

CJA BILLING AND PAYMENT INSTRUCTION MANUAL

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

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I. INTRODUCTION

These *Instructions* have been prepared to inform CJA panel attorneys of the correct procedures regarding CJA claims for hourly compensation and expense reimbursement. For more detailed information about billing procedures or to find answers to questions not addressed in these *Instructions*, counsel should review the *Guide to Judiciary Policy, Volume 7A* (hereafter referred to as *Guide*) and any CJA-related General Orders or protocols adopted by each district court. Counsel should also be familiar with the Criminal Justice Act and related statutes (18 U.S.C. §3006A – Adequate Representation of Defendants; 18 U.S.C. §3005 – Counsel and Witnesses in Capital Cases; 18 U.S.C. §3599 – Counsel for Financially Unable Defendants; and 18 U.S.C. §983(b) – Civil Forfeiture Proceedings).

II. ATTORNEY BILLING REQUIREMENTS

A. Attorneys' Fees. Appointed counsel shall be compensated at the applicable rate for capital and non-capital cases.

1. Vouchers. Counsel will submit a CJA 20 and supporting itemized statements for non-capital cases and a CJA 30 and supporting itemized statements for capital and capital habeas cases. Counsel must complete all applicable sections of the CJA 20 or 30.

2. Itemization and Detail. Section 230 of the *Guide* outlines the procedures and rules for claims by CJA attorneys and should be followed regarding each voucher. See Appendix A for billing examples. If the level of detail is insufficient for auditing purposes, vouchers will be returned to counsel for resubmission with adequate detail. Vouchers must include the following:

- Time billed must be in tenths of an hour;
- Each entry must reflect discreet tasks;

- Attorneys may not “bundle” separate unrelated tasks into one entry;
- Attorneys may not list multiple tasks performed in a specific block of time;
- Without violating the Canons of Ethics or disclosure of attorney work product, entries must include sufficient detail to permit meaningful review including, but not limited to, specifying identifying information for witness interviews;¹
- Identification of participants in telephone conversations or conferences and topic(s) discussed;²
- Specific topics researched and identification, by ECF docket number, of pleadings filed as a result of the research;
- Identification of documents prepared, including the number of pages and ECF docket number, if filed; for documents not filed, an explanation sufficient to explain their relevance to the case.

3. Document Review. Document review entries MUST identify the documents reviewed (“discovery review” is inadequate) AND include Bates Numbers. If the documents do not contain Bates Numbers, counsel must include a page count. Counsel, experts, and service providers are expected to review discovery and/or documents at a rate of **at least 60 pages/hour**, although the court expects that some review (e.g., photographs; investigative report cover sheets; double-spaced documents) will take considerably less time. This permissible review rate is a guideline and is not to be applied mechanically; for instance, the court will reduce vouchers if every document review entry is exactly 60 pages/hour. If particular document review exceeds this permissible guideline because of the complexity and/or density of information reviewed, counsel should provide an explanation on his/her voucher entry (e.g., for an entry for which

¹ In lieu of identifying witnesses by name, counsel may identify witnesses by type (i.e., “guilt phase witness #1”) in sufficient detail to enable the court to distinguish between individuals interviewed.

² A simple description of the general topic of discussion is sufficient.

counsel is claiming 2 hours to review 40 pages, counsel should provide a justification, such as “counsel reviewed 40 pages of hand-written correspondence.”)

4. Non-Compensable Services. The following services are not compensable:

- Services of a personal nature are not compensable. Such services include but are not limited to: assisting the defendant in the disposition of the defendant’s personal property; arranging the placement of minor children; assisting the defendant in executing the conditions of probation; providing legal assistance in matters unrelated to the litigation of the case, although incidental to the defendant’s arrest, etc. Travel time or expenses related thereto for services of a personal nature, including services related to a defendant’s residential treatment, are also not compensable.
- Administrative/Secretarial Services. In addition, counsel cannot bill for performing administrative/secretarial services, such as copying or printing documents; making appointments; filing documents on ECF; or mailing documents. Similarly, if counsel performs work that is paralegal in nature, such as organizing/indexing discovery or making trial binders, counsel will be paid for that work at a paralegal rate. Finally, counsel cannot bill for preparing vouchers.
- Ancillary Services. Work related to state court proceedings will not be compensated unless the attorney obtains prior authorization from the court.
- Appeal. Time and expenses involved in the preparation of an appeal (whether from interlocutory orders or final judgments) or work related to the review of proceedings before this court. These are considered as applicable to the case before the United States Court of Appeals, and should be included on the voucher for services performed in that court.

B. Reimbursable Expenses. Expenses will be reimbursed at the actual cost without any markup. The court expects counsel to obtain the lowest rates available for these expenditures.

Reimbursable expenses are subject to the following limitations:

1. Travel. The court will reimburse travel expenses at the rate then in effect for federal judiciary employees, including air travel, hotels, parking fees, and tolls. In determining the reasonableness of travel costs, the court will be guided by the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing

government travel regulations. Counsel may contact the District Court Clerk's Office for those guidelines.

2. Food/Lodging. The court will reimburse for the actual and reasonable cost of food and lodging while traveling on case-related business outside of a 100-mile radius of the traveler's office.

3. Phone Calls/Faxes. The court will reimburse for the actual cost of case-related long-distance telephone calls. The court will not pay for any surcharges or for general telephone service. The court will reimburse the actual out-of-pocket expenses incurred in sending and receiving facsimiles. The actual out-of-pocket expenses for sending facsimiles shall be the actual long distance telephone charges. The actual out-of-pocket expenses for receiving facsimiles shall be the cost billed for photocopying which shall not exceed 10¢ per page.

4. Photocopies. Counsel will be reimbursed for the actual out-of-pocket expenses incurred in photocopying up to a maximum of 10¢ per page. In extraordinary circumstances, upon a prior showing of good cause, the court may authorize the employment of a photocopy service with a billing rate that exceeds 10¢ per page. In any such motion, counsel should explain the need for the extraordinary services and why the higher rate is justified and reasonable.

5. Postage and Private Carriers. The court will reimburse for the actual cost of case-related regular U.S. postage. The court will reimburse for the actual cost of other postal services or the use of non-federal carriers (such as overnight or two-day delivery) only if circumstances require the use of such services. The court, for example, will not reimburse for expedited delivery costs for routine correspondence, including submission of CJA vouchers or court documents that are not filed pursuant to a deadline. Counsel is to make every effort to use regular U.S. mail whenever possible. Excessive use of overnight carriers or other circumstances may prompt the

court to modify the provisions of this paragraph. The court will not reimburse for messenger service without valid justification for the use of such service.

6. Computer-Aided Legal Assistance. The court will reimburse the cost of computer-assisted legal research, provided the total cost of the computer-assisted research does not exceed the total amount of attorney compensation that would have been billed had the research been performed manually. When requesting reimbursement for computer-assisted research, counsel should provide the following documentation: (i) a brief statement setting forth the issue or issues that were the subject matter of the research; (ii) a copy of the bill and receipt for the use of the equipment or an explanation of the precise basis for the charge; and, (iii) if printing charges were incurred, an explanation of why such services were used.

7. Expenditures over \$300. Unless addressed by separate Order, any expenditure over \$300 must be authorized in advance by the court. Upon a finding that timely procurement of such goods or services could not practicably await prior authorization, in the interests of justice, the court may authorize the provision of and payment for such goods or services *nunc pro tunc*.

8. Receipts. Supporting documentation must be provided for single-item expenses in excess of \$50.00.

9. Exceptions. Upon a showing of good cause, the court may exempt counsel from one or more of the above requirements. However, counsel must seek any exemption or deviation from the above rules in advance of billing the item in question.

C. Non-Reimbursable Expenses and Costs.

1. General Office Overhead. Except in extraordinary circumstances (See Section 320.70.30 of the Guide), the following expenses associated with CJA representation are not

compensable, regardless of whether the work is performed by counsel or other personnel: rent, telephone services, secretarial services, etc.

2. Items of a Personal Nature. Such items include, but are not limited to, purchasing clothes or having clothes cleaned; getting a haircut; furnishing food, cigarettes, etc.

3. Following are examples of other non-reimbursable expenses and costs:

- Filing Fees. These fees are waived for persons proceeding under the Criminal Justice Act. Fees for deeds of trust to secure a defendant's release are not compensable under the Criminal Justice Act; these fees are paid for by the person(s) securing the collateral.
- Books, journals, or other publications.
- Costs related to educational seminars, including travel, attendance, registration, or materials.
- PACER costs are not reimbursable. Appointed attorneys can apply for a no-fee account and should contact the PACER service center for more information at www.pacer.gov.
- Expenses related to the testimony of a fact witness, either at trial or deposition, including service of subpoenas, transportation and other expenses, are not reimbursable under the Criminal Justice Act, but rather are governed by Rule 17, Federal Rules of Criminal Procedure and 28 United States Code § 1825. Such expenses are paid by the Department of Justice through the U.S. Marshal's Office.

III. REQUEST FOR INTERIM PAYMENTS

A. Prerequisite. Interim payments in non-capital representations may be authorized upon a showing that a representation is or will be extended or complex in nature. If the legal or factual issues in a representation are unusual, thus requiring the expenditure of more time, skill, and effort by the lawyer than would normally be required, the representation is complex. Unless the representation is likely to exceed the applicable statutory maximum, it should not be considered complex. If more time is reasonably required for total processing than the average representation, including pre-trial and post-trial hearings, the representation is extended. Counsel may request

interim payments by submitting an *Ex Parte* Under Seal Motion with the court with sufficient detail upon which the court can determine whether the representation is complex or extended. The court may require that counsel also submit a detailed budget as a condition of receiving interim payments. Interim payments in capital or capital habeas representations will be authorized after counsel submits and the court approves a comprehensive budget.

B. Interim Payment Schedule. If interim payments are authorized in a non-capital representation deemed by the court to be complex or extended, compensation earned and reimbursable expenses incurred shall be claimed on an interim voucher submitted according to the court's billing schedule, as reflected in the court's order authorizing interim payments. Counsel must include a copy of the order with every interim voucher.

C. Withholding. The court will review the interim vouchers when submitted, particularly with regard to the amount of time claimed, and will authorize compensation to be paid for 80 percent of the approved number of hours. This compensation will be determined by multiplying 80 percent of the approved number of hours by the applicable rate. The court will also authorize for payment of all reimbursable expenses reasonably incurred.

D. Final Voucher. At the conclusion of the representation, counsel shall submit a final voucher seeking payment of the 20 percent balance withheld from the earlier interim vouchers, as well as payment for representation provided during the final interim period. The final voucher shall set forth in detail the time and expenses claimed for the entire case, including all appropriate documentation. Counsel shall reflect all compensation and reimbursement previously received on the appropriate line of the final voucher, as well as the net amount remaining to be paid at the conclusion of the case. After reviewing the final voucher, the court will submit it to the chief judge of the circuit or delegate for review and approval.

IV. BUDGETING AND COST CONTAINMENT

A. Non-Capital Mega Representations. Representations likely to exceed \$30,000 in total fees, inclusive of attorney and service providers, or involve more than 300 hours of attorney time may be budgeted, at the discretion of the presiding judge.

B. Capital and Capital Habeas Representations. Appointed counsel is required to submit a budget in capital and capital habeas representations.

C. Electronic Discovery. Increasingly, many prosecutions involve voluminous electronic discovery, the review and dissemination of which has the potential to significantly increase the cost of representation. All appointed counsel are required to familiarize themselves with and follow the protocol for electronically stored information (ESI Protocol), a copy of which is available on each district court's website. If appointed counsel encounters resistance from CJA co-defendant counsel or the government regarding compliance with that protocol, appointed counsel has an affirmative obligation to inform the presiding judge. Counsel is encouraged to contact the National Litigation Support in the Office of Defender Services (ODS) at 510-637-3500 for guidance on cases with voluminous electronic discovery.

D. Interim Payments in Budgeted Representations. For all budgeted representations, the presiding judge will forward the signed budget order to the Court of Appeals for review and approval. Once the budget is approved by the Court of Appeals, the district court is not required to forward attorney interim vouchers to the Court of Appeals, except that the final approved attorney voucher for withheld amounts must be forwarded to the Court of Appeals for approval, along with a copy of the approved budget and a summary of amounts paid to date. All approved service provider interim vouchers that exceed the statutory maximum must be forwarded to the Court of Appeals for approval.

V. SERVICE PROVIDERS AND EXPERTS

A. Requests for Services. Before submitting a request for CJA funds to retain a service provider or expert, counsel must first refer to the presumptive rate schedule contained on Appendix B. Absent court approval, hourly rates for service providers and experts may not exceed the presumptive rates. In exceptional circumstances, when the need for services at a higher hourly rate can be justified, the court may authorize hourly rates above the presumptive maximum.

1. Paralegals and Legal Assistants. The court may approve the use of paralegals or legal assistants. However, counsel must seek approval from the court in advance. Any motion for permission to bill for the services of such individuals shall identify the individual and a description of his/her relevant experience, the scope of proposed work, the number of hours requested, and the proposed billing rate.

2. Investigators and Experts. Should counsel file a motion with the court for authorization to obtain the services of an investigator or expert, the motion shall: (i) identify the proposed investigator/expert and describe his/her credentials and experience; (ii) describe the subject matter to be covered by the investigator/expert; (iii) address why the investigator/expert is needed, *i.e.*, explain both the facts indicating that further analysis is justified and the reason an investigator/expert is needed to interpret those facts; (iv) discuss the stage of the proceedings at which the investigator/expert is needed; and, (v) provide a specific time budget identifying the investigator's/expert's billing rate and amount of time the investigator/expert anticipates spending on each portion of the investigation or analysis.

3. Associate Services. If counsel determines that the use of an associate is necessary to the representation of the case, counsel should file a motion with the court for authorization to obtain

such services. The motion shall: (i) identify the proposed associate and describe his/her credentials and experience; (ii) describe the scope of work to be performed by the associate; (iii) address why the associate is needed; and, (iv) indicate the number of hours requested and the hourly rate sought. Associate services are included in and not in addition to the applicable case compensation maximum.

B. Requests for Payment.

1. Service Providers and Experts. Requests for compensation for the use of paralegals, legal assistants, experts or investigators must be made on a CJA Form 21 for non-capital representations and on a CJA Form 31 for capital and capital habeas representations, and not listed as expenses on a CJA Form 20 or Form 30. All CJA Form 21 and Form 31 submissions must include a copy of the order authorizing employment of the person whose services are being billed.

A completed CJA Form 21 or Form 31 with a billing statement must be submitted on a monthly basis. Counsel's failure to submit monthly bills for service providers, including interpreters, may result in the court requiring counsel to show cause for that failure. Billing statements shall specifically describe the work performed, by whom, and the time allotted to each specific task. Descriptions should not be vague or general. Time entries should relate to specific individual tasks, and not simply list multiple tasks performed in a specified block of time. For example, client conferences should describe the subject matter of the conferences; work related to witnesses or other people should identify those people by name and, if necessary, identify their relevance to the case;³ work related to obtaining or reviewing documents should identify the documents or source of the documents, and include Bates numbers if available, or

³ In lieu of identifying witnesses by name, the service provider may identify witnesses by type (i.e., "guilt phase witness #1") in sufficient detail to enable the court to distinguish between individuals interviewed.

page counts; legal research should identify the topic being researched; preparation of pleadings or other documents should identify the document, including the ECF docket number; trial preparation should describe the subject matter being prepared; and travel time should describe the destination and the reason for the travel.

In the event any billing or expense reimbursement item exceeds the authorization therefor, counsel shall provide an explanation of the variance. Counsel may be required to provide further documentation substantiating the fees or expenses claimed, or to submit a declaration under the penalty of perjury detailing counsel's compliance with the standards and procedures established herein.

2. Associates. Requests for compensation for the use of associates must be made on a CJA Form 20 for non-capital cases and on a CJA Form 30 for capital and capital habeas cases, and not listed as expenses on appointed counsel's CJA Form 20 or Form 30. Vouchers for associate services must include a copy of the order authorizing employment of the person whose services are being billed. An associate's vouchers must comply with the same billing requirements (tenths of an hour increments; detailed entries; etc.) applicable to appointed counsel.

VI. TRAVEL

A. Vehicle Travel Time. Compensation shall be approved for actual time spent for necessary and reasonable travel. As with any billing entry, the presiding judge may reduce travel time if the amount claimed seems unreasonable given the totality of circumstances. For instance, if an out-of-district attorney travels to attend a hearing on one day, then travels to that district another day that same week to visit with an in-custody client, the presiding judge may determine that counsel could have performed both services on one day and reduce travel time accordingly. Ordinarily, allowable time for travel includes only those hours actually spent in or awaiting transit, and does

not include time spent traveling to court to file a pleading. In addition, the court strongly discourages the practice of an attorney billing for travel time to attend hearings when counsel's office is located within or close to the same community as the courthouse. Counsel may, however, seek reimbursement for parking, if necessary. Counsel and service providers are expected to be conservative with travel time and to combine trips when possible. Absent special circumstances, compensation for driving time when flying would be less expensive will be limited to the time that would have been spent had counsel or a service provider or expert traveled by air.

B. Mileage, Tolls, and Parking. Daily travel in a privately owned vehicle does not require prior authorization. The extent of the daily travel must have been reasonable and necessary. Travel by privately owned vehicle is reimbursed at the mileage rate prescribed for federal judiciary employees who use a vehicle for the conduct of official business. If a rental car is authorized, the traveler is reimbursed for the cost of the rental and the gas. Receipts must be submitted for both the rental and the gas.

C. Meals. Actual expenses incurred for meals and lodging while on overnight travel outside of the city or county of your residence in the course of a CJA representation must conform to the prevailing limitations governing travel and subsistence expenses of federal judiciary employees. The traveler must provide detailed restaurant bills and not just credit card slips. Alcoholic beverages, in-room movies, and other non-essential items are not reimbursable. Since the amount allowable is dependent upon the place of travel, please consult the GSA website (www.gsa.gov). Meals and lodging are included in the *per diem* rate; other expenses, such as taxi fares, rental car charges, etc. are not included in the *per diem* rate and may be claimed separately if receipts are provided.

D. Airplane and Overnight Travel. All overnight travel and all travel by airplane must be approved in advance by the presiding judge. Compensation will be approved for time spent in necessary and reasonable travel. Ordinarily, allowable time for travel includes only those hours actually spent in and awaiting transit. Please visit the GSA website for the current *per diem* rate (www.gsa.gov) and contact National Travel (NT) to determine government travel fares to provide an accurate estimate. NT may be contacted at any time, 24/7, at 1-800-445-0668, to obtain travel cost quotes. If air travel expenditures cannot be made at government rates, reimbursement to the attorney or expert for the travel costs will be limited to the amount of the government rate. Government tickets are refundable due to loss, change, or cancellation. If the traveler uses a non-government rate and loses the tickets or needs to change or cancel the reservations, he or she is liable for the cost.

VII. CONTEMPORANEOUS BILLING AND RECORD RETENTION

Attorneys MUST maintain contemporaneous time and attendance records for all work performed, including work performed by associates 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.

APPENDIX A

TIPS FOR PREVENTING VOUCHER PAYMENT DELAYS AND REDUCTIONS

PROPER CLASSIFICATION OF SERVICES (NO BUNDLING)

Do This....

Date	Service	Time	Description
1/5/15	Interviews and Conferences	1.6	Met with client's mother (.4); phone call with client (.4); met with client at jail (.8)
1/15/15	Obtain/Review Rcds	1.0	Reviewed 200 pages of wiretap transcripts (Bates Nos. 220-420)

Not this...

Date	Service	Time	Description
1/5/15	Interviews and Conferences	2.6	Met with client's mother (.4); phone call with client (.8); reviewed 200 pages of new discovery (1.0); met with client at jail (.4); legal research (.5)

DETAILED TASK DESCRIPTIONS

Do this...

Date	Service	Time	Description
2/5/15	Travel Time	1.0	Traveled by private car to locate and meet with two possible eye-witnesses (W1 and W2) in Grove, OK (includes travel to and within Grove to two separate residences)
2/5/15	Interviews and Conferences	1.6	Interviewed two possible eye-witnesses (W1 and W2) in Grove, OK, at their separate residences
2/8/15	Obtain/Review Rcds	1.5	Reviewed 200 pages of wiretap transcripts (Bates Nos. 220-420)
2/17/15	Legal Research and Writing	7.2	Researched whether the search of client's car without a warrant was unlawful; drafted motion to suppress (Dkt. No. 112)

Not this...

Date	Service	Time	Description
2/5/15	Travel Time	1.0	Travel to Grove, OK
2/5/15	Interviews and Conferences	1.6	Witness interviews
2/8/15	Obtain/Review Rcds	1.5	Reviewed discovery
2/17/15	Legal Research and Writing	7.2	Legal research and writing

ECF REVIEW

Do This....

Date	Service	Time	Description
1/5/15	Obtain/Review Rcds	.3	Reviewed multiple ECF filings that occurred during the day (Dkt. Nos. 2-9)

(NOTE: ECF review should reflect only the actual aggregate time that you spent reviewing the subject documents on a daily basis as opposed to billing for signing into your PACER account every time you receive a notification, then billing separate entries)

Not This....

Date	Service	Time	Description
1/5/15	Obtain/Review Rcds	.1	ECF review
1/5/15	Obtain/Review Rcds	.1	ECF review
1/5/15	Obtain/Review Rcds	.1	ECF review
1/5/15	Obtain/Review Rcds	.1	ECF review
1/5/15	Obtain/Review Rcds	.1	ECF review

APPENDIX B

PRESUMPTIVE RATE SCHEDULE FOR SERVICE PROVIDERS AND EXPERTS

EXPERTISE	PERMISSIBLE RATE RANGE (Depending on Experience)
Accountant	\$125-\$200/hour
Ballistics Expert	\$75-\$100/hour
Chemist	\$100-\$150/hour
Computer Expert	\$75-\$125/hour
DNA Analysis	\$100-\$150/hour
Expert Attorney (e.g., <i>Strickland</i> ; Immigration)	\$165/hour
Interpreter (state or federally certified)	\$65/hour
Non-Certified	\$35/hour
Jury Consultant	\$75-\$100/hour
Legal Assistant/Law Clerk ⁴ Employee of App'd Counsel	Hourly salary plus employer paid benefits (not to exceed \$25/hour)
Independent Contractor	\$15-\$25/hour
Licensed Investigators Non-Capital	\$55-\$75/hour
Capital/Capital Habeas	\$85-\$100/hour
Medical Doctors (M.D. or D.O.)	\$225-\$300/hour
Mitigation Experts (Capital and Capital Habeas)	\$85-\$100/hour
Paralegal Services ⁵ Employee of App'd Counsel	Hourly salary plus employer paid benefits (not to exceed \$55/hour)
Independent Contractor	\$35-\$55/hour
Psychologists/Neuropsychologists	\$150-\$200/hour

- In exceptional circumstances, when the need for services at a higher hourly rate can be justified, the court may authorize hourly rates above the presumptive maximum. If the requested rate is higher than the permissible rate range, counsel must provide sufficient justification (e.g., a unique expertise or the need for a particular expert based on the facts/circumstances of the case)

⁴ Typical legal assistant services include discovery indexing and organizing.

⁵ Typical paralegal services include preparing documents, pleadings, trial notebooks, and exhibits; drafting correspondence and pleadings; internet research and investigations; document production assistance; using discovery summarization and trial software; electronic brief preparation; and case citation checks.