

**ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS**

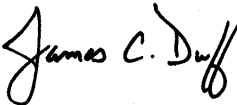
WASHINGTON, D. C. 20544

Date: 7/8/10

**GUIDE TO JUDICIARY POLICY**

TRANSMITTAL 07-001 VOLUME/PART 7A CHAPTER(S) 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  
Chief Preargument/Conference Attorneys  
Circuit Librarians

**FROM:** James C. Duff 

**RE: DEFENDER SERVICES**

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

[Chapter 3 – Authorization and Payment for Investigative, Expert, or Other Services](#)  
[Chapter 6 – Federal Death Penalty and Capital Habeas Corpus Representations](#)

On May 27, 2010, Congress passed the Federal Judiciary Administrative Improvements Act, which increased the waivable case compensation maximum amounts for expert, investigative, and other services. Additionally, the Act provided for the periodic increase of these amounts. Chapters 3 and 6 have been revised to reflect these statutory increases. Tables have been created in §§ 310.20.10 and 310.20.30 to show the amounts, effective date, and authority for the increase. References to the old amounts (\$1,600 and \$500) have been replaced with references to these new tables. A paragraph was added to explain the future periodic increases. In § 660.10.40, to avoid confusion, a reference has been added to the table in § 310.20.30. The significant changes are detailed in the Redline Comparison below.

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

**REDLINE COMPARISON REFLECTING CHANGES**

**§ 310.20 Limitations**

**§ 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**

<u>If services were performed between...</u>	<u>The compensation maximum is ...</u>	<u>Authority</u>
<u>05/27/10 to present</u>	<u>\$2,400</u>	<u>Federal Judiciary Administrative Improvements Act of 2010, Pub. L. No. 111-174, enacted on May 27, 2010.</u>
<u>12/8/04 to 5/26/10</u>	\$1,600	<u>Omnibus Appropriations Act, Fiscal Year 2005, Pub. L. No. 108-447, H.R. 4818, enacted December 8, 2004.</u>
<u>11/14/86 to 12/7/04</u>	<u>\$1,000</u>	<u>Pub. L. No. 99-651, 1986 HR 3004, enacted November 14, 1986.</u>

- (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. For guidelines applicable to capital cases, see: Guide, Vol 7A, § 660.20.10.
- (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.
- (bd) 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.
- (ee) If, under subsection (e) of the CJA, such services are rendered by members of an organization such as a corporation, unincorporated association, or partnership (other than those created under subsection (g) of the CJA), 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 of \$1,600,~~ exclusive of reimbursement for expenses reasonably incurred.

## REDLINE COMPARISON REFLECTING CHANGES

### § 310.20.20 Waiving the Case Compensation Maximums

- (~~da~~) Payment in excess of the ~~\$1,600~~case compensation limit for services authorized prior to the performance thereof may be made when certified by the U.S. judge 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. [. . .]

### § 310.20.2030 Without Prior Authorization

- (a) Subsection (e)(2)(A) of the CJA 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 ~~\$500~~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

<u>If services were performed between...</u>	<u>The compensation maximum is ...</u>	<u>Authority</u>
<u>05/27/10 to present</u>	<u>\$800</u>	<u>Federal Judiciary Administrative Improvements Act of 2010, Pub. L. No. 111-174, enacted on May 27, 2010.</u>
<u>12/8/04 to 5/26/10</u>	<u>\$500</u>	<u>Omnibus Appropriations Act, Fiscal Year 2005, Pub. L. No. 108-447, H.R. 4818, enacted December 8, 2004.</u>
<u>11/14/86 to 12/7/04</u>	<u>\$300</u>	<u>Pub. L. No. 99-651, 1986 HR 3004, enacted November 14, 1986.</u>

- (b) ~~This \$500 limit~~The limitation noted 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.

## REDLINE COMPARISON REFLECTING CHANGES

### § 310.60.20 Death Penalty Cases

Presiding judicial officers are urged to permit interim payment in death penalty cases. Because the CJA compensation ~~maximum of \$1,600~~maximums for investigative, expert, and other services set out in § 310.20.10(a) ~~does~~ not apply in capital cases, different procedures and memorandum orders must be used in those cases. ~~(See: Guide, Vol 7A, § 660~~§ 660.2010)~~20~~. These procedures and sample memorandum orders are also set forth in Appx 3C; (Procedures for Interim Payments to Service Providers in Capital Proceedings).

### § 320.20.30 Limitation of Amount

The limitations ~~of \$1,600 and \$500~~ 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~~.

### § 320.30 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 ~~of \$1,600 and \$500~~ set forth in § 310.20 and ~~the~~ \$7,500 limitation set forth in Guide, Vol 7A, § 660.20.10Ch 6 are inapplicable with regard to the cost of transcripts. ~~For procedures regarding federal defender organization transcript payments, see: Guide, Vol 7A, § 430.10.~~
- (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.

### § 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(Bb).

## REDLINE COMPARISON REFLECTING CHANGES

### § 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 ~~In General~~ 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.