

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

In the Matter of Criminal Justice Act
Protocol

General Order 18-003
([Supersedes](#) General Order 12-003)

CRIMINAL JUSTICE ACT PAYMENT AND REVIEW PROCESS

To promote consistency and encourage adherence to the best practices of the profession, this Order establishes the general guidelines for the process of paying for representation under the Criminal Justice Act (CJA). Pursuant to the CJA, it is the intent of the court to provide for the representation of any person financially unable to obtain adequate representation. This representation is accomplished through the appointment of counsel from the Federal Public Defender Office or from a panel of attorneys (CJA Panel Attorneys). CJA Panel Attorneys are expected to adhere to the strictest ethical standards. The selection, utilization, and evaluation of CJA Panel Attorneys are governed by the provisions of the 2018 CJA Plan and by the criteria established by the CJA Panel Committee, as set forth in [Appendix I](#). -The [2018 CJA Plan](#) is available for review on the court's website.

APPOINTMENT OF CJA PANEL ATTORNEYS

Appointment of counsel under the CJA shall be made from the current list of CJA Panel Attorneys by rotational assignment pursuant to procedures adopted by the court to ensure the equitable distribution of cases among panel attorneys. The district judge presiding over the case or the magistrate judge to whom the case has been referred may appoint a specific member of the CJA Panel if the court finds that the appointment is in the interest of justice, judicial economy, or continuity of representation, or if there is some other compelling circumstance warranting a specific attorney's appointment.

GENERAL PROVISIONS

1. Management of CJA appointment costs must be administered by the judge who presides over a case or by the magistrate judge to whom the case has been referred.
2. The submission of "interim" vouchers for compensation without prior court approval is authorized. Panel Attorneys may submit an interim voucher in monthly intervals so long as the voucher exceeds \$1000. In cases that exceed the statutory maximum but do not require a [mega budget](#), CJA Panel Attorneys must submit an interim voucher for payment within ninety (90) days from the date of the appointment and at intervals of no more than ninety (90) days for the duration of the appointment, unless the voucher is for less than \$1,000.
3. All final vouchers for payment must be submitted within forty-five (45) of the date of final disposition, termination of appointment, or sentencing, whichever is later. Vouchers for final payment submitted after the deadline must include a memorandum

demonstrating good cause for the untimely submission. Failure to submit timely vouchers for final payment will reflect negatively on reappointment.

4. As soon as practicable, but in any event within twenty-one (21) days of receipt of discovery, appointed counsel must make a preliminary review of the case to determine whether the case will substantially exceed the statutory maximum. If it reasonably appears that the case will substantially exceed the statutory maximum, but the case does not meet the criteria for [case budgeting](#), counsel must submit a [Form CJA 26](#) “Statement for a Compensation Claim in Excess of the Statutory Case Compensation Maximum (District Court)” within thirty (30) days of receiving discovery. At the same time, counsel must also submit a detailed memorandum supporting counsel’s claim that the case is extended or complex and that excess payment is necessary to provide fair compensation. (Guide to Judiciary Policy, Vol. 7A, [§ 230.23.40.](#)) Information on preparing and submitting a Form CJA 26 can be found on the court’s [website](#).
5. CJA Panel Attorneys are expected to further develop their expertise and gain additional experience by handling cases outside of CJA appointments. CJA appointments should not constitute a majority of a Panel Attorney's work on an annual basis. The court receives an annual report from the Administrative Office of the United States Courts of CJA Panel Attorneys who have billed more than 1,000 hours.
6. CJA Panel Attorneys may not accept or require compensation or valuable consideration for representation under the appointment from any source other than that provided under the CJA.

PROFESSIONAL DEVELOPMENT OF THE CJA PANEL

The United States District Court for the District of Utah is dedicated to professionalism and excellence in the fair administration of justice. To encourage diversity in the CJA Panel and sustain the expected high quality representation from Panel Attorneys, the court develops programs that provide foundational exposure and training in federal criminal defense to law students and new members of the Federal Bar (commonly referred to at present as the “Mentor Program” and “Second Chair Program,” respectively). In the spirit of community partnership and service to the court, these programs depend upon the active participation of CJA Panel Attorneys. Panel Attorneys’ participation in these programs will be an important factor considered in reappointment.

BUDGETS

Unless otherwise ordered by the court, case budgeting will be required in any case in which it reasonably appears that: (1) attorney hours are expected to exceed 300 hours; or (2) total expenditures are expected to exceed 300 times the prevailing [CJA Panel Attorney non-capital hourly rate](#). (Guide to Judiciary Policy, Vol. 7A, [§ 230.26.10.](#)) Appointed counsel must determine whether case budgeting is required within thirty (30) days of receiving discovery. If counsel determines that case budgeting is required, counsel must contact the [Case Budgeting Attorney](#) at the Tenth Circuit Court of Appeals and submit a [Form CJA 28A](#), “Attorney Services

Detailed Budget Worksheet for Non-capital Representations with the Potential for Extraordinary Cost” and [Form CJA 28B](#), “Attorney Services Summary Budget Worksheet for Non-capital Representations with the Potential for Extraordinary Cost.”

If it appears that the potential expenditures may exceed the amount in a previously approved budget, counsel must forthwith submit a revised budget to the Case Budgeting Attorney at Tenth Circuit Court of Appeals. Unless otherwise ordered by the court, approval of a budget constitutes pre-approval of expenditures up to the amount approved, but does not constitute pre-approval of CJA 20 vouchers for payment, which must be reviewed prior to payment.

REQUESTS FOR AUTHORIZATION FOR SERVICE PROVIDERS

All CJA Panel Attorneys appointed to provide representation may request under subsection (e) of the CJA, authorization to obtain investigative, expert, and other services necessary for adequate representation. These services will be paid from funds appropriated for the administration of the CJA. ([CJA 25 Notice to Panel Attorney Regarding Availability of Investigative, Expert and Other Services.](#)) All requests for authorization for service providers must be submitted through eVoucher. Prior authorization must be secured from the presiding judge or magistrate judge for all subsection (e) services where the total cost for services exceeds \$800. In cases requiring interpreter services, the court authorizes up to the maximum rate provided by the [Guide to Judiciary Policy, Vol. 7A, Chapter 3](#), without prior approval. (See [General Order 16-001](#).)

In non-death penalty proceedings, compensation for investigative, expert, and other services is limited by the Guide to Judiciary Policy, Vol. 7A [§ 310.20.10](#). Claims for compensation by a service provider in excess of case compensation maximums (excluding reimbursement for expenses) will be paid only if the presiding judge or magistrate judge certifies that payment in excess of the limit is necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit (or the active or senior circuit judge to whom the chief judge has delegated excess compensation approval authority).

In death penalty proceedings, compensation for investigative, expert, and other services is limited by the Guide to Judiciary Policy, Vol. 7A [§ 660.20.20](#). The limit applies to the total payments (including expenses) for all investigative, expert, and other services combined in a representation, not to each type of service or service provider individually. For payments in excess of the limit, the presiding judge or magistrate judge must certify the payments are necessary to provide fair compensation for services of an unusual character or duration.

The court establishes maximum billing rates for investigators, paralegals, and other service providers, as set forth in [Appendix II](#). These rates are based upon a survey of national rates and are subject to yearly review by the CJA Panel Committee. CJA Panel Attorneys are strongly encouraged to obtain and use those experts who will comply with the maximum rates.

RESTRICTIONS ON TRAVEL CHARGES

Travel time and mileage incurred between an attorney's office or residence and the courthouse for appearances will not be reimbursed. Expert travel time will be reimbursed at a reduced rate, which is recommended to be one third of the expert's hourly fee for testimony. Foreign travel by attorneys and experts is discouraged, and counsel is encouraged to use other alternatives such as Skype in lieu of such travel. For work performed after January 1, 2017, investigators will be paid \$20 per hour for the first 75 miles each way, and they will also receive the standard mileage rate. After traveling 75 miles one way, investigators will be paid \$50 per hour. If the investigator travels by air, they should attempt to work on the case while flying.

IT IS SO ORDERED

Dated this 27th day of June, 2018.



David Nuffer, Chief Judge



Paul M. Warner, Chief Magistrate Judge

APPENDIX I
PROTOCOL FOR CJA ATTORNEY PARTICIPATION
DISTRICT OF UTAH
Adopted June 27, 2018

CJA PANEL ATTORNEY ELIGIBILITY

Level 1 Panel. Attorneys eligible for the level 1 Panel must meet the following criteria:

1. One (1) to five (5) years legal practice in a judicial clerkship, clerkship for the Federal Public Defender Office or clerkship for the United States Attorney's Office;
2. Applicants who have completed either the CJA Mentor Program or the CJA Second-Chair Program will be strongly considered;
3. Within one year of Panel membership, completion of twelve (12) hours CLE for CJA Panel Attorneys, which includes a mandatory Annual Training Seminar sponsored by the Federal Public Defender Office. If counsel is unable to attend the mandatory Annual Training Seminar sponsored by the Federal Public Defender Office, counsel may seek approval from the CJA Panel Supervising Attorney or Chief Magistrate Judge to attend the annual Federal Bar Association Criminal Practice Seminar, a six (6) hour training program offered by the Office of Defender Services Training Branch, or another comparable six (6) hour training seminar. Proof of CLE attendance must be shown upon completion or Panel membership will be reviewed for suspension or termination;
4. Completion of six (6) or more hours of CJA-related education per year after completion of mandatory CLE hours referenced in paragraph 3 above;
5. Applicants for the CJA Panel must be members in good standing of the federal bar of this district and the Tenth Circuit Court of Appeals;
6. Applicants must be a resident of this district and maintain a primary, satellite, or shared office in this district;
7. Applicants must possess strong litigation skills and demonstrate proficiency with the Federal Sentencing Guidelines, federal sentencing procedures, Bail Reform Act, Federal Rules of Criminal Procedure, and Federal Rules of Evidence;
8. Applicants must have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney;
9. A copy of or internet access to the Federal Criminal Code and Rules, United States Sentencing Guidelines, District of Utah Local Rules, and Federal Rules of Appellate Procedure;

10. CM/ECF registration and word processing capability;
11. Proficiency in managing ESI (electronically stored information); and
12. Willingness/availability to accept Level A cases, which include misdemeanors, basic felony cases, and case-related matters;
13. Attorneys who do not possess the experience set forth above but believe they have equivalent other experience are encouraged to apply, setting forth in writing the details of their experience for the CJA Panel Committee's consideration.

Level 2 Panel. Attorneys eligible for the Level 2 Panel must meet the following criteria:

1. Five (5) years or more criminal-law-related legal experience; or
2. Three (3) years of experience as a Level 1 CJA Panel Attorney; or
3. Trial counsel in three (3) or more federal or state felony jury trials; and
4. Completion of six (6) hours CLE for CJA Panel Attorneys, which include a mandatory Annual Training Seminar sponsored by the Federal Public Defender Office. If counsel is unable to attend the mandatory Annual Training Seminar sponsored by the Federal Public Defender Office, counsel may seek approval from the CJA Panel Supervising Attorney or Chief Magistrate Judge to attend the annual Federal Bar Association Criminal Practice Seminar, a six (6) hour training program offered by the Office of Defender Services Training Branch, or another comparable six (6) hour training seminar. Proof of CLE attendance must be shown upon completion or panel membership will be reviewed for suspension or termination;
5. Applicants for the CJA Panel must be members in good standing of the federal bar of this district and the Tenth Circuit Court of Appeals;
6. Applicants must be a resident of this district and maintain a primary, satellite, or shared office in this district;
7. Applicants must possess strong litigation skills and demonstrate proficiency with the Federal Sentencing Guidelines, federal sentencing procedures, Bail Reform Act, Federal Rules of Criminal Procedure, and Federal Rules of Evidence;
8. Applicants must have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney;

9. A copy of or internet access to the Federal Criminal Code and Rules, United States Sentencing Guidelines, District of Utah Local Rules, and Federal Rules of Appellate Procedure;
10. CM/ECF registration and word-processing capability;
11. Proficiency in managing ESI (electronically stored information); and
12. Willingness/availability to accept representation in Level B cases, which include complex felony cases such as white collar offenses, multi-codefendant drug offenses, and violent felonies.
13. Attorneys who do not possess the experience set forth above but believe they have equivalent other experience are encouraged to apply, setting forth in writing the details of that experience for the CJA Panel Committee's consideration.

REQUIREMENTS FOR CONTINUED PANEL MEMBERSHIP

Upon appointment to the CJA Panel, each CJA Panel Attorney must adhere to the following requirements for continued Panel membership:

1. Each CJA Panel Attorney must provide the court with a current office e-mail address, telephone, and cell phone information.
2. If the CJA Panel Attorney has support staff, each CJA Panel Attorney must designate for the court the name and contact information of a person authorized to accept or decline a request for representation (such as an office manager, secretary, or associate) in the event the attorney is not personally available to respond to a request for CJA representation. The representative must commit to insure the presence of the appointed attorney at scheduled hearings.
3. Inquiries as to the type of case to be assigned should not be made. Absent compelling circumstances, acceptance or non-acceptance of a case should not be made based on the nature or type of case.
4. If the CJA Panel Attorney is unavailable or unwilling to take cases on five (5) or more occasions in a year, the CJA Panel Attorney will be considered for removal from the panel.
5. Should an assigned CJA Panel Attorney be unable to attend a scheduled hearing, they must make all reasonable efforts to have another CJA Panel Attorney attend.
6. Absent compelling circumstances, the CJA Panel Attorney should not send a substitute CJA Panel Attorney for the initial appearance or other critical stage of the proceedings.

7. Under no circumstances should the CJA Panel Attorney send a non-CJA Panel Attorney to cover a hearing.

Those CJA Panel Attorneys designated as Level 3, Special Appointments, may request to be entered into the regular appointment rotation and Level 2 designation. Requests must be made in writing to the Chief Magistrate Judge and will be reviewed by the CJA Panel Committee at the next meeting. If approved, the CJA Panel Attorney must remain at a Level 2 for a minimum of two years.

8. Questions of availability, number of current pending case assignments, compliance with CJA and district billing requirements, legal competency, disciplinary referrals, and participation in the Third-Year Mentor and/or Second-Chair Program, will be considered by the CJA Panel Committee in determining continued membership.
9. The CJA Panel Committee will conduct a yearly statistical review for the court, which will include panel members' case assignments, the number and nature of pending cases, and compliance with local CJA guidelines and protocols.

APPENDIX II

There are numerous expert service providers with a variety of rates. For this reason, the list below is not intended to be all inclusive. In instances where there is no acceptable provider willing to work for the presumptive rate, a request for Authorization for Expert and Other Services should be made to the court through eVoucher for the higher rate. The request should be accompanied by a detailed explanation of the steps taken to procure the lower rate. As with all presumptive rates, there may be instances where a particular individual possesses a special skill or expertise that warrants a higher rate. In such instances, a request for Authorization for Expert and Other Services should be made to the court through eVoucher with an explanation regarding why the rate requested is justified and reasonable. The rates set forth below are based upon a national survey of the rates paid by other districts across the nation and are subject to yearly review by the CJA Panel Committee and the court.

Associates - not to exceed \$90 per hour

Computer Forensics - not to exceed \$200 per hour

Interpreters

- i. Interpreting - the current rate for certified or language skilled contract court Interpreters approved by the Administrative Office of Courts
- ii. Transcription - not to exceed \$50 per hour
- iii. Translation services - in accordance with the Department of State Translation Rates current at the time of translation. Contact the Clerk's Office for current rate information

Investigators - not to exceed \$75 per hour

- i. Travel over 75 miles - \$50 per hour
- ii. Travel under 75 miles- \$20 per hour

IT Management - not to exceed \$75 per hour

Research and Writing Assistant - not to exceed \$45 per hour

Mitigation Specialists - not to exceed \$60 per hour

Paralegals - not to exceed \$45 per hour

Polygraph Expert - not to exceed \$500 per test

Medical Experts (Including Psychiatrists) - not to exceed \$300 per hour

Psychologists - not to exceed \$200 per hour

CPAs - not to exceed \$200 per hour

Other Experts - A CJA Panel Attorney desiring to use an expert not on the preceding list is directed to obtain estimates from 2 to 3 experts in the field. The estimates should be included with the request for Authorization for Expert and Other Services through eVoucher so the court may determine a fair hourly rate. In situations where the expert is so specialized that multiple estimates cannot be obtained, counsel must outline the efforts sought to obtain an expert and why the special circumstances warrant the use of a particular expert.