 in accrued compensation and expense claims.
- (b) ~~Appx. 2C (Procedures for Interim Payments to Counsel in Non-Death Penalty Cases) contains instructions on interim payments on the procedures for effecting interim payments to counsel, and a sample memorandum order on this subject that provides for two alternative payment methods.~~

## REDLINE COMPARISON REFLECTING CHANGES

### § 230.73.10 [cont'd]

- (e)(b) ~~Case budgeting, circuit approval of interim vouchers, and enhanced reporting through the eVoucher system should be used. 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 or complex cases, and the practical application of the statutorily imposed responsibility of CJA representations and the requirement for the chief judge of the circuit to provide a meaningful review of claims for excess compensation or their delegate to approve compensation over the statutory thresholds listed in § 230.23.20.~~
- (dc) Other interim payment arrangements ~~which effectuate this balance~~ may be ~~devised~~ adopted in consultation with the AO's Defender Services Office.

### § 230.73.20 Death Penalty Cases

~~Presiding judicial officers are urged to permit. Because of the expected length of death penalty representations and the anticipated hardship on counsel in providing representation for such a period without compensation, courts and presiding judges or their delegate should allow interim payments of compensation and expenses to CJA counsel at regular intervals in death penalty cases. Since the The Anti-Drug Abuse Act of 1988 effectively repealed the CJA hourly rates and case eliminated compensation maximums with respect to for CJA attorneys in death penalty cases, a separate set of procedures and a separate memorandum order. As such, the chief judge of the circuit has no role in reviewing attorney compensation in capital representations and no portion of compensation should be withheld used in these cases. These procedures and a sample memorandum order are provided in Appx. 2D (Procedures for Interim Payments to Counsel in Death Penalty Cases).~~

[. . .]

*[Significant changes in Chapter 3 (Authorization and Payment for Investigative, Expert, or Other Services) follow:]*

~~Appx 3B: Procedures for Interim Payments to Service Providers in Non-Death Penalty Cases (pdf)(word)~~

~~Appx 3C: Procedures for Interim Payments to Service Providers in Capital Proceedings (pdf)(word)~~

### § 310 In General

[. . .]

### § 310.60 Interim Payments

#### § 310.60.10 Non-Death Penalty Cases

- (a) ~~Courts and presiding judges or their delegate should allow interim payments of compensation and expenses to experts and other service providers at regular intervals in representations exceeding 90 days in duration or \$4,000 in accrued compensation and expense claims. 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).~~

## REDLINE COMPARISON REFLECTING CHANGES

### § 310.60.10 [cont'd]

- (b) Case budgeting, circuit approval of interim vouchers, and enhanced reporting through the eVoucher system should be used~~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 CJA representations and the requirement for the~~ chief judge of the circuit ~~to provide a meaningful review of claims for excess compensation or their delegate to approve compensation over the statutory thresholds listed in § 310.20.10.~~~~
- (c) Other interim payment arrangements ~~which effectuate this balance~~ may be ~~devised~~adopted in consultation with the AO's Defender Services Office.

### § 310.60.20 Death Penalty Cases

Because of the expected length of death penalty representations and the anticipated hardship on service providers in providing services for such a period without compensation, courts and presiding judges or their delegate should allow interim payments of compensation and expenses to experts and other service providers at regular intervals in death penalty cases. See: Guide, Vol. 7A, § 660.40 (Interim Payments to Service Providers).~~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).~~

*[Significant changes in Chapter 6 (Federal Death Penalty and Capital Habeas Corpus Representations) follow:]*

### § 630 Compensation of Appointed Counsel in Capital Cases

[. . .]

#### § 630.40 Interim Payments to Counsel

It is urged that ~~Because of the court permit interim payment of expected length of death penalty representations and the anticipated hardship on counsel in providing representation for such a period without compensation, courts and presiding judges or their delegate should allow interim payments of compensation and expenses to CJA counsel at regular intervals~~ in capital cases. For information ~~further guidance~~ 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).~~

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

[. . .]

#### § 660.40 Interim Payments to Service Providers

[. . .]

## REDLINE COMPARISON REFLECTING CHANGES

### § 660.40.10 In General

~~Because of the expected length of death penalty representations and the anticipated hardship on service providers in providing services for such a period without compensation, courts and presiding judges or their delegate should allow interim payments of compensation and expenses to experts and other service providers at regular intervals in death penalty cases. See: Guide, Vol. 7A, § 310.60.20. 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 Case budgeting, circuit approval of procedures for effecting interim payments, including a special memorandum order, must vouchers, and enhanced reporting through the eVoucher system should be used in these cases. These procedures and a sample memorandum order are provided in 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 to strike a balance between the interest in relieving experts and other service providers of financial hardships in death penalty cases and the practical application of the statutorily imposed responsibility of requirement for 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 or their delegate to approve compensation over the statutory threshold listed in § 660.20.20. See also: case-budgeting techniques recommended in § 640.~~

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

~~No compensation thresholds requiring circuit approval apply to capital cases commenced, or appellate proceedings in which an appeal was perfected before April 24, 1996. See also: § 660.20.30. A separate set of procedures for effecting interim payments, including a separate memorandum order, must be used in these cases. These procedures and sample memorandum order are provided in 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.~~