

**SECOND CIRCUIT
JUDICIAL COUNCIL COMMITTEE
ON
CRIMINAL JUSTICE ACT REPRESENTATION
POLICY AND PROCEDURE
MANUAL**

as amended
through
April 17, 2012

INTRODUCTION

This Circuit-wide manual has been prepared in an effort to inform the panel of this Circuit's policies and procedures relating to CJA appointments in the Court of Appeals and the six District Courts of New York, Connecticut and Vermont.

Please remember that funds for CJA representation are to be used in the most fiscally responsible fashion. You, the CJA Panel Members are uniquely able to negotiate the lowest rate possible when retaining the services of an expert or other service providers. Additional information concerning CJA representation can be found in the local District or Circuit CJA Plans as well as Volume VII of the *Guide to Judiciary Policy* which can be found at www.uscourts.gov. Any questions regarding your CJA representation should be directed to CJA Case-Budgeting Attorney, Jerry L. Tritz, at 212-857-8726. A copy of this manual is posted on the Second Circuit's website and will be updated as necessary due to rate or other policy changes.

The judges of the United States Courts for the Second Circuit are grateful for the service provided to financially eligible defendants by the dedicated CJA Panel Attorneys throughout our Circuit.

Hon. Peter W. Hall, Circuit Judge
Chairman
Second Circuit Judicial Council Committee
On Criminal Justice Act Representation

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Each district has a CJA panel attorney representative who represents the CJA panel and serves as a liaison between the CJA panel and the court, the federal defender organization and the Administrative Office of the United States Courts Office of Defender Services.

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I. General Instructions for CJA Forms 20 & 30 - Appointment of and Authority to Pay Court Appointed Counsel - and CJA Forms 21 & 31 - (Authorization and Voucher for Expert and Other Services)

A. Rules for Processing Voucher Payments

1. Billing Statements and Required Detail

- a. CJA Forms are computer-generated. CJA counsel will receive a copy of the original CJA Form 20 (non-capital representation) or 30 (capital representation) voucher after appointment. The original is docketed and placed in the court file. Counsel can obtain a CJA Form 21 (non-capital case) or 31 (capital case) for use with investigative and other services providers from the Second Circuit's website. Additional CJA forms always can be found on the Circuit's website.
- b. A voucher number will not appear on the face of the voucher. The voucher number is generated when the voucher is certified for payment.
- c. Vouchers must be filed **within 45 days** after the conclusion of representation, absent good cause. If counsel submit vouchers outside of the time limits without good cause, counsel risk not being paid for the representation. When submitting a voucher outside the 45-day time period, an affidavit setting forth good cause must be attached. Counsel is responsible for advising their service providers of this voucher submission requirement.
- d. When your representation ends, please complete, sign and return all vouchers, including those for attorneys (CJA Form 20/30) or experts (CJA Form 21/31) to:

Court of Appeals:

Richard Alcantara
Administrative Manager
U.S. Court of Appeals
40 Foley Square
New York, NY 10007
212-857-8610

Southern District of New York:

Tracy Miller
CJA Docket Clerk
U.S. Courthouse
500 Pearl Street
New York, NY 10007
212-805-4054

Eastern District of New York:

Laura Rios
Case Processing Clerk
Alfonso D'Amato U.S. Courthouse
100 Federal Plaza
Central Islip, NY 11722
631-712-6024

Northern District of New York:

Robin L. Smith
Administrative Assistant
James M. Hanley Federal Building
100 South Clinton Street
Syracuse, NY 13261
315-234-8513

Western District of New York:

(Buffalo)

Lisa G. Ball
Financial Operations Supervisor
U.S. District Court
2 Niagara Square
Buffalo, NY 14202
716-551-1731

(Rochester)

Maria Gomolka
Financial Specialist
U.S. District Court
2 Niagara Square
Buffalo, NY 14202
716-551-1732

District of Connecticut:
Bonnie D'Onofrio
CJA Audit Clerk
450 Main Street
Hartford, CT 06103
860-240-3205

District of Vermont:
Lisa Wright
Case Administrator
United States District Courthouse
506 Federal Building
11 Elmwood Avenue
Burlington, VT 05401
802-951-6395

- e. Vouchers and worksheets must be typewritten and submitted on the CJA fillable forms found on the Circuit and District Court websites.
- f. Computer generated time slips (even if the entries are organized by the categories on the CJA Form 20 or 30) cannot be used. The purpose of this provision is to have all timesheets look alike to expedite the review process.
- g. Worksheets must provide the date of service, a brief description of the service performed and the time expended.
- h. Failure to adhere to this Manual's provisions may result in processing and payment delays.
- I. Questions regarding the status of pending vouchers should be directed to the CJA contacts above in the court where the work is performed.
- j. Each worksheet page must provide the case name and docket number and be numbered sequentially.
- k. Panel attorney time must be reported in tenths of hours.

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B. Voucher Review

- 1. Vouchers are reviewed by the CJA Clerk's Office for:
 - a. Technical compliance with these Guidelines and this manual, as well as completeness.
 - b. Mathematical accuracy.
Vouchers which fail such review may be returned for correction and re-submission.
- 2. Reasonableness of claim is a matter addressed to the discretion of the judge presiding over the matter and the Chief Judge of the U.S. Court of Appeals for the Second Circuit or his designee if the voucher exceeds the statutory maximums.

C. Approval for Payment

- 1. Vouchers under the statutory case compensation maximum or interim vouchers are approved for payment by the presiding judge.
- 2. Excess Compensation Vouchers, including final interim vouchers, are reviewed by the CJA Clerk's Office and forwarded to the presiding judge for approval or reduction. The judge will approve and certify an amount for payment (see voucher reduction procedures which follow in Section I (E) and explain the voucher reduction review process) and forward the voucher for final approval to the Chief Judge of the Court of Appeals or his or her designee.

D. Social Security and Employer Identification Numbers

- 1. The current payment system uses social security numbers for identification.
- 2. Your social security number or employer identification number will not appear on the face of the voucher.

3. Your payment information was entered in the payment system in accord with your instructions on how your income is to be reported.
4. If there is any change in how your income should be reported, notify the CJA Clerk's Office prior to the payment of the voucher.

E. Voucher Reduction Procedures

1. Prior to the reduction of any voucher, other than for mathematical or technical errors, or the denial of certification for payment, the CJA panel attorney shall receive notice and a brief statement of the reason for the denial or reduction. The CJA attorney will then be allowed to submit a written statement addressing the matter to the judge handling the voucher.
2. Any request for reconsideration must be submitted to the CJA Clerk's Office **within 10 days** of notification of the proposed reduction or denial unless good cause is shown.
3. The presiding judge or the Chief Judge of the Circuit or his designee will review a timely submitted request for reconsideration and may grant it in full, in part, or not at all.
4. This decision is final and will be communicated to the CJA panel attorney.

F. Hourly Rates and Case Compensation Maximums for CJA Attorneys

1. The present hourly rate for in-court and out-of-court time in non-capital cases for all Districts within the Second Circuit and the Court of Appeals can be found in Appendix "A" along with a list of previously authorized rates with their effective periods.
2. The maximum hourly rate for in-court and out-of-court hours in capital cases for all Districts with the Second Circuit and the Court of Appeals can be found in Appendix "B" along with the previous rates with their effective periods.
3. The category of cases and case maximums for attorney fees for which the approval of the Chief Judge of the Court of Appeals (or his or her delegate) must be obtained can be found in Appendix "C".
4. A CJA Form 26 has been substituted for the detailed memorandum previously required for attorney excess compensation claims in the district courts and must accompany voucher claims exceeding the statutory maximum. A CJA Form 27 is required for appellate vouchers exceeding

the statutory maximum. (See Circuit's webpage for blank forms)

G. Case Compensation Maximums for Investigative, Expert and Other Service Providers

1. The case maximums for service provider fees for which the approval of the Chief Judge of the Court of Appeals (or his or her delegate) must be obtained can be found in Appendix "C".
2. Compensation claims for services provided by investigators, experts or other service providers must be billed on CJA Form 21 or 31. Counsel may not claim expert services as an expense of counsel.

H. Presumptive Rates

1. A series of presumptive rates have been established to inform CJA counsel and the Court of what would be an appropriate rate to be paid to a particular service provider.
2. While the presumptive rate appropriate to an associate or a specific type of service provider is discussed in the section of this manual addressing that particular service provider, a presumptive rate chart can be found in the rear of this manual in Appendix "E" and for interpreters specifically, Appendix "F".
3. Presumptive rates, are rebuttable. Where counsel believes that the presumptive rate does not adequately compensate a particular service provider, counsel may make a written application to the presiding judicial officer for a different rate. Counsel should provide support for this requested rate.

II. Services Which Are Compensable - Support Required

A. Associates

1. The use of associates is allowed under the Guide. (*See Guide to Judiciary Policy*, Vol. 7, Part A, Chapter 2, Section 230.53.10 and .20) only when the associate is appointed in accordance with § 230.53.20(b) or § 620.10 in a capital case. It is the intent of each court's CJA Plan that the assigned CJA attorney represent the client and not the associate. An associate is considered an extension of, not a substitute for, the CJA Panel Attorney. The associate may perform services for the CJA Panel Attorney, not instead of the CJA attorney. In order to claim associate compensation you must:

- a. In a non-capital representation, obtain prior approval from the presiding judge where it is anticipated that the billing for the associate will exceed ten hours. If the associate is not part of appointed counsel's law practice, prior approval is required for any amount of work. In capital representations, prior approval is required to bill any amount of associate work.
 - b. Use CJA forms 20 and 30 to bill associated attorneys services. Associate use is billed on individual worksheets attached to the attorney's voucher setting forth the hours worked and the rate of compensation. Associate counsel services cannot be billed as an expense of counsel, even if the associate is an employee of the firm.
 - c. Associates are billed at between \$80 and \$90 per hour regardless of the nature of the case, including capital cases. Associates who are not members of the CJA Panel will not be reimbursed at the full CJA rate. Where within the \$80 to \$90 parameters the rate should fall should be the product of a discussion between the assigned attorney and the Case-Budgeting Attorney with final approval of the rate given by the presiding judicial officer. Consideration should be given to the experience, knowledge and educational background of the associate as well as cost savings anticipated to be enjoyed due to the special attributes of the associate.
 - d. Although it is intended that the \$90 figure be viewed as a maximum rate for associates who are not full time employees of the assigned attorney's firm, there may be situations where an associate is possessed of some special knowledge or skill so as to warrant a higher rate. Prior application must be made to the presiding judicial officer for authorization to pay an associate a higher rate. If an associate is a member of the CJA panel, he or she may, without a request for an exception, receive the full CJA rate.
2. In a death-eligible case, where lead counsel and learned co-counsel are paid the higher death-eligible case rate, if an associate rate higher than \$90 per hour is sought, counsel should address such application to the discretion of the presiding judicial officer after consulting with the Case-Budgeting Attorney.
 - a. The mere fact that the associate shall be working on a capital case, shall not, in and of itself, be deemed sufficient to warrant a higher

associate rate.

- b. *The Guide to Judiciary Policy* § 620.10.10(c) mandates that in capital cases, associates may be used with prior court approval, “at a reduced hourly rate” provided the net effect would be to “diminish the total cost of representation.” A reduced hourly rate cannot exceed \$90 per hour. The \$90 figure is a cap which not all associates will be qualified to receive. Counsel should be prepared to justify the amount paid with consideration given to the knowledge, skill and experience of the associate.
- c. It should be noted that where an associate is a full time employee of the CJA Panel member, a rate which exceeds \$90 per hour may be set, after consulting with the Circuit CJA Case-Budgeting Attorney, which recognizes the additional overhead costs associated with maintaining said full time employee. This rate must also be approved by the presiding judicial officer to whom the case is assigned and applies to capital and non-capital cases.
- d. On the face of the worksheets, separately identify the time claimed by the CJA attorney and/or the associate
- e. Associate time spent in meetings or in court will not be compensated absent some compelling justification for the associate to participate in these events. Only appointed CJA counsel may bill for meetings, conferences or court appearances. Where the associate appears in court with CJA counsel, or in lieu of appointed CJA counsel, prior approval of the presiding judicial officer should be sought to allow the court to rule on the necessity of the associates’ participation. Without an appropriate ruling from the court, an associate will not be compensated for attending meetings, conferences and court appearances
- f. With respect to non-capital cases, the spirit of *The Guide to Judiciary Policies* § 620.10.10(c) also applies to using associates to lower the cost of the representation or to meet time limits. With prior approval for services in excess of ten hours, associates may be used, at the presumptive rate, where such services will diminish the total cost of representation
- g. CJA Panel Members should be fiscally responsible in using associates.

- I. Excessive research or copying by associates will not be reimbursed.
- ii. Excessive time spent in conference with or among associates will not be compensated.
- iii. If the assigned attorney does not have time to represent the client, he/she should not accept the assignment.

B. Research

1. Counsel will be reimbursed for reasonable and necessary research time. Each CJA attorney is expected to have a basic knowledge of the Federal Criminal Code and Rules.
- 2.. Worksheets should set forth sufficient details regarding the issues researched to facilitate the reasonableness review of each voucher.

C. Document Review

1. Detail sufficient to identify the work performed should be provided on the worksheets for time spent on “file” or “discovery” review.
- 2.. Simply noting “discovery review” is insufficient.
3. Counsel should describe the type of documents reviewed and the quantity reviewed along with the date this review occurred.
4. It is intended that sufficient information be supplied to allow the Court to make a meaningful reasonableness evaluation of the work performed by CJA counsel.

D. Waiting Time

1. Reasonable waiting time will be compensated where it is unforeseen and unavoidable.
2. In instances where waiting time is “foreseeable” CJA counsel should bring other matters to work on during such period of waiting. Counsel should also attempt to use the inevitable waiting time encountered when

attempting to enter a correctional facility by bringing other material to review.

E. Travel Expenses

1. Compensation will be approved for time spent in reasonable and necessary travel. Allowable time includes only those hours actually spent in or awaiting transit and should be recorded on the out-of-court hourly worksheet.
2. Where the client is jailed at considerable distance from counsel's office, consideration should be given to telephone conferencing whenever appropriate. It is not the purpose of this provision to discourage attorney-client in-person meetings, however, where non-substantive matters are to be discussed, telephone conferencing may be appropriate.
3. Permission for out-of-District/Circuit travel should be obtained from the presiding judge in the form of a travel authorization where an overnight stay will be required or a transportation expense exceeding \$500 is anticipated. Permission for out-of-Circuit travel on appeals shall be obtained from the Circuit Executive's office. The travel authorization will be necessary to obtain favorable government rates for CJA Panel Attorney travel through the government travel agency.

III. Case-Budgeting

A. Types of Cases Subject to Case-Budgeting

1. Capital Cases: All death eligible cases are subject to case-budgeting. As soon as CJA counsel is assigned to a death eligible case, counsel should contact the Case-Budgeting Attorney for assistance in budgeting the case.
- 2.. Capital Habeas Corpus Petitions: Habeas Corpus proceedings in the District Court from death-related convictions are subject to case-budgeting. Counsel assigned to a capital related habeas case should contact the Case-Budgeting Attorney for assistance with the case-budgeting of this case.
3. Mega-Cases: Other high expense cases also known as "mega" cases also should be budgeted, but case-budgeting is not mandatory.

- a. A mega-case is defined as:
 - I. A case in which it is anticipated 300 or more attorney hours will be required to be expended in the representation of one defendant, or
 - ii. \$30,000 in total costs are anticipated to be expended in the representation of a single defendant.
- b. While there are no specific criteria or elements of a case which in and of itself will make a case achieve mega status, there are several identifiable facts which, if present in a particular case, could indicate that a case will become a mega-case. A list of these factors can be found in Appendix “G”.
- c. CJA counsel assigned to a case where one or more of these factors are present or where it is believed that the matter may achieve mega status, should contact the Case-budgeting Attorney for assistance in determining whether case-budgeting would be appropriate in this case.

B. CJA Forms to Be Used When Case-Budgeting

1. When budgeting a death eligible case, a death related habeas proceeding or a mega-case, the regular paper CJA forms will not be used for the billing of attorney and associate hours. Special forms utilizing Excel spreadsheets will be used. These forms may be obtained from the Case-Budgeting Attorney as well as a manual which explains how to use the Excel spreadsheets.
2. While case-budgets, in all three categories of cases, shall be prepared on the Excel spreadsheet programs, only the attorneys and associates will use the spreadsheets to submit their vouchers. Service providers will continue to submit their vouchers on the standard paper CJA Forms 21 and 31.
3. All questions concerning case-budgeting should be directed to the Case-Budgeting Attorney, Jerry L. Tritz at (212) 857-8726.

C. Direct Appeal from a Death Eligible Case - Compensation Rate

1. If the defendant receives a non-death sentence, but the result of subsequent proceedings (appeal or habeas) may expose the defendant to the death penalty, counsel may be compensated at the capital rate for those proceedings.
- 2.. In those instances where, regardless of the outcome of the appeal or habeas proceeding, a sentence of death will not be a sentencing option, then, in such a case, the capital rate shall not be available and counsel will be compensated at the standard CJA rate.

IV. The Voucher Payment Process For Cases Not Subject to Case-Budgeting

A. Interim Payment Requests

1. The authorization for submitting interim vouchers can be found in Volume VII of the *Guide to Judiciary Policy* (§§ 310.60.10, 230.73 and 660.40).
2. In extended cases, a request for interim payment may be granted. The request must be approved by the presiding judge and the Chief Judge of the Circuit.
3. Requests for interim payment must be in writing with sufficient detail to support the request and should be addressed to the presiding judge. Once the request is granted or denied, it will be docketed and a copy mailed to the panel member.
4. Interim payment requests can be made for every 30, 60 or 90 days. Payment periods may also be tied to case events - for example, one payment pre-trial, one at the conclusion of trial, and a final payment after sentencing.
5. In any case in which an attorney expects to exceed 300 hours, a request for interim payments MUST be made. This will allow the Court to begin the budgeting process if necessary. The fact that the matter is potentially a mega-case should be stated in the affidavit submitted in support of the interim payment request.

B. Procedure Upon Approval of Interim Payments

1. Make copies of your appointing voucher and use those copies when filing

your future interim vouchers for payment.

2. Please maintain all returned copies of your vouchers that have been certified for payment for ease in making final claims for payment. Copies of approved vouchers should be attached to each succeeding voucher to inform the Court about historical payment details.
3. Worksheets and/or billing statements must accompany each interim payment voucher. Worksheets must be typed; the CJA fillable worksheets can be found on the Circuit's website.
4. Interim vouchers are calculated for payment on an 80% basis. In other words, 20% of the compensation excluding expenses is withheld so that the Chief Judge of the Court of Appeals can decide the reasonableness of the final claim for payment. Expenses claimed on each interim voucher are paid in full.
5. The final claim for payment is certified by the presiding judge and forwarded to the Chief Judge of the Court of Appeals for approval in cases where the statutory maximum is exceeded.
6. The final claim for payment must:
 - a. List the total number of hours and expenses claimed on all prior voucher submissions.
 - b. Accompany worksheets for the final work period.
 - c. Be accompanied by a letter detailing the payment history, including: voucher number, amount claimed, amount paid, amount owed and if any expenses are claimed for the final work period.
 - d. Be accompanied by a CJA Form 26 (district court representation) or a CJA Form 27 (appellate case) (see CJA Forms on the Circuit's website). When considering your claim, the presiding judge may rely on your CJA Form 26/27 without soliciting further information to justify your claim and provide a basis for the Court to make a reasonable evaluation.

V. Reimbursable Expenses

- A. General Rule: Reasonable out-of-pocket expenses incurred in connection with your representation may be claimed on the CJA Form 20 voucher.

- B. Supporting Documentation: All expenses, including mileage claims, must be thoroughly documented. Reimbursement may be delayed or denied for failure to itemize or supply documentation for expenses.

- C. Telephone
 - 1. Reimbursement may be claimed for the actual cost of case-related long distance phone calls.
 - 2. Your billing record must be attached with the case related long distance expense highlighted.
 - 3. CJA funds will not be approved for reimbursement of local calls or telephone surcharges.

- D. Facsimile
 - 1. Reimbursement is limited to the actual cost of any long distance charge associated with the phone transmission for an outgoing document.
 - 2. No reimbursement is allowed for receipt of a facsimile.
 - 3. The costs of the machine, supplies and phone line are considered general office overhead and are not reimbursable.

- E. Photocopying
 - 1. In-house duplication is strongly recommended.
 - 2. There may be circumstances where in-house duplication is neither feasible nor cost effective and therefore an outside vendor is needed. Prior approval of the presiding judicial officer is required if the cost may exceed \$500.
 - 3. Where there is a large amount of material to be copied in a particular case, Counsel should contact the Case-Budgeting Attorney for assistance and guidance in developing the most cost effective approach.
 - 4. Counsel should use the most fiscally responsible method for discovery duplication. In some instances, this will require coordination among co-counsel and use of a commercial duplication firm.

5. Receipts must be attached for reimbursement of any commercial duplication expense.
6. Claims for reimbursement of copying expenses must be itemized and contain:
 - a. A description of the nature of the items copied.
 - b. The number of pages copied.
 - c. The actual cost per page for duplication; and
 - d. Necessity for duplication.
7. Excessive duplication of case law is strongly discouraged and will not be reimbursed.
8. Excessive duplication of discovery materials for associate review will not be reimbursed.

F. Postage

1. Reimbursement will be made for the actual cost of case-related regular United States postage.
2. Reimbursement for rush/overnight mail service will not be granted absent justification for the use of such services.

G. Transcripts

1. Counsel must submit a CJA Form 24 to the presiding judge for approval.
2. Payment is made directly to the court reporter with the CJA Form 24.
3. Except during a trial, expedited or daily copy is discouraged. Any requests for expedited or daily copy must be justified and pre-approved by the presiding judge.
4. Where appropriate, only essential portions of the transcript should be ordered. Justification should be made in a letter to the presiding judge explaining the need for any special authorization requested in Box 13 of the CJA Form 24.

5. Counsel must prepare the necessary CJA Form 24 for each individual court reporter or courtroom deputy if the proceeding was electronically recorded and to obtain the presiding judge's approval prior to ordering any transcripts.
6. Each transcript request must contain the date of the necessary testimony.

H. Computer Assisted Legal Research (CALR)

1. The cost of use by appointed counsel of CALR, may be allowed as a reimbursable out-of-pocket expense, provided the amount claimed is reasonable.
2. Whenever appointed counsel incurs charges for CALR, counsel should attach to the compensation voucher, a copy of the bill and receipt for the legal research services used 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).
3. Where the amount claimed exceeds \$500 or if it includes costs for downloading or printing, counsel should include a brief written statement of justification.

VI. Non-reimbursable Expenses

- A. General office overhead items such as secretarial service, rent, telephone service and other office overhead which are not usually reflected in a bill to a private client are not reimbursable, absent extraordinary circumstances (see sections 230.66.10 and 320.70 of the *Guide to Judiciary Policy*). In evaluation whether extraordinary circumstances are present, consideration should be given to whether the circumstances under which the need arose would normally result in an additional charge to a fee paying client.
- B. Time spent in voucher preparation is not compensable.
- C. Investigative, expert or other service providers, including paralegal services are not a reimbursable expense of appointed counsel. Prior authorization for these services must be obtained from the presiding judge (and United States Court of Appeals CJA Committee Chair) and payment is made directly to the investigator or expert on a CJA Form 21 or a CJA Form 31 in a capital case. Please see section 12 on CJA Forms 21 and 31.

- D. The printing of briefs is not reimbursable; however, the cost of mimeographing, “xeroxing” or similar copy services is reimbursable.
- E. Filing fees are waived for persons proceeding under the CJA. Fees relating to and arising out of a defendant’s release on bail are not reimbursable under the CJA. These fees must be paid by the person securing the collateral.
- F. Personal items and services for the client such as clothing for court, haircuts, travel and lodging are not reimbursable under the CJA. Payments for such items or expenses by appointed counsel will not be reimbursed.
- G. Books, journals, publications and supplies for the law office are not reimbursable. However, under certain circumstances, computer hardware and software may be obtained pursuant to § 320.70.40 of the *Guide to Judiciary Policy*. The process of acquiring such materials should be commenced by contacting the Case-Budgeting Attorney.
- H. Costs related to educational seminars or continuing legal education are not reimbursable. However, case consultation with federal death resource counsel is compensable even if it occurs at a training seminar.
- I. Messenger/Courier Services
 - 1. The use of Messenger/Courier Services as well as express mail service is strongly discouraged. The United States mail or another low cost service should be used whenever possible.
 - 2. Where a Messenger/Courier Service or express mail service is employed, counsel must attach an explanation and justification for such expenses.
 - 3. Receipts or invoices are required for reimbursement of such expenses.

VII. Instructions for the CJA Form 21 and 31 and the Use of Investigative, Expert and other Service Providers.

- A. All requests for investigative, expert or other service providers shall be made by a motion to the presiding judge.
- B. Prior authorization must be obtained for any investigative, expert or other service provider fees, excluding expenses, which will exceed \$800.

1. Failure to obtain prior authorization may result in disallowance of any claim for investigative, expert or other service provider compensation exceeding \$800.
 2. Exceeding the prior authorization without making a further application may result in disallowance of that portion of the claim exceeding the prior authorization.
 3. Claims for investigative, paralegal, or expert compensation exceeding \$800 without prior authorization will only be approved if the presiding judge finds, in the interest of justice, that timely procurement of necessary services could not await prior authorization. (See §310.20.10 of the *Guide to Judiciary Policy*)
 4. Application for the ratification of expenses incurred without prior Court approval are not viewed favorably and every effort should be made to **avoid these *nunc pro tunc* applications.**
 5. When seeking prior approval, indicate the necessity for the service, the hourly rate charged by the provider and the hours of service anticipated to be required. Please note that any amount approved, even if expressed as a number of hours times an hourly rate, will be deemed to cover compensation and expenses. Vouchers which exceed their prior authorization because of expenses will not be favorably viewed. If expenses will bring a voucher above its prior authorization, a further application should promptly be made to the Court.
 6. If you obtain prior approval for expert, investigative or other services and it later becomes apparent that the cost will exceed the initial approved amount, additional compensation must be requested and approval obtained from the presiding judge before any further service is provided. It is the clear intent of these policies to end the practice whereby providers routinely exceed their prior approval and thereafter counsel request *nunc pro tunc* approval from the Court. Such applications will not be routinely granted.
- C. Investigative, expert or other services compensation, exclusive of reasonable expenses, may not exceed the statutory maximum unless such additional payment in excess of the statutory maximum is certified by the presiding judge as necessary to provide fair compensation for services of an unusual character or duration. (A chart setting forth the statutory maximums may be found in Appendix “C”)

- D. Procedure for Obtaining Approval for and Compensation of Investigative, Expert and Other Service Providers.
1. A request for prior approval of investigative, expert or other service provider services, including paralegals, is prepared by appointed counsel and submitted to the presiding judge.
 2. A request must contain:
 - a. The expert's name, address, telephone number and taxpayer identification number or social security number;
 - b. The investigator, expert or other service provider's hourly rate (see Presumptive Rates Schedule in Appendix "E");
 - c. The estimated number of hours to complete the work;
 - d. Justification for the use of the expert, investigator or other service provider;
 - e. A properly prepared CJA Form 21 or 31 for the judge's approval; and
 - f. An affidavit of counsel.
 3. If the approved request for compensation exceeds the statutory maximum, it will be forwarded to the Chief Judge of the Court of Appeals for approval
 4. After approval, a copy of the approved order and the CJA Form 21 or 31 will be mailed to appointed counsel.
 5. Appointed counsel should forward the CJA Form 21 (non-capital) or 31 (capital) to the expert, investigator or service provider with instructions not to exceed the amount approved without additional approval of the court, even if the excess will only be for expenses.
 6. Once the expert, investigator or service provider's services have been completed, the CJA Form 21/31 should be completed and forwarded to appointed counsel for certification along with an itemized bill.
 7. Experts must attach to each voucher a billing sheet which breaks down the work by:

- a. Date(s) the work was performed
 - b. Brief description of what was done
 - c. Time spent (in tenths of hours) for each task
8. After reviewing the itemized bill and voucher for accuracy, appointed counsel should certify the voucher in Box 19 of CJA Form 21 or 31. The voucher and itemized bill should then be mailed to the office of the CJA Clerk for processing and payment.
9. If the expert compensation amount exceeds the statutory maximum, the voucher will be forwarded to the presiding judge along with a recommendation to approve or reduce the voucher claim. If the voucher is certified by the presiding judge for compensation in excess of the statutory maximum, the voucher will be referred to the Chief Judge of the Court of Appeals for approval.
- E. Circuit-wide Presumptive Rates and Other Information for Investigators, Experts and Other Service Providers.
- a. The presumptive hourly rate for a Psychiatrist or Psychologist and other similar providers (see Appendix “E”) is a goal to be sought after.
 - b. If a provider seeks a higher rate of compensation than provided in Appendix “E”, CJA counsel are encouraged to attempt to negotiate a lower CJA rate.
2. Investigators
- a. The investigators’ presumptive hourly rate can be found in Appendix “E”. These rates apply in all cases including mega-cases and death eligible cases and are Circuit-wide.
 - b. When retaining the services of an investigator or other service provider, counsel should consider the distance from the location of the provider to the location where the services will be rendered. Excessive or unnecessary billing for travel time and mileage expenses will not be compensated when a similar provider more geographically appropriate could have been substituted. The goal of this provision is to minimize payments for unnecessary travel where a more geographically appropriate provider could have been retained.

- c. Counsel, for good cause shown to the presiding judge, who seek to retain the services of an investigator whose base of operations is outside the geographic area of where the services will be rendered, may do so, if:
 - I. Counsel negotiates a lower rate for travel time (i.e., \$35-\$45 per hour); or
 - ii. Counsel negotiates a finite number of hours above which the investigator will not be paid while on travel. This has the effect of capping the investigator's travel time so the presiding judicial officer knows that this investigator's travel expenses will not exceed the amount set, without a further application being made.
 - iii. Counsel are asked to be fiscally responsible in their choice of outside providers being mindful of the travel time and mileage costs.
 - d. Subpoenas may be served by an investigator if and only if the service of the subpoena is incident to an interview of the witness and the investigator is near the location of the witness. (See §230.66.50 of the *Guide to Judiciary Policy* for further clarification)
 - e. In multiple defendant cases, it may be possible to split investigative costs among the defendants. Obviously, counsel must be cognizant of conflict issues.
 - f. Investigators will not be compensated for "assisting counsel at trial" unless prior authorization is received from the presiding judge.
 - g. Two investigators from one firm may not bill for attending meetings with appointed counsel.
 - h. Consider submitting requests for all service providers at the same time. It is preferred, when possible, that multiple service provider requests for the same case be submitted all at the same time to conserve judicial time.
- 3. Pathologist hourly rate can be found in Appendix "E".
 - 4. Paralegal Services:

- a. The compensation rate for a paralegal can be found in Appendix “E”.
- b. If the paralegal is a salaried employee of the firm, the payment is not limited to the actual hourly rate paid the paralegal employee.
- c. Where a paralegal is a full time employee of the panel member’s firm, counsel may seek reasonable compensation which exceeds the presumptive rate and recognizes the added costs associated with maintaining said full time paralegal employee. For guidance with establishing this rate, the Case-Budgeting Attorney should be contacted prior to an application being made to the presiding judicial officer.
- d. Paralegal services are billed on a CJA Form 21 or 31.
- e. Paralegal use cannot be billed as an expense of counsel.
- f. The maximum presumptive rate is a rate which not all paralegals will be sufficiently qualified to receive.
- g. Counsel should be prepared to explain to the presiding judge what educational background, experience or language skills qualify the paralegal to receive compensation at the maximum rate.
- h. The limits on service providers are applicable to paralegals. See §§ 310.20.10 and 310.20.20 of Volume VII of the *Guide to Judiciary Policy*, which states in part that compensation in excess of \$800 requires prior approval and compensation exceeding the case maximums requires Circuit approval.
- I. Paralegals, like associates, are not substitutes for assigned CJA attorneys. (i) Paralegals may not bill for attending court proceedings (other than trial) without prior Court authorization. (ii) Paralegals cannot bill for meetings or client conferences. (iii) It is expected that the assigned CJA attorney will meet with the client and a paralegal may not substitute in this role.

5. Mitigation Specialists

- a. The Circuit-wide presumptive rate for mitigation specialists can be found in Appendix “E”. As in all circumstances where presumptive rates apply and counsel cannot secure an appropriate mitigation specialist at the presumptive rate, application may be

made to the presiding judge for another rate upon a showing of necessity and good cause.

- b. Mitigation specialist services are billed on CJA Forms 21 or 31. The use of a mitigation specialist cannot be billed as an expense of counsel.
- c. Counsel are not required to seek prior approval to retain a mitigation specialist where:
 - I. The mitigation specialist is paid the presumptive rate or less.
 - ii. Case-budgeting for the case is in effect.
 - iii. The mitigation specialist is within the case budget.
- d. If the case is not subject to case-budgeting, prior approval will be required for mitigation services exceeding \$800.
- e. Counsel should remind his/her mitigation specialist of the requirement to seek further authorization where the specialist anticipates exceeding the previously authorized amount.
- f. Counsel should be mindful that mitigation specialist fees, like all expert fees, are subject to negotiation. Counsel are asked to use their best efforts to attain the best price for the services to be rendered by the mitigation specialist and to seek out the most geographically appropriate person based on the area where the mitigation investigation will occur. The presumptive rate is a cap, but not the only rate.

6. Interpreters Generally

- a. It has been the practice in this Circuit to pay interpreters working on CJA matters the contract rate negotiated between the Court and the interpreters who work in the Courthouse. These rates are generally divided into half day and full day fees with different amounts set for certified and non-certified interpreters. These rates are listed on the website of the individual courts and can be found in Appendix “F” of this manual.
- b. Travel time is included in the calculation of whether an interpreter has worked a half or full day.

- I. Counsel should consider the travel starting place of the interpreter they select.
- ii. When lengthy travel must occur, counsel are asked to consider seeing more than one client in the location to divide the travel costs among several CJA cases.
- c. Counsel should be aware there are certified and non-certified interpreters who accept CJA work. A list of certified and non-certified interpreters along with a sufficient address to judge travel time can be obtained from the district court's interpreter's office.
 - I. Certified interpreters are paid at a higher rate than the non-certified language proficient individuals. If counsel anticipates using an interpreter to review a Presentence Report or a plea agreement, a certified interpreter should be retained where possible.
 - ii. If the purpose of a meeting is to render a status report or a general session necessary to facilitate good client relations, counsel should consider using a non-certified language proficient person.
- d. Interpreters working on CJA cases in the Second Circuit will be compensated on an hourly basis for the translation of transcriptions of tapes.
 - I. Translation/transcriptions of taped conversations in a foreign language performed for CJA counsel, will be compensated at the same rate as that paid by the United States Attorney's Office for similar services which is \$60 per hour.
 - ii. Where counsel believes the required translation makes the \$60 per hour rate inappropriate, then, counsel may apply to the presiding judge for another rate and provide the court with a detailed written explanation as to the basis for the requested rate.
- e. Approval for any expert's hourly rate exceeding the court's presumptive rate must be obtained from the presiding judge.
- f. Appointed counsel should attempt to obtain the lowest possible hourly rate. For assistance with obtaining investigators,

paralegals, psychologists and psychiatrists as well as other service providers, willing to work for or under the presumptive rates, please contact the Circuit's CJA Case-Budgeting Attorney.

7. In-Court Interpreting

- a. Counsel should attempt, where possible, to utilize the Court's interpreter for pre and post-court client conferences.
- b. By arriving early for a court appearance and requesting that the interpreter arrive early, the court's interpreter may be used for short discussions prior to the case being called.
- c. Short visits with the client in court may eliminate the necessity of a trip to the detention facility and a full day's billing to CJA by the interpreter.
- d. If the hearing from which you requested an interpreter is canceled or rescheduled, you should notify the Interpreter's Office immediately so the interpreter's services can be canceled.

8. Out-of-Court Interpreting

- a. The selection of an interpreter for an out-of-court conference should be handled in the same manner as the selection of any other expert. There is no statutory requirement that a certified interpreter be used.
- b. Fee rates to be paid to interpreters and effective dates can be found in Appendix "F".
- c. The District Court CJA clerks have reported an increasing number of last minute (within 24 hours of the scheduled appointment time) cancellations of interpreters by attorneys. Under these circumstances, if the interpreter cannot book another session and had no other billable work during the scheduled sessions, they must be paid accordingly, even though services were not provided. Counsel should use their best efforts to avoid last minute cancellations.
- d. Interpreters seeking payment for last minute cancellations must submit a letter from counsel acknowledging the belated cancellations and a letter from the interpreter representing that the interpreter did not fill the time slot with another client and had no

other income producing work to perform during this same time period.

- e. Although there are no presumptive rates for interpreters, there may be instances where adherence to the full day half day system would cause a service provider to be unjustly enriched. For example, to charge CJA a full half day rate where a brief conference call was interpreted by a service provider from his/her home would appear inappropriate. In such instances it is permissible to negotiate an hourly rate. The current hourly rate for language skilled and certified interpreters as well as the previous hourly rates can be found in Appendix "F".
- f. All out-of-court interpreting requires the permission of the court if the interpreter's fee will exceed \$500.
- g. All interpreters are paid with a CJA Form 21 voucher in non-capital cases and a CJA Form 31 in a capital case. The vouchers must be completely filled out, including the top portion of the voucher containing the case and defendant information.
- h. Counsel should review an interpreter's voucher for completeness and accuracy prior to submitting it for payment. Be certain that Box 13 provides sufficient information to identify the nature of the services rendered.

F. Information and Considerations Regarding Investigators, Experts and Other Service Providers:

- 1. Where the amount of time needed to complete the project is unclear, counsel should consider seeking the presiding judges's approval for the statutory maximum limit.
- 2. Once the initial work is completed, counsel and the provider should have a basis to estimate the number of hours needed to complete the service. An accurate request for additional approval in excess of the statutory maximum can then be forwarded to the Chief Judge of the Court of Appeals.

VIII. Panel Travel

A. General Rules

1. The current and previous mileage compensation rates are located in Appendix “D”. Such claims must contain the stated purpose of the travel, the number of miles, and the amount due. The claims must be itemized on the expense worksheet.
 - a. Receipts are required for any and all travel expenses, including daily parking and tolls. Any other expense exceeding \$50 will require a receipt as well.
 - b. Overnight travel must be approved by the presiding judge prior to incurring travel costs.
 - c. Reimbursement for meals may not be claimed, unless you are on overnight travel status or the actual travel time exceeds 10 hours but is less than 24 hours and no overnight stay is required. Meals obtained must be in accord with existing government travel regulations. Alcoholic beverages are not reimbursable.
 - d. Reimbursable travel expenses are confined to expenses considered essential and in connection with counsel’s representation under the CJA and supported by receipts.
 - e. A CJA Panel Attorney traveling on official CJA business must exercise the same care in incurring expenses that a prudent person would exercise in conducting personal business using his or her own money. Excessive costs, circuitous routes, services unnecessary or unjustified in the performance of CJA business are not reimbursed. Mileage and other expenses shall be claimed only for the direct route, unless there is a necessity to travel another route. The most fiscally responsible method of travel must be selected. The attorney should consider the amount of travel time as well as travel fares in making the selection.
 - f. All overnight travel should be arranged using government discount travel rates. Contact the appropriate court’s CJA Clerk’s Office for assistance.
 - g. Attorneys will not be compensated for time spent driving to court to file motions unless it is of an emergency nature and a written explanation is submitted.

1. A written request for travel authorization must be submitted in advance to the presiding judicial officer
 - a. A written travel authorization must be signed by the judge.
 - b. Contact the CJA Clerk's Office for the applicable *per diem* rate for your destination.
 - c. After the Court has authorized your travel, the order should be presented to the Clerk's office for issuance of a travel authorization form. After submitting this form to the Government's travel agency, your flights will be booked and billed directly to the Court. However, hotels and meals must be covered by counsel and reimbursement sought when the voucher is submitted.
 - d. A service provider who will be traveling with or on behalf of a CJA panel member is also subject to the requirement of obtaining a travel authorization
 - e. When traveling on a District Court matter, application should be made to the presiding judicial officer for an order authorizing the requested travel. Once received, the order should be presented to the District Court Clerk's Office who will issue the travel authorization.
 - f. When traveling on an appellate matter, a motion should be made in the Court of Appeals for authorization to travel. If granted, such travel authorization can be presented to The National Travel Service who will charge transportation costs to the government account. If counsel is willing to lay out the transportation costs and seek reimbursement by voucher thereafter, counsel may book transportation by means other than The National Travel Service while being mindful to be fiscally responsible in the choice of carrier.
2. After Obtaining the Travel Authorization:
 - a. Call The National Travel Service to arrange for tickets and hotel accommodations. The number is 800-445-0668.
 - b. Identify yourself as a CJA Panel Attorney (or expert) providing CJA representation.

- c. Provide The National Travel Service with the required information from the travel authorization.
 - d. Instruct The National Travel Service where to send the tickets.
- 3. Costs for common carriers are paid directly by the court.
- 4. Hotel costs are claimed for reimbursement on the travel section of the voucher.
- 5. Receipts are required for reimbursement for all travel expenses. Credit Card bills are not sufficient for reimbursement purposes.
- 6. If you arrange your own travel, you will be reimbursed at the contracted government discount rate. Failure to obtain judicial approval for overnight travel may result in your claim for reimbursement being disallowed.

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Appendix “A”

CJA Hourly Rates for Attorney Time in Non-Capital Cases and Periods of Applicability

January 1, 2010 to the present	\$125
March 11, 2009 - December 31, 2009	\$110
January 1, 2008 - March 10, 2009	\$100
May 20, 2007 - December 31, 2007	\$94
January 1, 2006 - May 19, 2007	\$92
May 1, 2002 - December 31, 2005	\$90
On or prior to April 30, 2002	Contact Case-Budgeting Attorney

Appendix “B”

CJA Maximum Hourly Rates for Attorney Time in Capital Cases with Periods of Applicability

January 1, 2010 to the present	\$178
March 11, 2009 - December 31, 2009	\$175
January 1, 2008 - March 10, 2009	\$170
May 20, 2007 - December 31, 2007	\$166
January 1, 2006 - May 19, 2007	\$163
February 1, 2005 - December 31, 2005	\$160
On or prior to January 31, 2005	\$125

Appendix “C”

Case Compensation Maximum Chart*

CJA 20 Vouchers				CJA 21 Vouchers		CJA 31 Vouchers
Work performed on or after 12/8/04	Work performed on or after 10/13/08	Work performed on or after 3/11/09	Work performed on or after 1/1/10	Work performed prior to 5/27/10	Work performed on or after 5/27/10	
\$1,500 for witnesses, violations and crack cocaine retroactive amendment	\$1,700 for witnesses, violations and crack cocaine retroactive amendment	\$1,800 for witnesses, violations and crack cocaine retroactive amendment	\$2,100 for witnesses, violations and crack cocaine retroactive amendment	With prior court authorization \$1,600 (cumulative compensation, excluding expenses, paid payee for a given defendant in a representation)	With prior court authorization \$2,400 (cumulative compensation, excluding expenses, paid payee for a given defendant in a representation)	With prior court authorization \$7,500 (combined total compensation and expenses paid for all investigative, expert and other services for a given defendant in a representation)
\$2,000 misdemeanors	\$2,200 misdemeanors	\$2,400 misdemeanors	\$2,800 misdemeanors \$6,900 appeals			
\$7,000 felonies and HC petitions	\$7,800 felonies and HC petitions	\$8,600 felonies and HC petitions	\$9,700 felonies and HC petitions	Without prior court authorization, \$500 for each category of service	Without prior court authorization, \$800 for each category of service	Without prior court authorization, \$800 for each category of service

* With the exception of CJA 31 vouchers, with prior court authorization, the case compensation maximum amounts exclude expenses.

** For work performed prior to 12/8/04, kindly contact the Case-Budgeting Attorney.

Appendix “D”

Mileage Allowance

April 17, 2012	.555
January 1, 2011	.510
January 1, 2010	.500
February 1, 2009	.550
August 1, 2008	.585
March 19, 2008	.505
February 1, 2007	.485
January 1, 2006	.445
September 1, 2005	.485
February 4, 2005	.405
January 1, 2004	.375

Appendix “E”

Presumptive Hourly Rates*

Investigator	\$80 - \$95
Associates	\$80 - \$90
Paralegals	\$35 - \$50
Mitigation Expert	\$100
Law Students	\$13 - \$28
Mental Health Professionals	\$200 - \$250
Pathologists	\$250

- * There are almost an infinite number of expert service providers with an equal variety of rates. For this reason, this list is not intended to be all inclusive. The intention is to keep the mental health providers, pathologists, serologists and other expert provider’s rates at or below \$250 per hour whenever possible. If you are quoted a higher rate by a service provider, counsel are encouraged to attempt to negotiate a lower **CJA** rate. In instances where the provider has refused to negotiate a lower rate and there is no other acceptable provider willing to work for the presumptive rate, applications should be made to the presiding judicial officer for the higher rate with a detailed explanation of the steps taken to procure the lower rate as justification for the rate requested.

As with all presumptive rates, there may be instances where a particular individual possesses a special skill or expertise that warrants a higher rate. In such instances, application should be made to the presiding judicial officer with an explanation as to why the rate requested is justified and reasonable.

Appendix “F”

Interpreters Rates Chart*

As of February 1, 2010		
	Certified	Non Certified
Full Day	\$388	\$187
Half Day	\$210	\$103
Overtime	\$55/hour or part thereof	\$32/hour or part thereof
As of April 1, 2009		
Full Day	\$384	\$185
Half Day	\$208	\$102
Overtime	\$54/hour or part thereof	\$32/hour or part thereof
As of January 2, 2008		
Full Day	\$376	\$181
Half Day	\$204	\$100
Overtime	\$53/hour or part thereof	\$31/hour or part thereof
As of April 2, 2007**		
Full Day	\$364	\$175
Half Day	\$197	\$94
Overtime	\$51/hour or part thereof	\$29/hour or part thereof

* Overtime payments are payable only for time worked in excess of 8 hours in one day. A contract interpreter cannot charge different court units or a federal defender or CJA panel attorney for any half-day or full days for which he or she is already receiving payment from another court unit or a federal defender or CJA panel attorney.

We observe a ten-minute courtesy period before overtime rates apply for assignments after 5:30 p.m.

** For rates prior to April 2, 2007, kindly contact the Case-Budgeting Attorney.

Appendix “G”

SIGNS OF A MEGA-CASE

1. Large discovery cases
2. Complex cases
3. Large multiple defendant cases
4. Cases where the participants are non-English speakers, especially where the language spoken is exotic or unusual
5. Cases where a defendant has mental health issues
6. Large indictments with multiple counts
7. Indictments where terrorism is alleged
8. Securities or other major fraud indictments
9. Wiretap cases especially where foreign languages are involved
10. RICO cases
11. Organized crime cases
12. Drug trafficking/Drug kingpin cases
13. Gang cases
14. Any case where a plea appears out of the question because of such factors as immigration status or deportation consequences
15. Any case which appears, from an early stage, destined for trial