

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

FILED
U.S. DISTRICT COURT

2012 JUL 26 A 11:18
General Order 12-0003
DISTRICT OF UTAH

In the Matter of Criminal Justice Act
Protocol

CRIMINAL JUSTICE ACT PAYMENT AND REVIEW PROCESS

This order establishes the general guidelines for the process of paying for the costs of Criminal Justice Act (CJA) representation in order to promote consistency and to maximize available judicial resources.

It is the general intent of the court to provide a plan for the representation of any person financially unable to obtain adequate representation in accordance with the Criminal Justice Act.¹ This is primarily done through a panel of attorneys (CJA Panel), by the appointment of counsel from the Federal Defender Office, and by other counsel chosen by the court to act on CJA cases. Panel members are expected to adhere to the strictest ethical standards. The selection, utilization, and evaluation of members of the CJA panel are governed by the provisions of the Amended CJA Plan adopted by the court and approved by the 10th Circuit Court of Appeals,² by the provisions set forth below, and the criteria established by the Panel Selection Committee.³

GENERAL PROVISIONS

1. Management of the costs of a CJA appointment shall be administered by the judge who presides over a case. A district judge may oversee this management personally or may refer the management to a magistrate judge.
2. Interim payments are highly disfavored. The court will review interim payment motions on a quarterly basis. Any interim motion seeking an exception to quarterly review must be accompanied by a detailed declaration stating specifically why an interim payment is necessary and why such a payment cannot be paid on a quarterly basis. A failure to include a detailed declaration with any interim payment request made on more than a quarterly basis will result in the court denying the request.
3. All final vouchers for payment in a case must be submitted to the CJA Panel Administrator no later than 45 days from the date of sentencing or within 45 days of being terminated on a case.

¹ See 18 U.S.C. § 3006A (“Each United States district court, . . . , shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation in accordance with this section. Representation under each plan shall include counsel and investigative, expert, and other services necessary for adequate representation.”).

² The Amended CJA Plan may be found on the court’s website at <http://www.utd.uscourts.gov/documents/cjapage.html> (last accessed July 2, 2012).

³ See Appendix I.

4. A final voucher for payment exceeding the statutory maximum must include the CJA 20 worksheet, a memorandum setting forth the statutory maximums for fees, outline the quantity of discovery materials used in the case, state the length of the trial, number of co-defendants if applicable, and provide a statement from the attorney regarding his or her opinion about the complexity of the case.⁴ CJA appointed counsel are to use the worksheet available from the court's website and to submit it with memorandum.⁵
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 member'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 bill more than 1,000 hours and uses this report to determine whether case assignments should be reduced for a panel member.

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 per defendant are expected to exceed \$30,000.⁶ A memorandum in support of the budget must be attached with the required budget form. Both the memorandum and the budget form are to be filed under seal with the court.

As soon as practicable, but in any event not more than twenty-one (21) days after receipt of initial discovery, appointed counsel must make a preliminary review of the case to determine whether the case meets the criteria for a case budget.⁷ Not later than thirty (30) days after review of the initial discovery, if appointed counsel's review indicates case budgeting is required, or as soon thereafter that counsel determines case budgeting is required, counsel must submit an initial budget filed under seal for approval by the court. Thereafter, the court may hold one or more pretrial hearings on a case budget *sua sponte* or upon the request of appointed counsel.

If it appears that the potential expenditures may exceed the amount in a previously approved budget, counsel must forthwith submit a revised budget for approval. The revised budget is to be attached with a memorandum in support and filed under seal with the court.

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 vouchers which must be reviewed prior to payment. In the absence of good cause shown for extraordinary

⁴ This information is similar to that required by CJA Form 26. The court has found that the use of this form, while helpful, has proven inadequate. Counsel may, however, submit CJA Form 26 along with the additional required information.

⁵ This form may be found on the court's website at <http://www.utd.uscourts.gov/documents/cjapage.html>.

⁶ See *Guide to Judiciary Policy Vol. 7: Defender Services* Chapter 2 § 230.26.10 ("Courts are encouraged to use case budgeting techniques in representations that appear likely to become or have become extraordinary in terms of potential cost (ordinarily, a representation in which attorney hours are expected to exceed 300 hours or total expenditures are expected to exceed \$30,000 for appointed counsel and services other than counsel for an individual CJA defendant").

⁷ Forms for submitting budgets are available on the court's website at <http://www.utd.uscourts.gov/documents/cjapage.html>.

circumstances, the court will not approve applications for compensation in excess of the amount specified in the approved budget.

REQUESTS FOR APPOINTMENT OF EXPERTS AND FEES

All requests to appoint experts must include the standardized forms found on the court's website⁸ and must set forth the requested hourly rate for the expert.

Appointed attorneys are expected to assist the court in finding the least expensive reasonable method to provide high quality legal and other services to indigent defendants. With prior authorization, compensation for investigative, expert, and other services is limited to the amounts set forth by the Criminal Justice Act. The court establishes maximum billing rates for investigators, paralegals and other service providers as set forth below in Appendix II. These rates are based upon a survey of national rates and are subject to yearly review by the Panel Selection Committee. Appointed counsel are strongly encouraged to obtain and use those experts that will comply with the maximum rates. Any requests to exceed these rates will be denied unless a showing of substantial need can be made pursuant to a detailed motion outlining the specific circumstances that warrant departure from these rates. A denial of a request for expert fees by a magistrate judge may be reviewed by a district judge pursuant to the Local Rules.⁹

RESTRICTIONS ON TRAVEL CHARGES

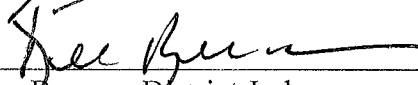
Travel time and mileage incurred from an attorney's office or residence to and from court for appearances will not be reimbursed. Expert travel time will be reimbursed at a rate reduced from the expert's usual rate, recommended to be one third of the expert's hourly fee for testimony. Foreign travel by attorneys and experts is discouraged and counsel are encouraged to use other alternatives such as Skype in lieu of such travel.

IT IS SO ORDERED

Dated this 17th day of July, 2012



Ted Stewart, Chief Judge




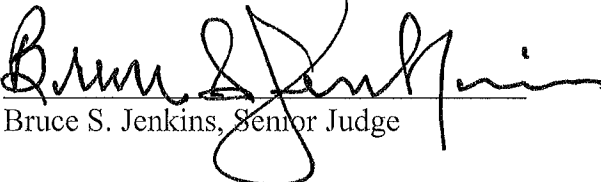
Dee Benson, District Judge


⁸ These forms may be found on the court's website at <http://www.utd.uscourts.gov/documents/cjapage.html>.

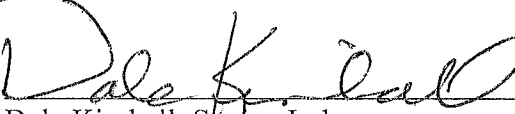
⁹ See DUCrimR 57-16 ("Appeals of magistrate judge rulings on criminal motions will be conducted in the same manner as appeals of magistrate judge rulings on civil motions."); DUCivR 74-1 (setting forth the manner for appeals of magistrate judge rulings on civil motions).

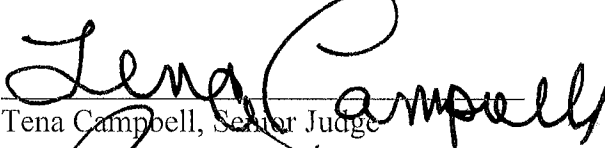

Clark Waddoups, District Judge


David Nuffer, District Judge

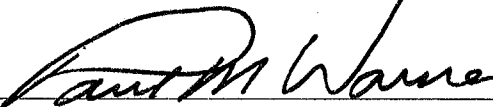

Bruce S. Jenkins, Senior Judge


David Sam, Senior Judge


Dale Kimball, Senior Judge


Tena Campbell, Senior Judge


Brooke C. Wells, Chief Magistrate Judge


Paul M. Warner, Magistrate Judge


Evelyn J. Furse, Magistrate Judge

Appendix I

PROTOCOL FOR CJA ATTORNEY PARTICIPATION
DISTRICT OF UTAH – Panel Selection Committee
Adopted September 1, 2006
Amended July 17, 2012

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

1. Each CJA attorney must provide the court with a current office e-mail address, telephone, FAX and cell phone information.
2. 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 attorney at scheduled hearings.
3. Acceptance or non-acceptance of a case may not be made based on the nature or type of case. Inquiries as to the type of case to be assigned should not be made.
4. If 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 panel attorney be unable to attend a scheduled hearing, he or she must make all reasonable efforts to have another CJA panel attorney attend.
6. In addition to pre-trial, trial and sentencing responsibilities, CJA counsel will also be responsible for perfecting appeals to the Tenth Circuit Court of Appeals according to established protocols.
7. Those CJA Panel attorneys designated as Level 3, Special Appointments, may elect to request to enter back 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 Panel Selection Committee at the next semi-annual meeting. If approved, CJA counsel must remain 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, disciplinary referrals and legal competency will be considered by the committee in determining continued membership.
9. The court will conduct a yearly statistical review which will include a 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. The intention is to keep the expert provider's rates at or below the per hour maximum rate whenever possible. If quoted a higher rate by a service provider, appointed counsel are encouraged to attempt to negotiate a lower CJA rate. In instances where the provider has refused to negotiate a lower rate and there is no other acceptable provider willing to work for the presumptive rate, applications should be made to the court for the higher rate with 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, application should be made to the court 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 Panel Selection 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 Courts¹⁰
- 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.¹¹

Investigators – not to exceed \$60 per hour.

IT Management – not to exceed \$50 per hour.

Law Clerks – not to exceed \$45 per hour.

Mitigation Specialists – The use of Mitigation Specialists is strongly discouraged by the court. The work performed by such specialists often duplicates detention, pre-trial service and pre-sentence reports. An appointed attorney desiring to use a mitigation specialist must submit a motion to the court accompanied with an affidavit outlining in detail the special circumstances warranting the use of a mitigation specialist. If approved by the court, a mitigation specialist's rate is not to exceed \$60 per hour.

Paralegals – not to exceed \$45 per hour.

¹⁰ Current fees for certified or language skilled contract court interpreters may be found at <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/ContractInterpretersFees.aspx>.

¹¹ The Department of State Translation Rates may be found at http://jnet.ao.dcn/District/Court_Interpreting/State_Dept_Translation_Fee_Schedule.html.

Polygraph Expert – not to exceed \$500 per test.

Psychiatrists – not to exceed \$200 per hour.

Psychologists – not to exceed \$200 per hour

Other Experts – an appointed attorney desiring to use an expert not on the preceding list is directed to obtain estimates from 2 to 3 experts in the field and submit those estimates to the court so the court may determine a fair hourly rate. In situations where the expert is so specialized that this cannot be done, appointed counsel is to submit an affidavit to the court outlining the efforts sought to obtain an expert and why the special circumstances warrant the use of a particular expert.