JUDICIAL COUNCIL OF THE NINTH CIRCUIT

CRIMINAL JUSTICE ACT POLICIES AND PROCEDURES

APPROVED OCTOBER 20, 2016
REVISED APRIL 20, 2022

APPENDICES UPDATED FEBRUARY 1, 2024

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I. INTRODUCTION

The Judicial Council of the Ninth Circuit ("the Judicial Council") has approved the following case management and budgeting policies and procedures applicable to representations for counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A ("CJA"), and to death-eligible and capital habeas representations for counsel appointed under 18 U.S.C. § 3005 or § 3599(a).

These policies should be read in conjunction with the Guidelines for Administering the CJA and Related Statutes, Volume 7, Part A, *Guide to Judiciary Policy* ("CJA Guidelines"). Additional procedural guidance is available on the Circuit CJA Unit website at www.ca9.uscourts.gov/cja.

With the exception of Appendix 2 (Service Provider Hourly Rates), appendices to these policies and procedures may be revised by the Circuit CJA Unit without submission to the Judicial Council. Revisions to Appendix 2 require approval of the Chief Circuit Judge on behalf of the Judicial Council.

II. CJA PLANS

As required by the CJA and the CJA Guidelines, each court should develop a plan for furnishing representation in federal court for any person financially unable to obtain adequate representation. The objective of the plan should be to attain equal justice under the law for all persons.

The Ninth Circuit's Model CJA Plan, adopted by the Judicial Council, is available on www.ca9.uscourts.gov/cja, and the AO's Model CJA Plan is available in Appendix 2A of the CJA Guidelines at www.uscourts.gov. The Circuit Model Plan is substantially the same as the AO Model Plan but with enhanced panel management provisions adopted by the Judicial Council in response to the 2017 Report of the Ad Hoc Committee to Review the Criminal Justice Act (Cardone Report).

Each court should review its plan at least every five years and amend as needed to ensure compliance with the CJA, the CJA Guidelines, and other relevant Judicial Conference and Ninth Circuit policies. Plans, including any substantive amendments, must be approved by the Judicial Council. Non-substantive amendments may be approved by the Chief Circuit Judge without submission to the Judicial Council.

III. CASE BUDGETING

The development of a case budget in all capital and eligible complex or high-cost non-capital CJA appointments supports the availability of appropriate funding for quality client representations while providing necessary oversight and opportunities for efficiencies. A case budget with supporting documentation also provides the reviewing court sufficient information for reasonableness determinations and other statutorily required approvals.

To facilitate review and approval of a budget by the Chief Circuit Judge or delegee, case budgets should be developed with the assistance of a circuit Case Budgeting Attorney ("CBA"), working in collaboration with a court's CJA supervisory attorney (if any).[1] See Appendix 10 for CBA contact information. To enable CBAs to effectively carry out their duties and, when requested, review select payment vouchers in budgeted cases, CBAs should be given access to a court's eVoucher system.

A. CAPITAL CASES

All CJA costs in death-eligible prosecutions or capital habeas proceedings, including those with a federal public or community defender as co-counsel, must be budgeted by a circuit CBA in collaboration with a local CJA supervisory attorney (if any). Within 30 days of appointment, the court, CJA counsel, or CJA supervisory attorney must contact a circuit CBA for budgeting assistance.

A capital budget authorized by a court also must be submitted to the Chief Circuit Judge or delegee for secondary approval through a Budget-AUTH in eVoucher.

[1] The term "CJA supervisory attorney" encompasses any attorney designated by a court or federal defender office to assist with the review and processing of CJA funding authorizations or payment vouchers.

B. NON-CAPITAL HIGH-COST CASES

In CJA Guideline § 230.26.10, the Judicial Conference of the United States ("JCUS") encourages the use of case budgeting in any representation anticipated to exceed either 300 attorney hours or total costs (combined attorney and service provider fees) in excess of 300 times the prevailing CJA attorney non-capital hourly rate, rounded up to the nearest thousand (e.g., if the prevailing panel rate is $164/hour, the total costs benchmark would be $50,000: $164/hour x 300 hours = $49,200, rounded up to $50,000).

The Judicial Council also encourages budgeting in complex or high-cost non-capital cases that meet these thresholds. For CJA representations that exceed or are likely to exceed $100,000 in total costs, the Judicial Council requires budgeting by a circuit CBA in collaboration with a local CJA supervisory attorney (if any).

C. NOTICE OF POTENTIAL HIGH-COST CASE

Indicators of a potential high-cost case are listed in Appendix 9. The Judicial Council encourages courts to adopt a local rule or standing order identifying non-capital high-cost cases as early in the criminal process as possible to facilitate budgeting. Because a district's United States Attorney's Office is most knowledgeable about a case's charges and discovery, such rule or order could direct that office to provide notice of a potential high-cost case. Courts may also provide for similar notice from defense counsel.

D. BUDGETING IN STAGES

To make the budget submission and review process more manageable and effective, budgeting ordinarily will be accomplished in stages and, if appropriate, in discrete time periods within stages, such as six-month intervals.

For example, depending on the circumstances, an attorney might submit a budget for the entire representation (through trial/potential sentencing), the entire

pretrial stage, or, if the pretrial stage is expected to be lengthy, for a shorter interval such as through discovery review, the filing of pretrial motions, or trial preparation. Similarly, the first stage of a death-eligible federal prosecution may extend to a decision by the Department of Justice whether to authorize the prosecution to seek the death penalty. Depending on the timing of DOJ's decision-making process, the attorney could submit a budget for the entire stage or for a given period of time within the stage.

For capital habeas proceedings, budgets may be composed of numerous stages, depending on a number of factors particular to a case or district. Such stages ordinarily include record review, petition preparation, responsive briefing, and evidentiary hearing.

In death-eligible prosecutions, it is often critical to assemble a team and begin working on mitigation and fact investigation right away. Therefore, shortly after appointment, the assigned CBA will provide counsel with a proposed "seed money" budget for the court's consideration. Courts should authorize seed money to allow counsel to become familiar with the case, develop strategy, gather a team, and develop a more detailed budget. This preliminary budget should provide sufficient funding for the first 90 days of representation and include authorization for counsel to enlist an investigator, paralegal, and mitigation specialist.

E. VOUCHER REVIEW IN BUDGETED CASES

Although case budgeting generally expedites voucher review, courts are still required to assess whether claimed amounts were reasonably incurred in light of their representational purpose. See CJA Guideline § 230.33.10 (Standard for Voucher Review) and JCUS-SEP 2018, p. 42. Courts may refer select payment vouchers in budgeted cases to the assigned CBA for review and recommendation.

See Section VI.D for an explanation of when vouchers in budgeted cases must be submitted to the circuit for review and approval.

F. BUDGET SUPPLEMENTS

Counsel are responsible for tracking attorney hours and all CJA-funded service provider hours and should routinely run a Defendant Detail Budget Report in eVoucher to ensure the defense team remains within authorized funding levels. Counsel, investigators, experts, and other service providers must not exceed the budget authorized by a court without first seeking prior approval. Supplemental budget requests should be made before funding is exhausted and far enough in advance to give the court sufficient time to review and rule on the request.

Nunc pro tunc requests will be considered only upon a showing of good cause, such as when a task not previously contemplated required immediate action. A general assertion of "competing professional demands" does not establish good cause; a detailed explanation of those demands is required.

IV. COUNSEL APPOINTMENT AND COMPENSATION

A. GEOGRAPHIC PROXIMITY

Without compromising the quality of representation, courts should try to appoint CJA attorneys who are located reasonably near to where the case will be heard to avoid unnecessary travel time and facilitate access to the client.

In cases where more than one attorney is appointed, preferably counsel nearest the client would conduct most of the client visits unless the counsel farthest from the client possesses a certain expertise or working relationship with the client that warrants otherwise. Counsel and other team members not in close geographic proximity to the client should coordinate client visits with court hearings or other case-related activities whenever feasible and, if applicable, arrange to meet with other CJA clients on the same trip.

B. HOURLY RATES FOR APPOINTED COUNSEL

1. Death-Eligible Prosecutions

At the outset of any proceeding in which a financially eligible defendant is or may be charged with a crime punishable by death, a court must appoint two attorneys, at least one of whom is learned in the law applicable to capital cases. 18 U.S.C. § 3005. Courts must consider and give due weight to the recommendation of the federal defender organization before appointing counsel.[2] The maximum hourly rate in death-eligible prosecutions is set forth in CJA Guideline § 630.10.10(A) and Appendix 1. In orders appointing counsel, courts should identify the applicable hourly rate for all counsel and provide for the rate to adjust automatically in accordance with periodic rate increases.

If the prosecution files notice that it will not seek the death penalty, the court should consider whether reducing the number of counsel is appropriate, as

[2] Districts without a federal defender organization must consult with the AO's Defender Services Office.

provided in CJA Guideline § 630.30.20. The factors to consider in determining whether circumstances justify the continuation of more than one attorney include: the need to avoid disruption of the proceedings, whether the decision not to seek the death penalty occurred late in the litigation, whether the case is unusually complex, and whether the defense has reasonably allocated trial duties among counsel well into the case such that it would negatively impact the representation to dismiss one attorney.

Following notice that the prosecution will not seek the death penalty, the court should also consider reducing the hourly rate for counsel (and any service providers authorized at a higher capital rate), in light of the factors listed in CJA Guideline § 630.30.30. Such factors include the extent to which the representation precludes counsel from taking other work, the commitment of time and resources counsel has made and will continue to make in the case, and the need to compensate appointed counsel fairly. Any rate reduction must apply prospectively only.

If a court reduces the number of counsel, it should set a timeline and authorize a sufficient number of hours to allow for an orderly transition of the defense team. This includes allowing departing counsel and any mitigation investigator or specialist time to draft transmittal memoranda and meet with remaining counsel and the client.

2. Capital Habeas Corpus Proceedings

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

Hourly rates for CJA-appointed counsel in capital habeas cases are set forth in Appendix 1. Attorneys who have substantially drafted at least three prior capital habeas petitions are eligible for the lead counsel rate. The co-counsel rate applies to those who have substantially drafted one or two prior petitions. All other counsel must be compensated at the second counsel rate. Two attorneys

may be appointed at the lead counsel rate if both meet the experiential requirements.

3. Non-Capital Representations

The current maximum hourly rate for CJA attorneys in non-capital cases is set forth in Appendix 1. In most circumstances, only one CJA-compensated attorney is necessary for each client representation. However, a second attorney may be appointed in any case determined by the court to be extremely difficult or when such appointment would be in the interest of justice to ensure high quality representation. See CJA Guideline § 230.53.20.

Co-counsel who are members of the court's CJA panel should be compensated at the non-capital CJA hourly rate. If a non-panel attorney is appointed as co-counsel, the court should determine the hourly rate based on the attorney's experience and qualifications, up to the maximum non-capital CJA hourly rate.

C. ATTORNEY COMPENSATION MAXIMUMS

The CJA contains waivable attorney case compensation maximum amounts for various types of non-capital representations; capital representations have no attorney case compensation maximum. Appendix 3 lists the most common non-capital representation maximums. A complete list is set forth in CJA Guideline § 230.23.20. Expenses and service provider fees do not apply toward a compensation maximum.

Payments in excess of a compensation maximum must be approved by the Chief Circuit Judge or delegee and require certification that the representation is "extended or complex" and that excess payment is necessary to compensate counsel fairly. As explained in Section VI, some courts require prior authorization from both the court and Chief Circuit Judge or delegee before counsel incurs billable time in excess of the applicable compensation maximum.

When an attorney withdraws and new counsel is substituted, the case compensation maximum does not reset. Rather, the combined fees for all successive attorneys appointed to a single representation (i.e., for a particular client in a particular case) count against the compensation maximum. See CJA Guideline § 230.56. Absent concerns over the performance or billing of prior counsel, the substituted attorney should be allowed to submit a final voucher before the representation concludes, preferably within 45 days of withdrawing.

D. CJA APPOINTMENT OF RETAINED COUNSEL

Courts have discretion under the CJA, 18 U.S.C. § 3006A(c), to authorize appointment of and payment to an attorney initially retained by an individual who later becomes financially unable to pay for representation. In deciding whether to authorize the appointment, the court should consider whether counsel is a CJA attorney or otherwise regularly practices in federal court.

Regarding payment, the court should inquire into the fees already paid to the retained attorney. Such inquiry may include requiring counsel to provide *in camera* copies of the retainer agreement, billing statements, and a statement of funds received from or on behalf of the client.

A court may find it appropriate to allow the retained attorney to begin billing under the CJA upon appointment. Or a court may find it appropriate to appoint the retained attorney *nunc pro tunc* to the start of counsel's representation. In the latter scenario, the court may then order that any funds paid to retained counsel be attributed to work already performed and costs incurred (at the applicable CJA hourly rate), as well as new work performed and costs incurred, until the funds are deemed exhausted. Once exhausted, counsel and service providers would begin billing under the CJA. Courts may consider other equitable arrangements as well.

E. ASSOCIATES

1. Distinction Between Associate Counsel and Co-Counsel

"Associate," for the purpose of CJA compensation, is an attorney authorized to assist appointed counsel on a case but not as counsel of record. An associate under the CJA is either a member of appointed counsel's firm or an independent contract attorney authorized to practice law in the relevant jurisdiction. As discussed further below, an associate is considered an extension of, not a substitute for, the appointed CJA panel attorney. "Co-counsel" (see Section IV.B.3), on the other hand, serves as additional counsel of record and has the same duties and responsibilities as first appointed counsel unless appointed for a limited purpose.

Appointed counsel is responsible for attending pre-trial and probation interviews, negotiating potential pleas, discussing significant decisions with the client, and participating in substantive hearings, and may not unreasonably delegate responsibilities to associate counsel or duplicate work. Associates generally perform discrete tasks such as research, motion writing, summarizing discovery, reviewing discovery with the client, etc.

Associates and appointed counsel may be compensated for reasonable time conferring with each other regarding the case and specific assignments, but both should not bill time for participating in meetings with others absent a demonstrated need relevant to the associate's assigned tasks. Such need should be described in detail in the corresponding voucher. Where an associate appears in court with appointed counsel, including second-chairing trial, prior approval should be sought to allow the court to consider the reasonable necessity of the associate attorney's participation.

2. Prior Authorization for Associates

As provided in CJA Guidelines § 230.53.20(b) (non-capital) and § 620.10 (capital), CJA attorneys may utilize the services of attorneys who are members of

appointed counsel's firm. However, prior approval is required in all capital cases and, in some courts, non-capital cases. Counsel should consult with the court's CJA administrative staff regarding any particular authorization procedures before using members of appointed counsel's firm.

In all cases, prior authorization is required to enlist independent contract attorneys who are not members of appointed counsel's firm. The authorization request should provide justification for the associate appointment and detail the proposed scope of work.

In determining whether to permit appointed counsel to utilize an associate, courts may consider that associate involvement in a case provides a valuable opportunity to develop future CJA panel members.

3. Hourly Rate

An experience-based hourly rate range for associates is listed in Appendix 1. For those associates who are members of the court's CJA panel, a court may authorize up to the maximum non-capital CJA hourly rate.

4. Billing

The services of associate counsel may not be billed on CJA 21 or 31 (service provider payment voucher). Rather, an associate's billable time must be submitted on CJA 20 or 30 (attorney payment voucher) and counts toward the attorney compensation maximum. If under local practice the associate is set up for separate billing submission in eVoucher, the associate's vouchers must be submitted at the same time as appointed counsel's vouchers for the same billing periods to aid reasonableness review. In addition, appointed counsel should indicate that they have reviewed and approved amounts separately claimed on an associate attorney's voucher.

F. DIVISION OF LABOR

Whenever appropriate and without compromising the quality of work, services should be performed by the least expensive, competent provider capable of performing the work. Accordingly, CJA-appointed attorneys should enlist associates, paralegals, investigators, and other lower-cost service providers where the appointed attorney's expertise is not required, such as for legal research or preliminary discovery review.

Counsel should develop a plan to divide responsibilities among defense team members so that each member is performing duties effectively and efficiently, thereby avoiding unnecessary duplication of effort. While meetings are needed to effectively divide responsibilities among team members and to coordinate efforts, counsel should assess the need for a meeting in advance and consider whether its purpose could be served using a video or phone conference instead of meeting in person. Similarly, where team members belong to the same firm, non-substantive internal firm communications (e.g., to schedule internal deadlines or discuss division of labor logistics) should be billed with restraint.

Typically, it is presumed that initial fact-gathering interviews of potential witnesses may be conducted by an investigator or mitigation specialist alone and that, after key witnesses are identified, only one attorney need accompany the investigator or mitigation specialist to subsequent interviews. If the circumstances of a particular case warrant otherwise, counsel should provide justification in the payment voucher or authorization request.

Support staff—including law clerks, paralegals, associates, and investigators—will not be compensated for attendance at court hearings without prior court approval. However, courts should consider authorizing one or more such staff to assist appointed counsel during trial or evidentiary hearings, especially in capital cases and cases involving voluminous discovery, trial exhibits, or witnesses.

G. COMPENSABLE SERVICES

The Ninth Circuit CJA Compensability Handbook provides extensive guidance and detailed examples on what is presumptively compensable within the Ninth Circuit throughout the many stages of CJA representation. The Handbook was created to assist both panel attorneys and approving authorities in understanding and applying the CJA Guidelines and to provide a framework for analyzing challenging compensability questions. Administrative tasks that are typically not separately reimbursable or compensable may be claimed when they are extraordinary or unusual in terms of volume, extent, or difficulty. See CJA Guideline § 320.70.30. Counsel are encouraged to consult local CJA administrative staff regarding such circumstances.

Areas of note include:

1. Office Overhead

Under CJA Guidelines § 230.66.10 and § 320.80.10, the authorized hourly rate for panel attorneys and service providers includes compensation for general office overhead, including clerical assistance. Consequently, routine administrative tasks are not separately compensable, even if performed by an attorney.

Non-compensable administrative tasks include: (1) entering calls, meetings, due dates, or court appearances into a calendar; (2) rote or routine scheduling-related communications, including with the court; (3) leaving non-substantive voicemail messages; (4) filing or lodging electronic documents in CM/ECF, unless the filing is particularly voluminous or atypical such that filing takes an unusual or extraordinary amount of time; (5) emailing courtesy copies or proposed orders; (6) copying, scanning, or printing; (7) office filing; and (8) preparing documents for mailing.

2. Budgeting and Voucher Preparation

Time spent creating and entering billable time and expenses into a payment voucher is a non-compensable administrative expense. However, time spent requesting funding for experts, investigators, and other service providers, as well as reviewing service provider payment vouchers to certify that billed time and expenses were rendered, is compensable.

In addition, time spent preparing a budget or an advance request to exceed the case compensation maximum is compensable because it requires counsel to plan for litigation by preliminarily reviewing records, sorting through discovery, initiating contact with experts and other service providers, and assessing overall case needs. However, time spent justifying a bill or seeking authorization to exceed the compensation maximum *after* the work has been substantially completed is not compensable.

3. Travel Arrangements

Time spent making travel arrangements for counsel or a service provider, whether undertaken by an attorney, paralegal, or other staff member, is a non-compensable administrative task. However, time spent preparing a request for travel authorization from the court is compensable.

4. Attorney Travel

Under CJA Guideline § 230.60, appointed counsel must be compensated for reasonably necessary travel. Courts are encouraged to adopt locally appropriate travel policies. In developing such guidance, courts should form a working group that includes representatives from the judiciary, CJA panel, federal defender office, and CJA administrative staff to ensure such policies support the equitable treatment of panel members and the need for necessary travel, including in-person attorney-client meetings. See Note accompanying CJA Guideline § 230.60.

In determining whether actual expenses incurred are "reasonable," counsel should be guided by travel and subsistence expense levels set by the Judiciary Staff Travel Regulations.

Advance travel approval is ordinarily required in two circumstances: (1) out-of-district travel and (2) overnight travel. Counsel should consult with the court's CJA administrative staff regarding local authorization procedures and travel regulations. When feasible, attorneys are expected to perform case-related work while traveling, which should be billed to a substantive billing category not as travel time.

Federal law authorizes attorneys, experts, and other persons traveling primarily in connection with carrying out responsibilities under the CJA to use government travel rates from common carriers and lodging providers. Government rates may provide substantial cost reductions or increased flexibility over ordinary commercial rates. To obtain such rates, prior approval must be obtained. See CJA Guideline § 230.63.40(d). Counsel should contact local CJA administrative staff for details on how to obtain government rates.

5. Notices of Electronic Filing

Accessing, downloading, opening, renaming, saving, printing, or forwarding a Notice of Electronic Filing ("NEF") is a non-compensable administrative task. However, reasonable time spent reviewing a text-only NEF or an Electronic Court Filing ("ECF") document linked to an NEF is compensable.

Counsel are expected to exercise professional judgment in billing time for reviewing NEFs and ECF documents that require no substantive response, especially in multi-defendant cases where notices or filed documents may be unrelated or irrelevant to their client or representation.

6. Discovery Organization and Review

In any case with complex discovery, an efficient and cost-effective method to process, distribute, organize, and review discovery must be developed early in

the representation. Counsel should confer with the National Litigation Support Team ("NLST") in the Defender Services Office, a circuit CBA, or the court's CJA supervisory attorney on ways to effectively manage discovery, which may include use of a Coordinating Discovery Attorney, case management software, web-based discovery review platform, or litigation support specialist.

In multi-defendant cases, counsel must make every reasonable effort to collaborate and share discovery organization resources to the extent possible without creating a conflict. Prior authorization for computer hardware, software, or litigation services is required. If combined costs are expected to exceed $10,000, counsel must confer with NLST as provided in CJA Guideline § 320.70.40(a)(2).

Under Rule 16.1 of the Federal Rules of Criminal Procedure, no later than 14 days after arraignment, counsel must meet and confer with the government regarding a timetable and procedure for pretrial disclosures. Counsel may rely on *Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases* ("ESI Protocol") in discussing production mechanics with the government. See also *Criminal e-Discovery: A Pocket Guide for Judges*, available on www.fjc.gov,

After the discovery conference, either party may ask the court to determine the time, place, manner, or other aspects of disclosure to facilitate preparation for trial. Fed. R. Crim. P. 16.1(b). Because voluminous digital discovery greatly impacts timing and costs in criminal cases, courts are encouraged to issue case management orders that address discovery production protocols and timelines. Courts also should consider developing local policies to address discovery practices in criminal proceedings and form working groups to facilitate the provision of electronic discovery to pretrial detainees as recommended in *Guidance for the Provision of ESI to Detainees* (available on www.justice.gov and www.fd.org).

7. Record Review in Capital Habeas Cases

For purposes of developing a budget, the presumptive rate of review for court records and other documents in a capital habeas representation is 60 pages an hour. Each appointed attorney should review the core materials and divide review of non-core materials between them. Core materials include the trial transcript from opening statements to verdict, substantial motions, appellate briefs and decisions, and post-conviction pleadings, exhibits, transcripts, and decisions. Non-core materials include prior counsel's case files, co-defendant files, and investigative reports.

To reduce extraordinary expenses associated with record review of cases with voluminous documents, a two-step approach should be employed for review of non-core materials, as detailed below. Counsel are expected to enlist paralegal assistance to help organize and review records.

Step One

Prior to submission of a budget, the attorney or paralegal assesses the available materials, estimates the total number of pages, and prepares an inventory or index. Original hard-copy documents that have potential use as exhibits should be preserved and copies made as needed for the paralegal or attorney to use during substantive review.

Step Two

After step one, counsel should know the types and volume of documents that need careful review (e.g., investigative reports with handwritten notes) and those that may need less detailed attention (e.g., the second or third copy of a transcript). Accordingly, counsel should be in a position to prepare a detailed, accurate budget proposal for organization (including any necessary electronic scanning of relevant documents) and review of the core and non-core materials.

The budget should include time for a paralegal to organize materials and conduct a preliminary review prior to counsel. For example, the paralegal could

prepare witness files, create a comprehensive timeline, put police reports into chronological order, summarize transcripts or other materials, or prepare an exhaustion/default chart identifying each claim raised on direct appeal or in a post-conviction proceeding.

8. Certificate of Appealability Briefing in Habeas Cases

Consistent with Rule 11(a) of the Rules Governing § 2254 Cases and the Rules Governing § 2255 Proceedings, courts must issue or deny a Certificate of Appealability ("COA") when entering a final order adverse to the petitioner. Briefing on entitlement to a COA should be authorized only if a court concludes that it cannot rule without additional argument from the parties.

Courts should indicate whether a COA will be granted when ruling on a specific claim in a non-final order and then at the very end of the final dispositive order identify, by claim number, any and all claims for which a COA is granted or denied. For example: "A COA is granted as to Claims __, __, and __. A COA is denied as to all other claims. See 28 U.S.C. § 2253(c); *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003); *Slack v. McDaniel*, 529 U.S. 478, 484 (2000)."

V. INVESTIGATIVE, EXPERT, AND OTHER SERVICE PROVIDERS

A. AUTHORIZATION FOR SERVICES

1. Presiding Judge or Delegee

Under 18 U.S.C. § 3006A(e)(2) and CJA Guideline § 310.20.30, prior authorization from the presiding judge or delegee must be obtained for any service provider compensation in excess of $900[3] per representation, *not* per service provider. Within the Ninth Circuit, CJA representations routinely require the use of investigators, paralegals, and interpreters, and the combined cost of these services typically exceeds this limited amount.

To avoid the necessity of counsel expending compensable time in each case applying for commonly needed service providers, the Judicial Council encourages courts to adopt a general or standing order finding the services of investigators, paralegals, and interpreters necessary to effective CJA representation. The order could authorize court-appointed counsel to obtain such services up to a court-determined amount not in excess of the waivable case compensation maximum for service providers in non-capital cases (see Section V.A.2.a). A model order is set forth in Appendix 4.

If prior authorization was neither sought nor authorized by general or standing order, claims for service provider compensation exceeding $900 will be approved only if the court finds, in the interest of justice, that timely procurement of necessary services could not await prior authorization. Every effort should be made to avoid *nunc pro tunc* applications and to seek any required authorization before work by experts, investigators, or other providers is performed.

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[3] The $900 limit for services without prior authorization became effective February 15, 2019, but is regularly adjusted based on federal pay rate increases. See CJA Guideline § 310.20.30 and Appendix 3 for the current limit.

V. INVESTIGATIVE, EXPERT, AND OTHER SERVICE PROVIDERS

When seeking authorization, counsel must indicate the necessity of the service, the provider's name and hourly rate, and the estimated number of hours to complete the work. Courts should rule on service provider requests as expeditiously as possible, preferably within ten business days, to minimize litigation delay and associated costs.

If counsel obtains prior approval for expert, investigative, or other services and it later becomes apparent that the cost will exceed the initial approved amount, requests for additional compensation should be requested by counsel and authorized by the court *before* any further services are undertaken. Again, *nunc pro tunc* requests will be approved only if the court finds, in the interest of justice, that timely procurement of the additional services could not await prior authorization.

Once funding for investigators, experts or other specialized services has been approved, counsel is responsible for communicating the specific terms of the authorization with the service provider, initiating a CJA 21 (non-capital) or 31 (capital) in eVoucher to facilitate timely billing, and ensuring the provider's services do not exceed the authorized amount. To monitor available service provider funding, counsel should routinely run a Defendant Detail Budget Report in eVoucher.

In the event the court denies counsel's request for service provider funding in whole or in part and for purposes of possible appeal, counsel should seek to make a record of the denial in the ECF docket by filing under seal a notice of CJA funding denial or a motion for reconsideration.

2. Chief Circuit Judge or Delegee

a. Non-capital Cases

Under 18 U.S.C. § 3006A(e)(3) and CJA Guideline § 310.20.10, compensation for services in non-capital cases may not exceed $2,800[4] without approval of the Chief Circuit Judge or delegee and certification by the presiding judge or delegee that the fees are necessary to provide fair compensation for services of an unusual character or duration. This service provider compensation maximum is *per individual or organization* providing the services, not per case, representation, attorney, or provider type. The non-capital compensation services maximum is exclusive of reasonably incurred expenses. As provided in CJA Guideline § 310.20.20(b) and required by Ninth Circuit policy, approval for excess compensation must be obtained from the circuit in advance.

b. Capital Cases

Under 18 U.S.C. § 3599(g)(2) and CJA Guideline § 660.20.20, for capital cases commenced on or after April 24, 1996, the combined fees and expenses for investigative, expert, and other services are limited to $7,500 absent approval of the Chief Circuit Judge or delegee and certification by the presiding judge or delegee that the fees are necessary to provide fair compensation for services of an unusual charter or duration. This $7,500 limit is *per case* and applies to the total payments for all services and expenses, not to each service provider type individually. As provided in CJA Guideline § 660.20.20(d) and required by Ninth Circuit policy, approval for excess compensation must be obtained from the circuit in advance.

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[4] The $2,800 service provider waivable compensation maximum became effective January 1, 2023, but is regularly adjusted based on federal pay rate increases. See CJA Guideline § 310.20.10 and Appendix 3 for the current non-capital compensation maximum.

B. ENGAGING RELATIVES

In courts where engaging relatives is permitted, counsel must first provide notification of the relationship and potential services to the court *prior* to engaging any relative to perform CJA compensable services, other than an associate counsel in the same law firm.

C. GEOGRAPHIC PROXIMITY

To minimize travel costs, counsel must make a reasonable effort to retain qualified experts, investigators, or other service providers from the locale where the proposed services are to be performed, if such providers are available.

D. SERVICE PROVIDER HOURLY RATES

The current hourly rate ranges for investigators, experts, and other service providers are listed in Appendix 2. The high end of a listed range is not the presumptive rate. Rather, rates vary based on locality, education, specialization, certification, licensing, and experience.

Courts may adopt their own service provider rate schedule based on local needs. Court-specific rates may not exceed the high end of a range listed in Appendix 2 without approval of the Chief Circuit Judge.

In any individual case, the presiding judge or delegee may, for good cause, approve a rate in excess of the circuit maximum. Factors that may be considered in determining the existence of good cause include the uniqueness of the service or the service provider; the education, training, or specialization of the service provider; the lack of availability of this or similar service providers; complexity of the case; and any time limitations on the case that may affect how quickly the service needs to be completed. Circuit CBAs are available to assist CJA counsel in negotiating rates with providers.

For service providers who are employees of appointed counsel or counsel's firm, such as in-house paralegals, the hourly rate must not exceed the rate typically approved for independent CJA service providers in the relevant locale or charged by counsel to a fee-paying client for such services, whichever is less.

Courts may employ task-based billing to ensure application of an appropriate rate for the type of work performed. For example, if an expert, investigator, or mitigation specialist gathers records, which is a task that could be performed by a paralegal, such work may be compensated at a paralegal rate. In addition, if a provider has been authorized a higher "special skills" rate based on case-needed foreign language fluency or other specialized skill, only those tasks requiring use of the foreign language or other specialized skill should be billed at the higher rate.

Counsel are discouraged from requesting flat fees for services except in extraordinary circumstances and should instead negotiate with providers to accept the appropriate court-authorized hourly rate, unless the flat fee is more economical.

E. SERVICE PROVIDER TRAVEL

Service providers may be compensated for reasonable travel time and expenses. In determining whether actual expenses incurred are "reasonable," service providers should be guided by travel and subsistence expense levels set by the Judiciary Staff Travel Regulations. Federal law authorizes experts and other service providers traveling primarily in connection with carrying out responsibilities under the CJA to use government travel rates from common carriers and lodging providers. Government rates may provide substantial cost reductions or increased flexibility over ordinary commercial rates. See CJA Guideline § 320.80.20. Counsel and service providers should coordinate with local CJA administrative staff regarding the process for obtaining these rates.

Advance approval by the court is ordinarily required in two circumstances: (1) out-of-district travel, and (2) overnight travel. Counsel should consult with local CJA administrative staff regarding travel authorization procedures for service providers.

Counsel are expected to negotiate lower travel rates for high-cost service providers, preferably at 50 percent of the provider's services rate. Because some courts within the Ninth Circuit have travel limitations such as reduced rates or billable time maximums, counsel should consult with local CJA staff regarding applicable travel policies. Time spent performing case-related work while traveling is not "travel time" and should be compensated at the full hourly rate. Case-related work is work relevant to the responsibilities or duties assigned to the expert or service provider by appointed counsel.

F. INTERPRETERS AND TRANSLATORS

Funding for qualified interpreters is necessary to ensure CJA counsel's meaningful exchange of information with a defendant. Accordingly, authorization requests for interpreter services do not require extensive justification.

As provided in CJA Guideline § 320.15.20, in determining the reasonableness of rates paid to interpreters under the CJA, courts should utilize either: (1) the half-day and full-day rates established for contract court interpreters performing in-court services; or (2) an hourly rate, using the half- and full-day rates (prorated hourly) or the hourly overtime rate as a guidepost.

Every effort should be made to avoid less than 24 hours' notice of a cancelled interpreter appointment. Should that occur, the interpreter may bill CJA for any actual out-of-pocket expenses and for the time required to get to and from the appointment. If the interpreter was unable to schedule other court or CJA work for the cancelled time period, courts may authorize payment of a

reasonable cancellation fee after considering any other services rendered by the interpreter on the same day.

The translation of written documents typically should be billed by the English word at the rate set forth in Appendix 2. For administrative convenience, document translation services should be requested as part of an initial or supplemental interpreter authorization. Once approved, the services of multiple interpreters and translators may be billed to the same master eVoucher authorization.

G. TRANSCRIPTS

As provided in CJA Guideline § 320.30.30(a), in multi-defendant cases, only one transcript should be purchased from the court reporter on behalf of CJA-represented defendants. The appointed counsel or clerk of court should share an electronic copy with each of the CJA defendants for whom a transcript has been approved. If the transcript was provided in printed format, counsel or the court reporter should arrange for duplication at a commercially competitive rate (typically ten cents per page) rather than the usual first or additional copy transcript rates.

H. PAYMENT OF SERVICE PROVIDER FEES

Given the critical importance of maintaining the availability of high-quality service providers willing to assist with CJA appointed matters, counsel should make every effort to process and submit service provider vouchers in a timely manner.

Service provider fees and expenses must be submitted using eVoucher's CJA 21 or 31, and payments should be made directly to the service provider. Absent extraordinary circumstances, counsel should not pay experts, investigators, or other service providers out of pocket and then seek reimbursement on a CJA 20

or 30. Any exceptions to this general requirement should be discussed in advance with local CJA administrative staff.

I. SERVICES FOR DEFENDANTS WITH RETAINED COUNSEL

A defendant with retained counsel may at any point during the representation seek a determination by the court of financial eligibility for reasonably necessary investigative, expert, or other services under 18 U.S.C. § 3006A(e)(2). Such application shall include a Financial Affidavit (CJA 23).

In considering a funding request by a defendant with retained counsel, the court should inquire into the fee arrangement between the retained attorney and the client. 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 part of the costs and expenses as the court may direct.

In multi-defendant cases with CJA-funded shared service providers, a court may permit a defendant who is ineligible for CJA funding or who is represented by a federal defender organization to utilize CJA-funded shared services by paying a per-defendant proportional share of the total cost.

J. ENGAGEMENT LETTERS

Counsel appointed under the CJA and retained counsel authorized to enlist CJA-funded service providers should use written engagement letters for experts or other specialized services setting forth the details of their engagement, including the hourly rate, the maximum number of authorized hours or compensation amount, and the requirements of billing in tenths of an hour and contemporaneous recordkeeping. A sample engagement letter is set forth in Appendix 5.

V. INVESTIGATIVE, EXPERT, AND OTHER SERVICE PROVIDERS

For service providers being shared by multiple defendants in one case, the engagement letter should identify all the defendants' attorneys and not just the liaison attorney. In addition, CJA administrative staff should be notified if a liaison attorney withdraws from the case.

VI. AUTHORIZATION AND BILLING PROCEDURES

A. PREAUTHORIZATION OF ATTORNEY FEES

While not mandated, courts are encouraged to use CJA 26 or Budget-AUTH in eVoucher to require prior authorization of attorney fees (for appointed counsel and any authorized associates) in cases expected to exceed the case compensation maximum. To aid circuit review of a preauthorization request, counsel or the court must attach all relevant documents to the CJA 26 or Budget-AUTH, including any court-created justification form such as a Request for Excess Compensation, motion, supporting declaration, court order, budget application (including resume, CV, license, or other relevant documentation for a requested service provider), or court memoranda or emails concerning the request.

B. PREAUTHORIZATION OF SERVICE PROVIDER FEES

Courts must use AUTH in eVoucher to request prior authorization of service provider fees expected to exceed the case compensation maximum. To aid circuit review of a preauthorization request, counsel or the court must attach all relevant documents to the AUTH in eVoucher, including any court-created justification form, service provider qualifications (e.g., resume, CV, or license), supporting declaration, court order, budget application, or court memoranda or emails concerning the request.

For courts utilizing Budget-AUTH, eVoucher provides the option of automatically creating corresponding AUTHs for any approved service providers once the Budget-AUTH is approved by the Chief Circuit Judge or delegee.

C. INTERIM PAYMENT VOUCHERS

Courts should consider providing standing authorization for, or require submission of, interim vouchers for discrete periods of time, such as bi-monthly

or quarterly, and may set a minimum dollar threshold before counsel or a service provider may submit an interim voucher.

D. SUBMISSION OF INTERIM VOUCHERS FOR CIRCUIT REVIEW

1. Preauthorized Fees

If the Chief Circuit Judge or delegee has approved a request to exceed the attorney compensation maximum in a non-capital case via Budget-AUTH or CJA 26 (see Section IV.C) or a request to exceed the services compensation maximum in a non-capital or capital case via Budget-AUTH or AUTH (see SectionV.A.2), interim CJA 20, 21, and 31 vouchers that do not exceed the preauthorized fee limit do not require circuit review, unless otherwise directed by the Chief Circuit Judge or delegee. Rather, circuit review and approval is required only for final CJA 20, 21, or 31 vouchers or interims that exceed preauthorized fee limits. Attorney compensation claims on CJA 30 never require circuit review.

2. Fees Not Preauthorized

For non-capital cases in which the Chief Circuit Judge or delegee has *not* approved a prior request to exceed the case compensation maximum for attorney fees, courts must submit all interim payment vouchers to the circuit for review once the case compensation maximum is exceeded. To aid circuit review, counsel or the court must attach all relevant supporting documents to the CJA 20 payment voucher, including a Request for Excess Compensation form or CJA 26, an Information Summary Form (for appeals), or other document that explains why the representation is extended or complex and demonstrates that total fees to date are necessary to provide fair compensation.

Ninth Circuit policy requires prior authorization of service provider fees in excess of the case compensation maximums for capital and non-capital cases. In the rare instance preauthorization is not feasible, counsel must include with the payment voucher an explanation of why, in the interest of justice, timely procurement of necessary services "could not await prior authorization." 18 U.S.C. § 3006A(e)(2)(B).

E. TIMESHEETS AND RECORDKEEPING

1. Billing Entries

Actual time must be billed in tenths of an hour. Discrete tasks must be billed separately and to the correct voucher category except that those tasks taking less than 0.1 hours each must be aggregated into one block of time to ensure that billable time does not exceed actual hours worked. These requirements also apply to service providers.

Information must be provided in detail sufficient to permit meaningful review, without violating the canons of ethics or disclosing client confidences, so that reviewers may determine that the amount sought in the voucher provides fair compensation for the services rendered. In particular:

- Identify the number of pages or Bates range, amount of data, or length of audio or video records being reviewed, and the nature of the material reviewed (e.g., "transcripts," "302s," "surveillance video")
- Describe witness interviews with sufficient information to distinguish between individuals (*e.g.*, "Witness 1" or "W1" or "Witness A.K.")
- Identify the person(s) involved in telephone conversations or conferences and general topic of discussion (using descriptors or initials where confidentiality is needed)
- Describe generally any issue being researched
- When preparing or reviewing a court filing, identify the document by name or ECF number

Appendix 6 contains further guidance regarding specificity for timesheets, and detailed billing tip sheets are available at www.ca9.uscourts.gov/cja. In addition, counsel should consult with CJA administrative staff or local billing guides regarding the level of specificity required in supporting documentation.

2. Excess Hours in One Day

Unless in trial or finalizing an appellate brief or habeas petition, 10 or more hours billed in a single day by an attorney or service provider across all cases is unusual, and the necessity for such time should be explained in the voucher (e.g., trial preparation, impending deadline, etc.). Otherwise, the voucher may be returned for additional information.

3. Expenses

Courts should ensure that panel attorneys and service providers abide by the expense policies set forth in Appendix 7 and in the CJA Compensability Handbook.

4. Billing Records

Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, contract lawyers, and support staff, as well as expense records. In the absence of a court-specific policy defining "contemporaneous time and attendance records," information entered into eVoucher payment vouchers satisfies counsel's recordkeeping requirement, provided the information is entered as soon as feasible after performing the work described or based upon contemporaneous notes. Under CJA Guideline § 230.76, written records may be subject to audit and must be retained for at least three years after approval of the final voucher for any appointment.

Counsel should advise all investigators, experts, and other service providers that they must maintain contemporaneous time and attendance records for all work billed by them, as well as expense records. Providers who are authorized to enter time into eVoucher satisfy this requirement if billing information is entered as soon as feasible after performing the work described or based upon contemporaneous notes. Under CJA Guideline § 320.90, billing records are subject to audit and must be maintained for at least three years after approval of the service provider's or appointed counsel's final voucher, whichever is later.

F. DEADLINE FOR VOUCHER SUBMISSION

Under Guideline § 230.13, final vouchers should be submitted no later than 45 days after the representation concludes, absent good cause. Courts may by local policy extend this period up to a maximum of 90 days. Counsel should make every effort to submit all outstanding vouchers in a case at the same time and are responsible for advising service providers of this voucher submission requirement.

Counsel must create CJA 21 and 31 payment vouchers for service providers and should inform all providers of the date the representation concludes. If service providers are allowed to enter their own services into eVoucher, counsel should review and certify CJA 21 or 31 payment vouchers submitted for approval in a timely fashion.

Vouchers submitted beyond a court's time limit but less than one year after the case concluded must include a statement demonstrating good cause for the untimely submission. If submitted outside a court's time limit, counsel risks a reduction in compensation if claims cannot be adequately substantiated. Persistent submission of late vouchers may be addressed as a performance issue.

G. VOUCHER REVIEW

Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA panel attorneys must be compensated for time expended in court and time reasonably expended out of court and must be reimbursed for expenses reasonably incurred.

Vouchers are reviewed for technical compliance with the CJA Guidelines, these circuit policies, and any policies adopted by the district court or court of appeals.

The reasonableness of a claim is determined by the judge presiding over the matter or delegee and, if the voucher exceeds the case compensation maximum, the Chief Judge of the Ninth Circuit or delegee. In determining reasonableness,

the court should consider whether the work was clearly in excess of what was reasonably necessary.

Courts may delegate reasonableness review and approval to appropriate nonjudicial officers so long as ultimate review and approval authority is retained by the presiding judge. To aid with reasonableness review, a voucher may be referred to a local fee review committee for input. Appendix 8 contains an example of a fee review committee's procedures. The presiding judge or delegee also may seek input from the Circuit CJA Unit.

As provided by CJA Guidelines § 230.13 and § 310.70, absent extraordinary circumstances, courts should act upon payment vouchers within 30 days of submission.

H. VOUCHER REDUCTION PROCEDURES

Vouchers for attorney fees reasonably expended may not be reduced to lessen Defender Services program costs in response to adverse federal budgetary circumstances. Nor may a voucher be arbitrarily reduced to the statutory maximum.

As provided in CJA Guideline § 230.33.10, reductions to payment vouchers should be limited to mathematical errors; instances in which work billed was not compensable, undertaken, or completed; and instances in which the hours billed clearly exceed what was reasonably required to complete the task.

Prior to the reduction of any voucher, other than for technical errors or non-compliance with billing guidelines, the CJA attorney or service provider must receive notice and a brief statement of the reason for the proposed reduction. Counsel or the service provider will then be allowed a reasonable opportunity to address the matter to the court or reviewing official.

Courts should use the eVoucher program to facilitate this process by providing the reason(s) for the reduction either in the Public Notes section of eVoucher, or as an attachment in the Documents section. Attorneys can be

directed to respond in the same manner. Keeping the process within eVoucher will make for a transparent and convenient account of the exchange between the court and counsel. If an email exchange concerning an adjustment occurs, PDFs of the emails should be attached to the voucher and referenced in the eVoucher notes.

Every court should implement an independent review process for panel attorneys to challenge any non-technical reductions to vouchers that have been made by the presiding judge or delegee. Such review processes must be consistent with the statutory requirements for fixing compensation and reimbursement to be paid under 18 U.S.C. § 3006A(d). See CJA Guideline § 230.33.40 (Independent Review Process) and JCUS-MAR 2019, p. 19.

APPENDIX 1 – ATTORNEY HOURLY RATES

For services performed on or after January 1, 2024: [1]

CAPITAL DEATH-ELIGIBLE PROSECUTIONS	
Learned Counsel	$220
Co-Counsel	$220
CAPITAL HABEAS CASES	
Lead or Co-lead Counsel (prepared 3 or more capital petitions in prior representations)	$220
Co-counsel (prepared 1-2 capital habeas petitions in prior representations)	$200
Second Counsel (has not prepared a capital habeas petition)	$180
NON-CAPITAL CASES	
Lead Counsel	$172
Co-Counsel	$172

ASSOCIATES[2]

Years of Practice	Non-Capital Cases	Capital Cases
1 – 2 years	$100	$124
2 – 3 years	$105	$129
3 – 4 years	$110	$134
4 – 5 years	$116	$140
5 – 6 years	$121	$145
6 – 7 years	$126	$150
7 – 8 years	$131	$155
8 or more years	$137	$161

1 Consult CJA Guidelines § 230.16 and § 630.10.10 for the maximum hourly rates paid to capital and non-capital counsel for services performed prior to January 1, 2024. Please note that eVoucher does not update capital rates automatically when annual increases go into effect. Therefore, when appointing counsel in capital cases, courts should consider expressly authorizing that annual increases be added to the initial appointment rate

2 Suggested rates based on experience. District-specific rates may vary but not exceed the 8-year maximum unless the associate is a member of the district's CJA panel, in which case a court may authorize up to the maximum non-capital CJA hourly rate.

APPENDIX 2 – SERVICE PROVIDER HOURLY RATES

The high end of a listed range is not the presumptive rate. Rather, rates vary based on locality, education, specialization, certification, licensing, and experience. Depending on the circumstances in an individual case, a provider's rate may exceed the high end of a range upon a showing of good cause, as explained in Section V.D of these policies.

Courts may adopt their own service provider rate schedule based on local needs. However, court-specific rates may not exceed the high end of a below-listed range without approval of the Chief Circuit Judge. When a "special skills" rate is authorized based on case-needed foreign language fluency, only those tasks requiring use of the foreign language should be billed at the higher rate.

Counsel are expected to negotiate lower travel rates for high-cost service providers, preferably at 50 percent of the provider's services rate. Because some courts within the Ninth Circuit have travel limitations such as reduced rates or billable time maximums, counsel should consult with local CJA staff regarding applicable travel policies. Time spent performing case-related work while traveling is not "travel time" and should be compensated at the full hourly rate.

Investigators, Mitigation Specialists, and Paralegals			
Court-specific rates vary based on unique locality needs. Thus, the high end of a range is not the presumptive rate. For providers who work in multiple courts, the approved rate will be based on the applicable court's presumptive rate, not prior authorizations in other courts.			
	Standard Rate	Special Skills Rate	
Investigator – Capital Cases	$90 – $105	$110 – 125	Special skills rate is for case-needed foreign language fluency or other specialization, such as mastery of one or more relevant areas of forensic science (e.g., forensic psychology or digital forensics) or a high level of experience in the type of alleged offense. The rate may be reduced to a non- capital rate if the government opts against seeking the death penalty.
Investigator – Non-capital Cases	$85 – $100	$105 – $120	Special skills rate is for case-needed foreign language fluency or other specialization, such as mastery of one or more relevant areas of forensic science (e.g., forensic psychology or digital forensics) or a high level of experience in the type of alleged offense.

APPENDIX 2 – SERVICE PROVIDER HOURLY RATES

	Standard Rate	Special Skills Rate	
Mitigation Specialist – Capital Cases	$125 – $140	$145 – $160	Special skills rate is for providers with a master's degree, case-needed foreign language fluency or other specialized expertise. The rate may be reduced to a non-capital rate if the government opts against seeking the death penalty.
Mitigation Specialist – Non-capital Cases	$85 – $100	$105 – $120	Special skills rate is for providers with a master's degree, case-needed foreign language fluency, or other specialized expertise.
Paralegal (non-J.D.)	$65 – $75	$80 – $90	Special skills rate is for those with the technology skills necessary to perform complex litigation support or discovery database management (including subjective coding), case-needed foreign language fluency, or capital case expertise.
Paralegal (J.D.)	$80 – $90	$95 – $105	Special skills rate is for those with the technology skills necessary to perform complex litigation support or discovery database management (including subjective coding), case-needed foreign language fluency, or capital case expertise.

Other Service Provider Categories		
Accident Reconstruction	$150 – $200	
Accountant	$150 – $300	
Accounting Staff (non-CPA)	$65	E.g., reviewing/summarizing/preparing financial records
Attorney Expert – Capital	CJA Hourly Rate	
Attorney Expert – Non-Capital	CJA Hourly Rate	E.g., immigration law expert. DSO has established a partnership with National Immigrant Justice Center (NIJC), through its Defenders Initiative, and is available to answer queries (at no cost) from CJA practitioners regarding non-citizen clients. (Email defenders@heartlandalliance.org)
Audio, Video, Photo Forensic Analyst	$125 – $200	
Audio, Video, Photo Technician	$25 – $100	E.g., creating video exhibits, taking or enlarging photos, enhancing audio or video recordings, etc.
Ballistics/Firearms Expert	$150 – $300	
Canine Expert	$125 – $200	
Chemist/Toxicologist (B.S. or Ph.D.)	$150 – $275	
Chemist/Toxicologist (M.D.)	$275 – $400	

APPENDIX 2 – SERVICE PROVIDER HOURLY RATES

Computer/Cellphone/Cellular Tower Forensic Analyst	$175 – $300	
Crime Scene/Police Practices/Use-of-Force Expert	$150 – $250	
DNA Expert (B.S. or Ph.D.)	$150 – $300	
Fingerprint Analyst	$150 – $250	
Gang Expert	$150 – $200	
Handwriting Analyst	$100 – $250	
Interpreter/Translator for in-person meetings	$44 – $80	Range accommodates both certified and non-certified providers. Half-day rate is $320 for certified, $280 for professionally qualified, and $190 for language skilled (non-certified). Link to full-day rates.
Jury Consultant	$150 – $225	
College/Law Student or Intern	$25 – $35	
Legal Analyst/Consultant (Non-Attorney)	$75 – $100	E.g., Sentencing Guidelines consultant.
Medical – Other (M.D. or D.O.)	$275 – $400	
Neurologist or Neuropsychiatrist (M.D.)	$275 – $400	
Neuropsychologist (Ph.D.)	$250 – $375	
Nurse (L.P.N. or R.N.)	$100 – $125	
Nurse (M.S.N. or D.N.P.)	$150 – $300	Including S.A.N.E. certified.
Pathologist/Medical Examiner	$275 – $400	
Ph.D. – Other	$200 – $300	
Polygraph	$100 – $250	Polygraph testing typically billed at a flat rate between $500 and $1,250.
Psychiatrist (M.D.)	$275 – $400	
Psychologist (Ph.D.)	$200 – $300	
Translation – Foreign Language Document	Up to 22 cents per word	
Transcription – English Audio	$4.00 per page	Contract court reporter rate (without foreign translation) for non-automated transcription services. NOTE: Reimbursement for transcripts of federal court proceedings must be submitted on Form CJA-24 in eVoucher and requested in District Court, whether for use in District Court or the Court of Appeals.
Transcription and Translation Combined – Foreign Audio	$35 – $85	Combined translation and transcription of foreign audio recordings are typically billed by the hour, not per word or page, for non-automated services. Rates vary based on language, interpreter certification, and recording quality.

Revised: February 1, 2024

APPENDIX 3 – COMPENSATION MAXIMUMS

APPENDIX 3 – COMPENSATION MAXIMUMS

A. ATTORNEY CASE COMPENSATION MAXIMUMS

For representations in which work is performed on or after January 1, 2024:	
Non-capital felony	$13,400 for trial court level $9,600 for appeal
Misdemeanor	$3,800 for trial court level $9,600 for appeal
Non-capital post-conviction proceeding under 28 U.S.C. § 2241, § 2254, or § 2255	$13,400 for trial court level $9,600 for appeal

B. SERVICE PROVIDER NO PRIOR AUTHORIZATION LIMIT

For representations in which services are performed on or after January 1, 2024:	
All cases	$1,000 (all services)

C. SERVICE PROVIDER CASE COMPENSATION MAXIMUMS

For representations in which services are performed on or after January 1, 2024:	
Non-capital case	$3,000 (per individual authorization, exclusive of expenses reasonably incurred)
Capital case	$7,500 (applicable to total payments for investigative, expert, and other services in a case, including expenses, not to each service individually)

APPENDIX 4 – MODEL GENERAL ORDER AUTHORIZING FUNDING FOR COMMONLY UTILIZED SERVICE PROVIDER TYPES

IN THE UNITED STATES DISTRICT COURT

FOR THE [DISTRICT NAME]

In the Matter of OBTAINING CJA SERVICES WITHOUT PRIOR AUTHORIZATION	GENERAL ORDER NO. _____

Pursuant to 18 U.S.C. § 3006A(e)(2), counsel appointed under the Criminal Justice Act (CJA) are required to obtain prior authorization for any investigative, expert, or other services that, combined, exceed the statutorily imposed limit provided in the Guide to Judiciary Policy and Procedure, Volume 7A, Ch. 3, § 310.20.30(A), currently $900.

In the interests of justice and efficiency, the Court finds that the services of investigators, interpreters, and paralegals are necessary for adequate representation and hereby authorizes CJA-appointed counsel to utilize each of these service provider types up to the prevailing waivable case compensation maximum provided in the Guide to Judiciary Policy and Procedure, Volume 7A, Ch. 3, § 310.20.10(A), currently $2,800, without further order of the Court. CJA counsel shall otherwise comply with 18 U.S.C. § 3006A(e) and agree to be bound by the prevailing hourly rates for investigators, interpreters, and paralegals, as established by this Court [or "the Ninth Circuit Judicial Council" in the absence of court-specific rates].

IT IS SO ORDERED.

APPENDIX 5 – SAMPLE ENGAGEMENT LETTER

Sample Engagement Letter: Contents of Financial Arrangements

Case Name: _____

Case Number: _____

The engagement of your services for this case is subject to the following:

1) You will be compensated at a rate of $_____ per hour for services and $_____ per hour for travel time. The maximum payment amount authorized by the court as of this date for your services is $_____, excluding properly documented reimbursable expenses. Do not incur any single expense in excess of $500 without first contacting me so that I may obtain prior court authorization.

2) A CJA 21 (non-capital) or 31 (capital) will be created for you in the court's electronic voucher system which either you or I will complete and submit. Instructions on how to use the eVoucher system will be provided to you.

3) It is my responsibility as counsel to certify to the court that the services were rendered. Payment for your services is subject to approval by the presiding judge or delegee and, in certain circumstances, the Chief Judge of the Ninth Circuit or delegee. Approved payments are made by the Department of the Treasury out of the federal judiciary's Defender Services account, **not by me or my law firm**.

4) The presiding judge (and the Chief Judge of the Ninth Circuit or delegee) has discretion to reduce a voucher. Specific reasons include: (a) mathematical errors; (b) instances in which work billed was not compensable under district or circuit court policies or the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), Guide to Judiciary Policy, Volume 7, Part A; (c) instances in which work billed was not undertaken or completed; and (d) instances in which the hours billed are clearly in excess of what was reasonably required to complete the task. Accordingly, this Engagement Letter is not a guarantee of payment for all services rendered or expenses incurred.

5) **Do not perform services or incur expenses in excess of amounts authorized by the court**. Doing so creates a risk that the court will not authorize payment for the work done or expenses incurred, even if the services performed or expenses incurred are necessary. You must advise me **before** exceeding the court's authorization. If I determine such additional work and/or expenses are necessary for the representation, I will seek approval from the court for additional funds before such work is performed or expenses incurred.

6) Travel expenses will be reimbursed on the basis of actual expenses incurred. Please consult with me regarding the maximum reimbursement amounts for travel expenses. Airline travel must be authorized by the court by my application. If airline travel is authorized, I will provide guidance to you regarding the purchase of a ticket.

7) Record Keeping – Consistent with CJA Guideline § 320.90, you are required to maintain contemporaneous time and attendance records for all work/services billed, as well as expense records. These records should be entered into eVoucher on a CJA 21 or 31 that is submitted for payment. Any separate time and attendance records must be retained for three years after approval of the appointed counsel's or the service provider's final voucher, whichever is later.

8) Unless otherwise authorized by the court, a voucher for services performed and expenses incurred for the representation should be submitted at the conclusion of your services. While the court attempts to process invoices as quickly as possible, there may be delays in payment due to workload and other factors.

9) Scope of Work – You are authorized to do the following work:

_____

_____

_____

_____

_____

_____

_____

_____

Accepted by: _____

Date: _____

APPENDIX 6 – SPECIFICITY IN TIMESHEETS

Counsel should strive to provide sufficient information in their billing to demonstrate both reasonableness and compensability and are encouraged to review the Ninth Circuit CJA Unit's billing tip sheets at https://www.ca9.uscourts.gov/cja and any local billing guidelines.

PROPER CLASSIFICATION OF SERVICES (NO FULL-DAY BUNDLING):

Do this…

Date	Service	Description	Time
04/05/23	Interviews and Conferences	Met with AUSA (.4); phone call with client (.4); met with client at jail (.8)	1.6
04/05/23	Obtain/Review Rcds	Reviewed 302s re: Count 1 (Bates Nos. 001-225)	3.2
04/05/23	Legal Research	Legal research for motion to suppress	1.5

Not this…

Date	Service	Description	Time
04/05/23	Interviews and Conferences	Met with AUSA (.4); phone call with client (.4); met with client at jail (.8); Reviewed 302s re: Count 1 (Bates Nos. 001-225) (3.2); Legal research for motion to suppress (1.5)	6.3

DETAILED TASK DESCRIPTIONS:

Do this…

Date	Service	Description	Time
04/05/23	Travel Time	Traveled by private car to locate and meet with two possible eyewitnesses (W1 and W2) in Fresno, CA (includes travel to and within Fresno to two separate residences)	1.0
04/05/23	Interviews and Conferences	Interviewed two possible eyewitnesses (W1 and W2) in Fresno, CA, at their separate residences	1.6
04/08/23	Obtain/Review Rcds	Reviewed 200 pages of wiretap transcripts (Bates Nos. 220-420)	1.5
04/17/23	Legal Research	Researched whether the search of client's car without a warrant was unlawful; drafted motion to suppress (Doc. 112)	5.2
04/20/23	Obtain/Review Rcds	Reviewed cell site data, take notes, and draft timeline. Approx 150 pages of cell site discovery (no bates numbers).	2.0

APPENDIX 6 – SPECIFICITY IN TIMESHEETS

Not this…

Date	Service	Description	Time
04/05/23	Travel Time	Travel to Fresno, CA	1.0
04/05/23	Interviews and Conferences	Witness interviews	1.6
04/08/23	Obtain/Review Rcds	Reviewed discovery	1.5
04/17/23	Legal Research	Legal research and writing	5.2
04/20/23	Obtain/Review Rcds	Reviewed discovery	2.0

AGGREGATE ECF DOCUMENT REVIEW AND OTHER 0.1 TASKS:

Do this…

Date	Service	Description	Time
04/05/23	Obtain/Review Rcds	Reviewed multiple ECF filings (Doc. 2-9)	0.3
04/06/23	Interviews and Conferences	Review and respond to multiple emails from AUSA re: discovery	0.2

Not This….

Date	Service	Description	Time
04/05/23	Obtain/Review Rcds	ECF document review	0.1
04/05/23	Obtain/Review Rcds	ECF document review	0.1
04/05/23	Obtain/Review Rcds	ECF document review	0.1
04/05/23	Obtain/Review Rcds	ECF document review	0.1
04/05/23	Obtain/Review Rcds	ECF document review	0.1
04/06/23	Interviews and Conferences	Email AUSA re: discovery request	0.1
04/06/23	Interviews and Conferences	Review AUSA email response re: discovery request	0.1
04/06/23	Interviews and Conferences	Email AUSA re: discovery request follow-up	0.1
04/06/23	Interviews and Conferences	Review AUSA email response re: discovery request follow-up	0.1

APPENDIX 7 – EXPENSE POLICIES

APPENDIX 7 – EXPENSE POLICIES

- Prior approval of the presiding judicial officer should be sought for any single non-travel, case-related expense in excess of $500.

- The use of couriers, messengers, and other premium delivery services such as Express Mail, Federal Express, and United Parcel Service, is discouraged unless there is a genuine necessity for this service or unless the cost of the premium service does not exceed United States Postal Service express mail rates. Explanations and receipts for all such services are required.

- In-house copying is strongly encouraged and is reimbursable at a rate not to exceed fifteen cents ($0.15) per page for black-and-white copies and twenty-five cents ($0.25) per page for color copies. If in-house duplication is neither feasible nor cost effective, counsel or service providers are expected to negotiate the lowest rate possible from an outside vendor.

- Counsel should use the most fiscally responsible method for discovery duplication. In some instances, this will require coordination among co-counsel, a "meet and confer" with the AUSA, and potential use of an outside vendor.

- External hard drives purchased with the intent to stay with a case file (e.g., to store discovery) or for use in another CJA representation may be reimbursed as an out-of-pocket expense.

- General office overhead expenses are not reimbursable, including, but not limited to, flat-fee computerized research plans unless itemized by client (and billed on a proportional basis), land and cellular telephone maintenance fees, books and publications, office supplies and equipment, and all costs related to educational seminars.

APPENDIX 7 – EXPENSE POLICIES

- The cost of computer-assisted legal research (*e.g.*, Westlaw) may be allowed as a reimbursable out-of-pocket expense, provided the research pertains to the case and the amount claimed is reasonable and properly documented. CJA attorneys are expected to utilize the most cost-efficient pricing plan available. As provided by CJA Guideline § 230.63.30, a copy of the bill or receipt is required.

- Reimbursement for transcripts of federal court proceedings must be submitted on a CJA 24 in eVoucher. Except during trial, accelerated transcripts, such as Expedited (7 days), 3-Day, or Daily, are discouraged. Any requests for accelerated transcripts must be justified and pre-approved by the court.

- As provided in CJA Guideline § 320.30.30, only one CJA-appointed attorney should order a transcript of any federal proceeding and should share a copy with appointed counsel for other defendants. If sharing is impracticable, additional copies may be ordered from the court reporter, but fees for a second or successive copy to appointed counsel must be furnished at a commercially competitive duplication (estimated to be ten cents per page) rate rather than the usual first or additional copy transcript rates.

APPENDIX 8 – SAMPLE FEE REVIEW COMMITTEE PROCEDURES

CJA Fee Review Committee

I. Purpose

The court, through its CJA Committee, has established a CJA Fee Review Committee (FRC) to investigate and review vouchers submitted by appointed counsel and service providers for payment of fees and expenses. The purpose of the FRC is to assist the court in ensuring compliance with mandated billing guidelines and accurate record keeping; to assess the reasonableness of vouchers or individual time entries; and to provide due process and ensure fairness in voucher review.

II. Initiation of Review

Attorney and service provider vouchers will be reviewed by the CJA Fee Review Committee in any of the following circumstances:

A. Upon request by the court for review of a specific voucher or series of vouchers;
B. Upon referral by the court for assessment of an appointed attorney's or service provider's general billing practices;
C. Upon timely written request to the court or CJA administrator by appointed counsel or a service provider for a voucher that has been reduced by an amount exceeding $500.00;
D. Upon referral by the court for a random audit.

III. Investigation

The FRC shall conduct a review and investigation to determine whether the panel attorney's or service provider's voucher conforms to the court's billing guidelines, is reasonable considering a funding authorization or the circumstances of the case, and is otherwise accurate and proper. The investigation may include review of vouchers submitted by other panel members or service providers in the same, or similar cases, a review of court files, records of detention facilities, or interviews of panel members or service providers including the individual whose voucher is being reviewed.

No provision of this section shall be construed as permitting disclosure to the panel member or service provider of information from which they may infer the source, and no information shall be disclosed to the panel member or service provider or be obtained by any process which would jeopardize the confidentiality of communications for persons whose opinions have been sought in the investigation.

IV. Determination

In the event that the FRC determines that a voucher does not comply with the court's billing guidelines, is unreasonable, or is not otherwise accurate or proper, the court shall so notify the appointed counsel or service provider in writing, specifying the reasons therefor. The panel attorney or service provider may provide a written response within 10 days. After reviewing the response, the FRC shall make a recommendation regarding any reduction in the voucher it deems appropriate. A copy of this recommendation will be provided to the presiding judge, the CJA administrator, and to the panel member or service provider. The presiding judge will give significant weight to the FRC's recommendation in making a final determination. Whether the court adopts the FRC's recommendation or not, the court's decision is final and there shall be no additional right of review or further appeal. Any determination that a voucher should be reduced does not necessarily constitute a finding of wrongdoing.

V. Confidentiality

All information gathered pertaining to a CJA panel member or service provider during the fee review process shall be the property of the U.S. District Court and is to be treated as confidential. Votes of the FRC shall also be confidential and its members shall not disclose to others in any manner the name of the panel member or service provider audited; the discussions, deliberations, or action of the FRC concerning any audit; information obtained during investigation or deliberation of the FRC, or any documents related to the foregoing, unless ordered to do so by a court of competent jurisdiction.

VI. FRC - Member Selection and Terms

The FRC members shall be appointed by the court to investigate and review fee vouchers submitted by CJA attorneys or service providers. The FRC shall be comprised of at least three and no more than five people, all of whom shall be current or former members of the CJA panel and shall have handled at least ten cases of varying types pursuant to appointment under the Criminal Justice Act. Members of the FRC shall be appointed for two-year terms expiring at the end of a calendar year. There is no prohibition against reappointment for additional terms.

VII. Conflict of Interest

A member of the FRC shall recuse himself or herself from any and all participation in the consideration of a panel attorney or service provider voucher or from attempting to influence others with respect to such consideration, in the following circumstances:

A. The committee member is the current or former law partner or associate of the panel attorney, or a former employer of the service provider;
B. The committee member, or the law firm or office with which the committee member is affiliated, represents the panel attorney or service provider;
C. The committee member, or the law firm or office with which the committee member is affiliated, is a party to pending litigation in which the service provider or panel attorney member, or the law firm or office with which the panel attorney member is affiliated, is a party;
D. The committee member or his or her spouse is related to the panel attorney or service provider by consanguinity or affinity within the third degree according to the rules of civil law;
E. The committee member stands in the relation of guardian and ward, conservator and conservatee, employer and employee, or principal and agent to the panel attorney or service provider;
F. The committee member has appeared as an expert witness or acted as a consultant or has been consulted with reference to an actual or threatened lawsuit against the panel attorney or service provider for malpractice;
G. The committee member has any personal bias or prejudice concerning the panel attorney or service provider which would prevent the committee member from fairly evaluating all of the evidence;
H. The committee member represents or represented one party in the matter for which the request for compensation is being reviewed where the panel attorney to be audited represents or represented another party or where the service provider worked on behalf of another party.

In the event that a member of the FRC does not voluntarily recuse himself or herself, the Chair of the CJA Committee, shall, upon becoming aware of factors which may indicate a potential conflict of interest as described above, initiate an inquiry and make a determination as to whether or not such member should be recused. Any resulting determination in that regard shall be binding.

APPENDIX 9 – HIGH-COST CASE INDICATORS

APPENDIX 9 – HIGH-COST CASE INDICATORS

- Voluminous or complex discovery (*e.g.*, more than 500 gigabytes of data in the form of documents, audio or video recordings, or forensic images of computers, cell phones, or other devices)
- Use of wiretaps, especially involving foreign languages
- Multiple defendants
- Lengthy trial proceedings
- Large indictments with multiple counts
- The need for numerous experts
- Lengthy or complicated sentencing exposure
- Terrorism cases
- Securities or other major fraud cases
- RICO cases
- Organized crime, gang, or drug trafficking cases
- Cases with multi-national aspects

APPENDIX 10 – RESOURCES

A. NINTH CIRCUIT CJA UNIT

- CJA Compensability Handbook, Billing Tips, and additional resources: www.ca9.uscourts.gov/cja

- Kevin Morley
  CJA Administrative Attorney
  415.355.8988
  kmorley@ce9.uscourts.gov

- Jen Naegele (she)
  Case Budgeting Attorney
  415.355.8986
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- Suzanne Morris
  Case Budgeting Attorney
  415.355.8982
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- Brad Dobrinski
  CJA Analyst (eVoucher Support)
  503.326.1950
  bdobrinski@ce9.uscourts.gov

- Karina Rodriguez
  CJA Specialist (eVoucher Support)
  279.399.8827
  karina_rodriguez@ce9.uscourts.gov

B. NATIONAL CJA GUIDELINES

- Guide to Judiciary Policy, Volume 7 (Criminal Justice Act Guidelines)
  https://www.uscourts.gov/rules-policies/judiciary-policies/criminal-justice-act-cja-guidelines

- AO Defender Services Legal and Policy Division
  202.502.3030
  DSO_LPD@ao.uscourts.gov

C. LITIGATION SUPPORT

- National Litigation Support Team, AO Defender Services Office
  https://www.fd.org/litigation-support
  510.637.3500

- Sean Broderick, National Litigation Support Administrator
  Contact: sean_broderick@fd.org

- Kelly Scribner, Assistant National Litigation Support Administrator
  Contact: kelly_scribner@fd.org

APPENDIX 11 – CJA POINTS OF CONTACT

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- **District of Alaska**
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  Sonja Belau, CJA Panel Administrator
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- **Eastern District of California**
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  Connie Garcia, CJA Panel Administrator (Fresno)
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- **Northern District of California**
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  sonya_gueretta@cand.uscourts.gov

  Linda Ng, CJA Specialist
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APPENDIX 11 – CJA POINTS OF CONTACT

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  Adina Poitra, CJA Panel Administrator
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- **District of Nevada**
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- **District of the Northern Mariana Islands**
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