

FAQs AND TIPS FOR OBTAINING PRE-AUTHORIZATION FOR ATTORNEY'S FEES IN EXCESS OF THE STATUTORY MAXIMUM

FAQs

Q: Under what circumstances do I need to submit a CJA 26 request for authorization?

A: Submit a CJA 26 when you know that you will substantially exceed the statutory maximum for pretrial preparation, but will not reach the \$42,000 threshold requiring a mega budget and Tenth Circuit approval.

Q: When do I need to submit a CJA 26 request for authorization?

A: Submit the CJA 26 as soon as you have reached a point when you have a sufficient understanding of the case that you can anticipate what you will need to do and can estimate how many hours you will need to do it. Submit the CJA 26 before you exceed the statutory maximum.

Q: What does the CJA 26 cover?

A: The CJA 26 allows you to estimate and obtain preauthorization for the number of attorney hours you estimate you will need for pretrial preparation through sentencing.

Q: Should I ask for the total number of hours I think I will need or just the number of hours I will need that exceed the statutory maximum?

A: Request the total number of hours you will need.

Q: Do I need to submit a supporting memorandum?

A: Yes. You need to prepare a Memorandum in Support of Request for Authorization to Exceed the Statutory Maximum. A template of the memorandum is available on the Court's website. A worksheet is included with the template. Attach the worksheet to your memorandum.

Q: Do I file the Memorandum in Support of Request for Authorization to Exceed the Statutory Maximum in CM/ECF?

A: No. You will upload the memorandum and worksheet into the Documents page when you submit your CJA 26 request for authorization in eVoucher.

Q: Do I have to fill out the eVoucher Supplemental Information Statement for Compensation in Excess of the Statutory Case Compensation Maximum Form in addition to filing a memorandum?

A: No. You can type “see Memorandum attached to this request” in the empty fields.

Q: Can I submit interim vouchers?

A: Yes. You must submit interim vouchers every 90 days starting from the date you received approval of your request. You may submit interim vouchers every month so long as the request for payment exceeds \$1,000.

Q: What if I exceed the number of hours I have estimated I will need?

A: Because you are submitting interim requests for payment every 90 days, you should know when you are getting close to reaching the maximum number of approved hours. At that point, submit a second CJA 26 if the total cost for pretrial preparation is still below the \$42,000 threshold.

Q: What about service providers like investigators, paralegals and interpreters?

A: Effective utilization of service providers like paralegals, research and writing assistants, and investigators reduces the number of attorney hours you will need. You still have to submit a separate request for these service providers in eVoucher though. You can submit a request for authorization for service providers and experts at any time.

Q: What if my case is going to trial?

A: If the case does not resolve, you will need to make a second request for trial preparation and trial by submitting a CJA 26 request for authorization. Contact Rebecca Skordas and she will help you prepare the request. rebecca_skordas@uscourts.utd.gov. If you have already reached the \$25,000 mark, you may need to notify the court that the case will exceed \$42,000. Contact Cari Waters at the Tenth Circuit and she will help you prepare and submit a mega-case trial budget. cari_waters@ca10.uscourts.gov.

TIPs

- The most important part of your memorandum is the Statement of Why the Case is Complex or Extended. This is the threshold requirement for exceeding the statutory maximum.
- In the Nature and Extent of Discovery Materials section, tell the court, for example, how many gigabytes you have to review. Are there hours of audio and video recordings? Hundreds of line sheets? Forensic images of computer hard drives, smart phones or tablets? Has the discovery been provided in a format that is searchable? Is there any semblance of organization to the discovery production?

- The Attorney Hours Worksheet will help you calculate how many attorney hours you estimate you will need. You will attach the worksheet to the Memorandum.
- In the Statement of Estimated Attorney Hours for Discovery Review, you should indicate if you are going to use a paralegal, legal assistant or discovery manager to help manage and review discovery. You are demonstrating to the court that use of service providers reduces costs and that your request for attorney hours to review discovery is reasonable.
- The Attorney Hours Worksheet does not take the place of the Statement of Estimated Attorney Hours for Pretrial Preparation. In this section, you are explaining why you need the hours you have requested in the worksheet. Indicate if you plan on using a research and writing assistant to draft motions or for legal research, or an investigator to help interview witnesses.
- Most of the time you will only have to do this once. (You would have to anyway at the end of the case.) You will know in advance that, so long as your vouchers are reasonable, you will get paid and you can better manage your cash flow.