

# Guide to Judiciary Policy

Vol. 7: Defender Services

Pt. A: Guidelines for Administering the CJA and Related Statutes

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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.

### **§ 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**

- (a) The statutory basis for disclosing payments to counsel in noncapital appointments expired on Jan. 25, 2000. **See:** [§ 540](#). While disclosure provisions continue by Judicial Conference policy, courts should consider factors listed in [§ 510.30](#) and [§ 520.50](#), depending on the stage of the case, to ensure that such disclosures will not impact the right to counsel in CJA panel appointments. Disclosure may be postponed until after all proceedings have concluded. **See:** [§ 510.40](#).

- (b) For capital cases, disclosure must be **after** the disposition of the petition for habeas corpus.

### **§ 520.20 Documents**

- (a) To satisfy the requirements of the CJA, courts may release summary payment amounts from the eVoucher system, redacted or unredacted, depending on the stage of the particular case and the policy considerations involved.
- (b) Documentation submitted in support of, or attached to, payment may 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 \(Notice to Court Appointed Counsel of Public Disclosure of Attorney Fee Information\)](#).
- (c) Upon receipt of a request for disclosure of CJA payment information, courts may contact counsel about the propriety of safeguarding the information under [§ 510.40](#).

### **§ 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 summary payment amounts from the eVoucher system 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 for habeas corpus.

## § 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 1999](#), 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 2000](#), 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.