

# UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

## GUIDELINES FOR REPRESENTING CLIENTS and SUBMITTING CLAIMS FOR COMPENSATION UNDER THE CRIMINAL JUSTICE ACT

### PHILOSOPHY OF THE ACT

The underlying philosophy of the Criminal Justice Act, 28 U.S.C. § 3006A et seq., (CJA) is that attorneys as members of the bar of the Court owe a responsibility to represent persons financially unable to obtain adequate representation. 3<sup>rd</sup> LAR Misc. 109.1 provides, “Trial counsel in criminal cases, whether retained or appointed, are expected to continue on appeal absent extraordinary circumstances.” The CJA allows appointed counsel to be compensated for “time reasonably expended” and expenses “reasonably incurred.” See 18 U.S.C. § 3006A(d)(1). The rates specified by the Act are the maximum rates allowable and counsel should not expect to receive compensation which equates to private counsel fees.

### ATTORNEY REPRESENTATION

#### **Appeal**

An attorney’s representation commences from the date of appointment until the termination of the appeal or until he or she is relieved from court appointment by order of this Court.

Pursuant to 3<sup>rd</sup> Cir. LAR Misc. 109.1, trial counsel in criminal cases, **whether retained or appointed**, are expected to continue on appeal absent extraordinary circumstances. After the entry of an order of judgment by the trial court, counsel will not be permitted to withdraw from a direct criminal appeal without specific leave of this court. **Trial counsel not members of the bar of this court must promptly move for admission pursuant to 3d Cir. L.A.R. 46.1.**

### **Motions to Withdraw (other than Anders motions)**

Motions to withdraw as counsel will not be granted absent extraordinary circumstances. If permitted to withdraw, counsel should promptly forward the case record to successor or substitute CJA counsel.

### **Motions to Withdraw (Anders)**

If after diligent search of the trial record for appealable issues, counsel is convinced that the appeal presents no issue of even arguable merit, counsel may file a motion to withdraw and supporting brief pursuant to Anders v. California, 386 U.S. 738 (1967). 3<sup>rd</sup> LAR Misc. 109.2(a). The Anders brief must be served upon the appellant and the United States.

An Anders brief must provide “sufficient indicia that counsel has explored all possible issues for appeal.” United States v. Marvin, 211 F.3d 778, 781 (3d Cir. 2000). The brief must also explain why possible issues are frivolous. Counsel must ensure that an adequate appendix, including transcripts and presentence report if applicable, is filed. Id. Briefs in which “counsel argue the purportedly frivolous issues aggressively without explaining the faults in the arguments,” as well as those in which the court is “not satisfied that counsel adequately attempted to uncover the best arguments for his or her client” will be rejected. The motion to withdraw will be denied and counsel will be directed to file a new brief. Id. at 781-2.

### **En Banc and Panel Rehearing**

As noted in Fed. R. App. P. 35, en banc hearing or rehearing for appeals is not favored. Counsel has a duty to the Court commensurate with that owed his or her client to read with attention and observe with restraint the Required Statement for Rehearing En Banc set forth in 3<sup>rd</sup> Cir. LAR 35.1. Counsel is reminded that in every case the duty of counsel is fully discharged without filing a petition for rehearing en banc unless the case meets the rigorous requirements of Fed. R. App. P. 35 and 3<sup>rd</sup> Cir. LAR 25.1. If the client requests a petition for rehearing, but the attorney is of the position that the case does not meet the rigorous requirements of Fed. R. App. P. 35 and 3<sup>rd</sup> Cir. LAR 35.1., counsel should file a motion for leave to withdraw, with notice to the client that he or she may file a pro se petition for rehearing and the deadline for doing so. If needed, counsel should request additional time for his or her client to file a petition for rehearing. See United States v. Coney, 120 F.3d 26 (3d Cir. 1997). If the deadline for filing a petition for

rehearing has passed or will expire shortly, counsel may ask that the time be extended for the client in counsel's motion to withdraw.

### **Certiorari to Supreme Court**

If, after an adverse decision by the Court of Appeals, a review by the Supreme Court of the United States is to be sought, the appointed attorney **shall** if requested to do so after communication with the client, prepare a Petition for Writ of Certiorari in the United States Supreme Court. If counsel is of the opinion that no issues warrant review by the Supreme Court, counsel shall promptly file with the Court of Appeals a motion stating that opinion with particularity and requesting leave to withdraw with notice to the appellant that he or she may file a pro se petition for writ of certiorari and the deadline for doing so. See Austin v. United States, 513 U.S.5, 115 S. Ct. 380 (1994). See also 3<sup>rd</sup> Cir. LAR Misc. 109.2(b). Counsel shall promptly file such motion keeping in mind the deadlines for filing a Petition for Writ of Certiorari so as not to impede the litigant's ability to file in a timely manner a Petition for Writ of Certiorari pro se.

### **eVOUCHER AND VOUCHER PREPARATION**

Counsel must use eVoucher to prepare and electronically submit vouchers to the Court. Counsel will no longer file vouchers or related motions or documents through ECF. Manuals and instructional information regarding eVoucher are available on the Court's website at [Criminal Justice Act and Appointed Counsel Information](#).

The Clerk's Office will create and provide an initial login and password to counsel via email. Counsel will then log on and use these credentials to create a Single login profile. [Instructions](#) are available on the Court's website. The Clerk's Office will create an appointment for each case where counsel is appointed which will appear in counsel's Appointment List in eVoucher.

### **REJECTED VOUCHERS**

The Clerk's Office will reject any voucher which is submitted without all necessary supporting information, such as receipts for expenses over \$50.00 or statements for claims in excess of the statutory maximum. Any rejected vouchers will appear as highlighted entries in counsel's eVoucher My Documents box. The Clerk's Office will include directions regarding what

actions are required on behalf of counsel in the Notes section. Counsel will need to re-submit the voucher.

### **TIME LIMIT FOR FILING VOUCHER**

Counsel must file a final voucher **within 45 days** after the final decision of the Court of Appeals unless a Petition for Writ of Certiorari is filed. A decision is final at the time the judgment is entered unless a petition for rehearing is filed by counsel. No voucher will be accepted after these time periods without permission to file out-of-time. See 3<sup>rd</sup> Cir. LAR Misc. 108.3. When submitting the voucher, counsel is required to indicate whether a petition for writ of certiorari has been filed, whether the client declined to seek relief before the Supreme Court, or whether the client wished to pursue relief before the Supreme Court, but counsel is of the opinion that no issues meet the standard for certiorari relief and a motion to withdraw is pending. If a Petition for Writ of Certiorari is filed, counsel must file the voucher together with supporting documents within **45 days after the petition is filed** with the Clerk of the Supreme Court of the United States. Counsel may file a supplemental voucher for time and expenses incurred for activity after the filing of the Petition for Certiorari, if needed.

### **SUBMITTING A VOUCHER OUT OF TIME**

Counsel must include a motion to file out of time demonstrating good cause for the delay with any late-filed voucher. Counsel should upload the motion to file out of time under the Documents tab and not file the motion through ECF. The Clerk's Office will reject any untimely vouchers which do not include a motion to file out of time. Counsel will need to re-submit the voucher along with the required motion.

### **RECORD KEEPING**

Appointed counsel must maintain contemporaneous time records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the final voucher for an appointment.

### **PUBLIC DISCLOSURE OF VOUCHER INFORMATION**

Title 18 U.S.C. §3006A(d)(4) and (e)(4) requires public disclosure of the amounts paid for representation and other services. Section 3006A(d)(4)(C)

requires (unless the Court has determined certain interests which warrant limitation are implicated) disclosure of the form CJA 20/30 but not the supporting information and attachments. Under the relevant procedures, the Clerk must make a copy of the voucher available to the public. The Clerk's Office will not release the supporting documents, including time sheets and statements supporting requests for excess compensation.

If counsel desires to limit access to the voucher for any of the reasons stated in 18 U.S.C. §3006A(d)(4)(D), counsel must upload a motion requesting this relief as a document in eVoucher. The motion must set forth how the interests set forth in subparagraph (D) are implicated. This matter will be handled ex parte. If no such motion is filed, a copy of the Form CJA 20/30 produced by the eVoucher system, minus any supporting documentation, will be subject to public inspection.

For practical purposes, if counsel files a motion to have only certain portions of the voucher available for public access, and the Court grants the motion, the Clerk's Office will prepare a substitute CJA form 20/30 which summarizes the information which will be accessible to the public. A certified copy will be filed in the case which is open to the public inspection, and a copy will be sent to counsel.

### **INTERIM PAYMENTS**

The Court is unlikely to authorize interim compensation unless the appeal is extraordinary.

**Counsel seeking any interim payment including reimbursement for brief and appendix reproduction costs prior to the termination of representation, must file a motion along with the interim voucher through eVoucher.**

The motion must include the reason why counsel cannot wait until the termination of the appeal to claim all costs. No interim payment vouchers will be processed for payment without court approval.

If the brief and appendix have not yet been produced, the motion must contain an itemized estimate of the reproduction costs broken down into estimated costs for actual reproduction (photocopying), collating, covers, binding and delivery, if any.

## **REIMBURSEMENT FOR ATTORNEY TIME**

Court-appointed counsel may claim compensation for appellate work, including any work performed in connection with the preparation and filing of a Petition for Writ of Certiorari as well as any related expenses.

Counsel should not bill for time spent preparing the voucher or any supporting motions or documents.

In-court time is limited to the actual time of argument. Counsel should claim time spent waiting for oral argument as out-of-court “other” time.

Time spent on district court matters, or other matters unrelated to appellate representation, even if incidental to arrest, incarceration, or on remand, is not compensable in this court.

Counsel will be compensated for necessary and reasonable travel time. If a trip requires overnight lodging, compensable travel time includes time traveling from counsel’s office or home to the place of accommodation, as well as travel time returning directly to counsel’s office or home. Ordinarily, professional time spent traveling to the court to file a pleading is not compensable

Time expended by law clerks or paralegals should be submitted on a CJA 21 Form. See [Quick tips](#) on the Court’s website

## **PRIOR AUTHORIZATION**

Appointed counsel may not claim compensation for services furnished by an associate, partner, or co-counsel, unless specifically authorized or separately appointed in accordance with Guide to Judiciary Policy, Vol. 7A, § 230.53.20(b), except if co-counsel is a partner or associate of appointed counsel, no prior authorization is required to receive compensation up to ten hours of work by the partner or associate. If appointed counsel anticipates requesting compensation for more than ten hours of work by a partner or associate, appointed counsel should promptly request authorization. If co-counsel is not a partner or associate of appointed counsel, prior authorization is required to receive compensation for any work by co-counsel.

The hourly rate for non-appointed co-counsel who are not members of the CJA Panel shall not exceed 80% of the hourly rate for CJA Panel Attorneys,

except when the presiding judge determines that there are special circumstances justifying a higher hourly rate, such as when co-counsel possesses specialized knowledge or skills relevant to the case.

### **DETAILED SUPPORTING INFORMATION**

A chronological breakdown of hours expended for “Out of Court” and “In Court” work is entered in eVoucher. Each of the categories for which a claim is made is broken down by date, description of work performed, and hours spent on each date.

### **REQUESTS FOR COMPENSATION ABOVE THE STATUTORY MAXIMUM**

In any case in which the total compensation claimed is in **excess of the statutory case compensation maximum**, counsel shall submit with the voucher either a CJA 27 form or a separate statement justifying counsel’s claim that excess compensation is necessary to provide fair compensation as the case involved extended or complex representation.

Counsel should not expect to receive excess compensation *if* the case is not extended (if more time is reasonably required for total processing than the average case) or complex (if the legal or factual issues in a case are unusual, requiring the expenditure of more time, skill and effort by the attorney than would normally be required in an average case). The following criteria, among others and as applicable, should be discussed to aid the court in determining if excess payment is necessary to provide fair compensation: the complexity/novelty of the issues and whether any of these issues were briefed at the district court; matters researched but not briefed; responsibilities involved measured by the magnitude and precedential importance of the case; manner in which duties were performed; special skills, knowledge, efficiency, professionalism, judgment and experience required of or used by counsel; the nature of counsel’s practice and any injury thereto resulting from the representation; any unusual pressure of time or other factors under which professional services were delivered; and any other circumstance relevant and material to a determination of a fair and reasonable fee

Determination as to whether a case is extended, or complex is made by the voucher approving judge who authored the decision in the appeal and approved by a second circuit judge designated by the Chief Judge.

[The CJA 27 form](#) for counsel's use requesting compensation above the statutory maximum is available on the Court's website.

## **REIMBURSEMENT FOR EXPENSES**

Any individual expense item claim which is over \$50.00, **must** be accompanied by a copy of the invoice with a notation of payment and check number noted if applicable. "In house" copying is the only exception. See "Briefs" under expenses. Credit card slips and credit card statements may not be sufficient because they lack detail that would permit approval of the expense as reasonable and reimbursable.

### **ALL CATEGORIES MUST BE SEPARATELY ITEMIZED IN eVOUCHER. DO NOT COMBINE CATEGORIES.**

**eVoucher requires a type description for a claimed expense. The descriptions currently available in eVoucher are: 1) travel miles, 2) travel misc., 3) fax; 4) long distance; 5) photocopies; 6) postage; and 7) other expenses.**

**Time and Expenses Shared by Multiple Defendants**  
**Counsel must prorate time and expenses spent when visiting multiple incarcerated defendants at the same location.** Counsel should provide an explanation of the break-down and cross-reference the cases.

### **Travel (Attorney Travel)**

Travel expenses and other expenses reasonably incurred and necessary for adequate representation on appeal including travel expenses to and from court for presentation of oral argument may be claimed. Travel must be accomplished by the most economical means possible. Bridge, road, and tunnel tolls may be claimed as well as parking fees.

Air Travel – Court-appointed counsel are encouraged to obtain more favorable Government contract travel rates. This applies only to airfare for travel to and from oral arguments before this Court and court-approved visits to incarcerated clients if travel requires air transportation.

Contact this office at (267-299-4966) for further details and instructions.

Travel by Privately-Owned Automobile – the mileage rates corresponding to the time of travel may be found at [Mileage Reimbursement Rates](#)

### **Travel (To Visit Incarcerated Clients)**

Travel to visit incarcerated clients may be claimed only if prior court approval has been secured. Prior approval is sought by filing a travel authorization through eVoucher that contains an estimate of the most economical method of travel. The authorization must state the purpose, destination, estimated expense(s) of and justification for such additional travel, explaining why it is reasonable and necessary to meet with his or her incarcerated client.

### **Meals and Lodgings**

The CJA provides for reimbursement of expenses actually incurred while traveling. Counsel's expenses for meals and lodging incurred while traveling in the representation of the defendant would constitute reimbursable "out-of-pocket" expenses. Counsel should request the government rate from hotels. In determining whether actual expenses incurred are "reasonable," counsel should first review the per diem rates applicable to federal judiciary employees for the locality where counsel is traveling. The current per diem rates may be found at [GSA Per Diem Rates](#). Counsel should attach receipts for meals which exceed \$50.00 and a copy of the hotel bill to the voucher under the documents tab in eVoucher.

### **Nonreimbursable Travel Expenses**

Counsel will not be reimbursed for alcoholic beverages, entertainment related expenses (movies, books, etc.), or personal expenses (laundry services, accident insurance, etc.).

### **Briefs and Appendices**

The Court requires electronic filing. The electronic version is the official filed version for the Court's records. Costs are not permitted if counsel uses a third-party vendor for the task of electronic filing.

The cost of **photocopying** appellate briefs and reply briefs, if any, as well as the appendix may be claimed as an expense. Costs are not reimbursable for briefs and appendices produced by typists or offset method. Reimbursement for in-house copying is limited to \$.10 per page. Photocopying by outside establishments must be supported by an *itemized* bill copy. Counsel will be

reimbursed at cost for outside photocopying, covers, and binding, provided the costs are reasonable.

Itemization of photocopying costs claimed must be broken down into the following categories:

- a) number of documents copied.
- b) number of pages per copy.
- c) cost per page (in-house limited to 10 cents per page)
- d) cost, if any, for covers. (Reasonableness is presumed at \$2.00/ copy– See 3d Cir. LAR 39.3. If a higher rate is sought, counsel must submit a statement justifying the rate.)
- e) cost, if any, for binding (Reasonableness is presumed at \$4.00 per copy – See 3d Cir. LAR 39.3. If a higher rate is sought, counsel must submit a statement justifying the rate.)

**Delivery charges to and from outside photocopying establishment will not be reimbursed to counsel. Overnight or Express Mail charges solely to meet a standard filing deadline will not be permitted.**

### **Number of Copies**

The Court still requires the submission of hard copies of the briefs and appendices. Counsel must file with the Clerk of Court seven (7) copies of the principal brief and reply brief, if any. Counsel may claim an additional five (5) copies as an expense, so long as counsel provided the copies (two for opposing counsel, one for the client, one file copy and one extra copy if needed).

Unless otherwise ordered, counsel representing an appellant must file four (4) copies of the appendix. Counsel may claim an additional four (4) copies of the appendix as an expense so long as counsel provided the copies (one for opposing counsel, one for the client, one file copy and one extra copy if needed).

### **Appendix (Contents and Shared Costs)**

Only those documents necessary for the determination of the issues presented on appeal shall be included in the appendix. Reproduction of the entire transcript is unnecessary and shall be avoided. However, there may be instances, such as when the sufficiency of the evidence to convict is challenged that require reproduction of most or the entire transcript. See Fed. R. App. P. 30(b). Court-appointed counsel in multiple consolidated

appeals are encouraged to prepare and file one joint appendix covering those appeals. Thus, the costs for the joint appendix must be shared by counsel. If not shared, only the attorney responsible for filing the joint appendix may claim appendix costs.

### **Telephone**

Telephone calls, including collect calls from the client, may be reimbursed where it is determined that the calls were reasonable and necessary for proper handling of the case. Requests for reimbursement of such expenses should be submitted in the form of an itemized list indicating the date of each call, the charge for the call and the purpose of the call.

### **Computer Assisted Legal Research (CALR)**

The cost of use, by appointed counsel, of CALR services, may be allowed as a reimbursable out-of-pocket expense, provided that the amount claimed is reasonable.

Whenever appointed counsel incurs charges for CALR, counsel should attach to the compensation voucher a copy of the bill and receipt for the use of the legal research services 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).

If the amount claimed is more than \$500 or if it includes costs for downloading or printing, counsel should include a brief statement of justification.

### **Postage and Other Delivery Charges**

Postage is considered a reimbursable expense. Express delivery charges will be allowed only on rare occasions. Reimbursement of express delivery is limited to situations where there is a demonstrable, emergency need; counsel will be asked to support the inclusion of such expenses in certain cases. Dilatory conduct of counsel is not a justifiable reason for reimbursing such special services. **Overnight or Express Mail charges solely to meet a standard filing deadline will not be permitted.**

Counsel must provide a receipt for postage or delivery charges more than \$50.00.

### **Transcripts of COA Oral Argument**

Should the Court order transcripts of oral argument in an appeal, court appointed counsel's portion of the cost for the transcript may be claimed as a reimbursable expense.

### **EXPENSES NOT COVERED**

#### **Printing**

Printing of briefs (either by Standard Typographic Printing or Offset Printing) cannot be claimed and **will not be reimbursed**. **Only reasonable photocopying expenses will be reimbursed.**

#### **General Office Overhead**

General Office Overhead may not be claimed as an expense. This would include, but is not limited to, personnel costs, rent, telephone service and secretarial help (whether regularly or specially employed, performing normal, overtime, or supplemental work, even if counsel has not regularly employed secretary).

#### **Fees**

Filing fees are not required because the client is a pauper and counsel should not advance and pay these fees. Should the client later qualify for appointment under the CJA during the appeal, counsel may claim the appeal and docketing fee which was paid as an expense. Admission fees for either this Court or the Supreme Court of the United States will not be reimbursed. Counsel should file a Petition for Leave to Proceed in Forma Pauperis along with a Petition for Writ of Certiorari.

#### **Transcripts of Lower Court Proceedings**

Payment for transcripts under the Criminal Justice act is the responsibility of the government; therefore, as with filing fees, counsel should not pay for this expense. Counsel should file a CJA Form 24 **with the district court** to obtain transcripts even if counsel was not initially appointed by the district court.

In multi-defendant cases only one official transcript will be permitted under the CJA. Copies should be obtained at a reasonable copying rate.

## **PACER Charges**

PACER charges are not reimbursable. CJA attorneys are entitled to a free PACER account for use in CJA cases only. More information can be found [here](#)

## **COURT REDUCTION OF VOUCHER**

The Guide to Judiciary Policies and Procedures Volume 78, Chapter II, Section 2.22 has been amended to provide counsel notice when the Court reduces the amount claimed and to permit counsel an opportunity to respond. The Guide now directs that:

*If the court determines that a claim should be reduced, appointed counsel should be provided (a) prior notice of the proposed reduction with a brief statement of the reason(s) for it, and (b) an opportunity to address the matter. However, notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.*

If the Court believes that the voucher should be reduced, the Clerk's Office will issue a notice to counsel. The notice will set forth the intended reduction, summarize the basis for the reduction, and inform counsel that an objection may be filed within 10 days from the date of the notice. If counsel submits an objection, the Clerk will forward the objection to the Court for determination.

## **EXPERTS AND OTHER SERVICE PROVIDERS**

Service providers on appeal, such as paralegals, interpreters, translators, etc., generally should be compensated through CJA forms 21 or 31, not as expenses on counsel's CJA 20 or 30 voucher.

Service providers must maintain contemporaneous time and expense records for three years after approval of the final voucher in the representation. All payments are subject to post-audit. Any overpayments are subject to collection, including amounts due from future vouchers.

## **Prior Authorization**

The CJA, 18 U.S.C. § 3006A(e)(2)(A), allows appointed counsel to obtain a total of \$900 per case (excluding expenses) in expert and other services without prior court authorization, but subject to "later review" for reasonableness. Absent prior court authorization, service provider costs over \$900 will only be approved upon a showing that timely procurement of necessary services could not await prior authorization. CJA counsel are encouraged to obtain prior authorization for the total anticipated cost of each type of service provider, including paralegals employed by CJA counsel's law firm. To obtain the Court's approval, Counsel should submit an "Auth" form through eVoucher.

A \$2,700 statutory maximum (exclusive of expenses) applies to each organization or individual service provider used in an appeal. Services in excess of this amount must be justified with a showing that the excess is necessary to provide fair compensation for services of an unusual character and duration. See 18 U.S.C. § 3006A(e)(3).

Once funding for a service provider has been approved, counsel is responsible for communicating with the service provider to ensure compliance with specific terms of the court order. Counsel should ensure that service providers efficiently perform their assigned tasks and do not exceed authorized expenditures absent court approval.

### **COUNSEL'S RESPONSIBILITY TO KEEP CONTACT AND BILLING INFORMATION UP TO DATE**

Counsel must keep their contact and billing information up to date in eVoucher. IF YOU MOVE, CHANGE FIRMS, OR OTHERWISE CHANGE THE ASSIGNMENT OF TAX CONSEQUENCES FOR CJA PAYMENTS, YOU ARE RESPONSIBLE FOR UPDATING YOUR PROFILE AND BILLING INFORMATION IN eVOUCHER. Failure to maintain this information may delay payment.

**Questions concerning completion of the CJA Form 20/30 which are not answered in these Instructions should be addressed to the Clerk's Office CJA Voucher Processing Deputy at Telephone No. (267-299-4966).**

Revised March 2023