

# FEDERAL DEFENDERS OF MONTANA



## CJA BILLING AND COMPENSABILITY GUIDE

September, 2021

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## I. INTRODUCTION

This guide provides Criminal Justice Act (CJA) panel attorneys and service providers instructions on how to obtain resources on a case and submit compensation claims for payment. It also provides guidance on what is compensable under the CJA. Answers to broader questions about CJA policies and procedures can be found in the District of Montana's CJA Plan and CJA Plan Appendix B: Panel Management Protocol, found in the CJA section of the Federal Defender of Montana's website as well as the [CJA section of the District Court's website](#), the [Guide to Judiciary Policy & Procedures, Vol. 7](#), and the [Ninth Circuit Policies and Procedures Manual](#). The Federal Defender CJA Team – CJA Supervising Attorney, Wendy Holton, and Panel Administrator, Adina Poitra – are available to answer your questions and help in any way we can. You can contact us – Wendy at (406) 447-5753, [wendy\\_holton@fd.org](mailto:wendy_holton@fd.org); or Adina at (406) 268-2143, [Adina\\_Poitra@fd.org](mailto:Adina_Poitra@fd.org); or e-mail us jointly at [MTX\\_CJASA@fd.org](mailto:MTX_CJASA@fd.org).

## II. OBTAINING RESOURCES ON A CASE

### A. Consult With Your CJA Team

The CJA Team is responsible for implementing the policies and procedures associated with the administration of the panel and promoting high quality representation of defendants while collaborating with counsel to manage expenses. We are available to assist CJA panel counsel with case budgeting, retaining experts, voucher preparation and submission, and training issues.

The CJA Supervising Attorney is responsible for managing the CJA program including selecting, assigning, and training panel counsel. She is available to provide advice and assistance on all CJA matters as well as substantive legal analysis. Additionally, she can facilitate coordination with the National Litigation Support Team (NLST). NLST provides guidance on discovery requests, discovery management and analysis, and courtroom presentation in cases with voluminous electronic discovery.

### B. Requesting Co-Counsel

More than one attorney may be appointed if the court finds that a case is extremely complex and that it is in the interest of justice to appoint an additional attorney. An appointment motion and order must be filed in the docket through CM/ECF. If co-counsel is appointed the defense team is expected to avoid duplication of effort. Workload and roles should be clearly defined. Each attorney prepares and submits a separate voucher. Each may bill up to the case compensation maximum and seek fees in excess of the case compensation

maximum by attaching a [Request for Excess Compensation \(REC\)](#)<sup>1</sup> in the “Documents” section of the CJA 20.

### **C. Requesting Associate Counsel**

CJA panel attorneys are encouraged to use associate counsel whose hourly CJA rate is less than that of the appointed panel attorney. Rates can be found in Appendix 1 of the [Ninth Circuit Criminal Justice Act Policies and Procedures Manual](#), reproduced as Appendix 1 of this document. Prior court approval is required for services by associates, whether in-house or outside appointed counsel’s firm. An appointment motion and order must be filed in the docket through CM/ECF. The appointment motion should include the associate attorney’s professional experience, hourly rate, and proposed division of responsibilities. Contact your CJA Team for sample appointment motions.

The associate may not effectively become the primary attorney on the case; appointed counsel remains responsible for the representation. Associates may not appear in court in place of appointed counsel without prior court approval.

In-house associates submit their time on the same CJA 20 as appointed counsel. Contract associates submit separate CJA 20 vouchers. If associate and co-counsel fees together will exceed the case compensation maximum a Request for Excess Compensation (REC) must be completed and uploaded to the “Documents” section of the CJA 20.

### **D. Obtaining Expert and Other Services**

#### **1. Obtaining Funds**

CJA funds are available to engage interpreters, investigators, paralegals, and other service providers when reasonably necessary for the defense of the case. 18 U.S.C. § 3006A(e)(2)(A) authorizes CJA panel attorneys to obtain such services, without prior authorization but subject to subsequent review, providing the cost of the services obtained does not exceed \$900, plus expenses reasonably incurred. *See also*, [Guide to Judiciary Policy & Procedures, Vol. 7, § 310.20.30\(a\)](#). Any amount over \$900, must be preapproved using the AUTH process described below. If counsel does not obtain preapproval for the provider, compensation may not be approved. AUTH requests exceeding \$2,700 (including the \$900 that can be used without preapproval) require approval at both district and circuit levels. The preauthorized amount is per case, per defendant, regardless of whether the panel member is the first or subsequently appointed panel member on the case.

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<sup>1</sup> A fillable form can be found under “Forms” in the [CJA section](#) of the Federal Defenders of Montana website (you need to sign in) or in the [“CJA Billing”](#) section of the Court’s website.

Funding requests for providers are made by completing a [“Service Provider Funding Request – \(“AUTH”\) Form,”](#)<sup>2</sup> uploading it in the “Documents” section of a completed AUTH in eVoucher and submitting it for approval prior to exceeding threshold amount. The entire amount expected to be needed, including the threshold \$900, should be requested using the AUTH procedure. Service providers should keep track of approved funding and notify counsel in writing of any need for additional funds. Counsel should then submit a “Supplemental AUTH” using the procedure described above but selecting “Request Additional Funds” as opposed to “Create New Authorization” under “Authorization Type Selection.”

All services and expenses are subject to review for reasonableness. Counsel must provide sufficient justification to determine the reasonableness of the request for expert services. This includes a description of the services, a copy of the provider’s resume/CV, and the number of hours and hourly rate for the provider.

After an AUTH has been approved, go back to the case in your Appointments List and create the associated CJA 21 with the “Use Existing Authorization” option. For amounts under \$900 where preauthorization was not required or obtained, use the “No Authorization Required” option. In either case, the last step is “Voucher Assignment” where you select whether you or the expert will be responsible for entering the expert’s time and expenses on the CJA 21. This is something you should discuss with the expert. If he or she is an experienced service provider and has his or her own eVoucher credentials the voucher can be assigned to the expert for entry of services and expenses. Experts who do not regularly provide services to the panel generally do not have their own credentials. In that case, you should assign the voucher to the attorney and complete it from an invoice provided by the expert. The expert’s invoice should be uploaded into the “Documents” section of the CJA 21 prior to submission.<sup>3</sup>

Attorneys should negotiate with experts for CJA hourly rates and pursue other cost-saving measures that do not affect the quality of representation (e.g., coordinate travel with members of the defense team, arrange travel for consecutive client meetings or utilize video or phone conferences for defense team meetings).

## **2. Service Provider Rates**

The District of Montana has adopted the Ninth Circuit presumptive rate schedule available in Appendix 2 of the [Ninth Circuit Policy and Procedures Manual](#) reproduced as Appendix 2 of this document – with modifications for investigators, interpreters, and in-house paralegals.

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<sup>2</sup> A fillable form can be found under “Forms” in the [CJA section](#) of the Federal Defenders of Montana website (you need to sign in) or in the [“CJA Billing”](#) section of the Court’s website.

<sup>3</sup> When the attorney completes and submits the CJA 21 on an expert’s behalf eVoucher thinks that the expert has submitted it to the attorney for approval - so it is returned to the attorney’s “Active Documents” (just as if the expert had submitted to the attorney in the first place). It needs to be approved and submitted again to reach the CJA Unit’s queue.

Except for investigators, interpreters, and in-house paralegals, the low end of the range is the district's presumptive maximum. (The presumptive rate for investigators is \$85 per hour, for interpreters it is \$50 per hour, and for in-house paralegals it is \$55 per hour.) Compensation above these rates is reserved for providers with extraordinary skills or to address unusual difficulties with availability. Factors include the uniqueness of the service or the expert; the expert's education, training, or specialization; a lack of availability of this or similar experts; the complexity of the case; and any time limitations on the case that may affect how quickly the service needs to be completed. Supporting information should be detailed on AUTHs requesting an hourly rate greater than the presumptive maximum.

Appointed counsel should consult with the CJA Supervising Attorney prior to engaging any service provider who is related by blood or marriage.

### **3. *Nunc Pro Tunc* Requests for Service Providers**

*Nunc pro tunc* requests for services are disfavored. In the rare instance when prior approval is not feasible, attorneys must file a "Service Provider Funding Request – ("AUTH") Form" and submit it through the AUTH process in eVoucher with an explanation of why preapproval was not obtained. *Nunc pro tunc* requests without sufficient explanation will be returned to counsel for additional detail.

### **4. Engagement Letters**

CJA panel attorneys are encouraged to use written engagement letters with service providers. The letter should include the hourly rate, the authorized compensation amount, and the requirement for contemporaneous timekeeping. Engagement letters are potentially discoverable, so counsel should be careful not to reveal privileged or confidential information. A sample engagement letter can be found in Appendix 3 of the [Ninth Circuit Policy and Procedures Manual](#) reproduced as Appendix 3 of this document with some changes to reflect Montana's CJA Plan.

### **5. Making a Record When a Service Provider Request is Denied**

If a request for a service provider of any type is denied, an *ex parte* record should be made on the docket, through a CM/ECF filing, detailing the denial of the service. This is important for appellate counsel as (s)he may not have access to eVoucher to see what services were requested throughout the case and the reasons for any denials.

### **6. Court Ordered Psychological Evaluations**

Although CJA counsel may request an independent psychological evaluation using the AUTH process described above, court ordered psychological evaluations conducted pursuant to 18 U.S.C. §§ 4241 and 4242 are considered "nondefense" purpose examinations. The costs are paid by the Department of Justice and claims for these examinations should be submitted to the U.S. Attorney.

### III. SUBMITTING COMPENSATION CLAIMS FOR PAYMENT

#### A. Setting Up an eVoucher Account

Contact the CJA Team for assistance in setting up an eVoucher account for yourself or a vendor.

#### B. Payment Voucher Forms in eVoucher

##### 1. Attorneys

Attorney bills for non-capital cases are submitted on a CJA 20, which are created by counsel in eVoucher after the CJA Team creates the representation. The representation is found in your eVoucher account in your “Appointment’s List.” To create the CJA 20 click on the link to your case, find CJA 20 in the list on the left-hand side of the page, and click “Create.”

##### 2. Experts and Other Service Providers

Expert and other service provider’s bills for non-capital cases are submitted on a CJA 21. Counsel is responsible for obtaining funding for the provider using the AUTH process in eVoucher, described in Section II.D.1 above, and creating a CJA 21. If the provider has eVoucher credentials the voucher can be assigned to the provider for entry of services and expenses. Providers who are not expected to be active and regular panel providers generally will not have their own credentials. In that case, the attorney is responsible for entering the provider’s time and expenses on a CJA 21. Time spent creating and entering time and expense on a voucher is not compensable -- whether done by the provider or the attorney. Attorney review of a provider’s billed services is required and is compensable time. Attorneys should routinely screen their eVoucher account for approved AUTHs and CJA 21’s pending attorney approval. Note that when the attorney completes and submits a CJA 21 it comes back into the attorney’s queue – as if it had come from the provider. In this circumstance it must be submitted again.

In multi-defendant cases counsel should consider sharing experts when possible. CJA counsel appointed after another has withdrawn must use the services of investigators, interpreters, and other service providers retained by previous counsel unless new counsel shows compelling reasons to obtain a new service provider. Each CJA counsel must obtain authorization for services provided during his or her representation and must submit a CJA 21 for those services.

##### 3. Transcripts

Transcript costs may not be claimed as expenses on a CJA 20 whether they are for in-court proceedings or, for example, transcripts of discovery interviews. Rather, they are paid for separately using the AUTH process. As set forth below, transcripts of in-court proceedings are authorized and paid for using the AUTH 24/CJA 24 process. Transcripts of out-of-court proceedings are authorized and paid for using the AUTH/CJA 21 process.



#### **a. Transcripts of Court Proceedings**

Requests for transcripts of court proceedings are made by completing and submitting an AUTH 24. The AUTH 24 is found by clicking on the case in your “Appointments’ List” and then clicking on “Create” next to the “AUTH 24” on the left-hand side of the Appointment. When the AUTH 24 is submitted it goes to the CJA Team for approval. When it is approved you will receive an e-mail notification from the system. You must then complete and file a Transcript Designation and Order Form (TD&O) on the docket through CM/ECF. The TD&O form can be found under the “[Court Reporter’s](#)” tab on the District Court’s website. The CJA team and the court reporter will take it from there and pay for the transcripts on a CJA 24 created by the CJA Team.

#### **b. Transcripts of Out of Court Proceedings**

Transcripts of non-court proceedings (for example discovery interviews) are requested using the AUTH/CJA 21 process described in Section II.D.1 above. These are submitted on a CJA 21 NOT a CJA 24.

#### **c. Depositions of Fact Witnesses**

Transcripts and court reporter fees for depositions of fact witnesses are paid by the United States Marshals Service. See the Marshals Public Defender Handbook:

<https://www.usmarshals.gov/prisoner/pdhandbook.htm>

#### **C. Exceeding Statutory Maximums**

If counsel’s fees<sup>4</sup> on a case exceed the [statutory maximum](#) for the representation type a [Request for Excess Compensation Form \(REC\)](#)<sup>5</sup> must be completed and submitted in the “Documents” section of the CJA 20 voucher. The REC Form must provide sufficient detail to justify a finding that the case involves extended or complex representation, and that the amount is necessary to provide fair compensation. The justification should not contain confidential information or work product.

#### **D. Case Budgeting**

Budgets are required in death-eligible prosecutions, capital habeas cases and representations that will likely exceed 200 attorney hours or if total case costs might exceed \$50,000. The development of a case budget in unusually expensive representations helps ensure that defense counsel receive the resources necessary to effectively represent the accused. A case budget with supporting documentation provides the reviewing court with

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<sup>4</sup> Reasonable out-of-pocket expenses incurred in connection with a panel appointment may be claimed on a CJA 20, however, they are not included in the statutory maximum.

<sup>5</sup> A fillable form can be found under “Forms” in the [CJA section](#) of the Federal Defenders of Montana website (you need to sign in) or in the “[CJA Billing](#)” section of the Court’s website.

sufficient information to assess reasonableness, monitor fairness, and more effectively manage the expenditure of CJA funds.

When it appears that a case may require budgeting counsel should contact the CJA Supervising Attorney who, along with the Ninth Circuit CJA Case Budgeting Attorney (CBA), will provide counsel with an Electronic Budgeting Application (EBA). Budgets are submitted by uploading the EBA form to a BudgetAUTH form in eVoucher. Budgets are typically submitted in phases, and reasonable time spent preparing a budget is compensable. If service providers are requested in a budget, the AUTHs associated with the providers will be created automatically when the budget is approved.

#### **E. Compensable and Non-Compensable Services**

Secretarial help (whether regularly or specially employed) and secretarial duties (regardless of who performs them) are not compensable. These include but are not limited to:

- Filing court documents (CM/ECF) and e-mailing proposed orders to chambers
- Calendaring
- Downloading, renaming, saving, or printing CM/ECF documents
- Mailing, faxing, copying, filing
- Dropping off/picking up materials from a printer or copy shop
- Transcribing dictation and general word processing
- Receiving, screening, and referring telephone and in-person callers
- Answering/obtaining general inquiries/information about attorney office
- Setting up meetings and conferences and informing participants of dates, times, locations, etc., and maintaining office calendar
- Setting up and booking travel arrangements
- Opening and closing case files
- Preparing attorney or expert billing

#### **F. Billing in Time Increments**

Attorneys and service providers who bill on an hourly basis must do so in six-minute increments. Multiple services provided on a day in a case that took less than 0.1 hour (six minutes) each (e.g. reviewing ECF documents, reviewing and sending brief e-mails, leaving phone messages) should be aggregated into a single entry representing no more than the combined total time spent on all of the tasks.

Do this:

Service Type	Date ▲	Description	Hrs	Rate	Amt
a. Interviews and Conferences	08/24/2021	Tried to call client -- no answer or voice mail. Left a message with client's mom -- call me. Texted client.	0.1	\$155.00	\$15.50
b. Obtaining and Reviewing Records	08/24/2021	Reviewed ECF Docs. 2-6	0.3	\$155.00	\$46.50

Not this:

Service Type	Date ▲	Description	Hrs	Rate	Amt
a. Interviews and Conferences	08/24/2021	Tried to call client -- no answer or voice mail.	0.1	\$155.00	\$15.50
a. Interviews and Conferences	08/24/2021	Left a message with client's mom to call me.	0.1	\$155.00	\$15.50
a. Interviews and Conferences	08/24/2021	Texted client	0.1	\$155.00	\$15.50
b. Obtaining and Reviewing Records	08/24/2021	Reviewed ECF Doc. 2	0.1	\$155.00	\$15.50
b. Obtaining and Reviewing Records	08/24/2021	Reviewed ECF Doc. 3	0.1	\$155.00	\$15.50
b. Obtaining and Reviewing Records	08/24/2021	Reviewed ECF Doc. 4	0.1	\$155.00	\$15.50
b. Obtaining and Reviewing Records	08/24/2021	Reviewed ECF Doc. 5	0.1	\$155.00	\$15.50
b. Obtaining and Reviewing Records	08/24/2021	Reviewed ECF Doc. 6	0.1	\$155.00	\$15.50

MINUTES	TENTHS
0 – 3	.0
3 – 6	.1
7 – 12	.20
13 – 18	.30
19 – 24	.40
25 – 30	.50
31 – 36	.60
37 – 42	.70
43 – 48	.80
49 – 54	.90
55 – 60	1.0

## G. What Level of Detail is Required?

Time entries require sufficient detail so that a reviewer can determine reasonableness. Work product or privileged information should not be disclosed. Services must be charged in the appropriate “Service Type”:

- ✓ *In Court*: Time for court appearances should be billed starting when the hearing was scheduled to begin through the time it ended. This, along with the correct date, can be confirmed by reviewing the docket. Other time associated with the appearance – conferring with the client or family, etc. should be billed in a separate entry.
- ✓ *Interviews and Conferences*: Includes all meetings and communications, e.g. reviewing and responding to emails, correspondence, meetings with client and defense team, and telephone calls with counsel and service providers. Identify the general topic and the participants; initials or other identifiers should be used for witnesses. When meeting

with other CJA billers on a case, all should confirm the amount of time to be billed at the conclusion of the meeting.

- ✓ *Legal Research and Writing:* Specify the issue researched or type of motion without revealing defense strategy, and separate research from writing when possible. Include docket number if filed. This category also includes researching and writing jury instructions, drafting research memos, and preparing sentencing memoranda and charts.
- ✓ *Obtaining and Reviewing Records:* Includes discovery review and docket review. Specify the type of discovery reviewed (transcripts, reports, medical records, photos, audio recordings, etc.) with bates range, approximate number of pages and number and length of audio or video recordings as well as the nature of the materials (e.g., transcripts, investigative reports, medical records, jail calls etc.). Identify court filings by name and CM/ECF numbers.
- ✓ *Investigative or Other Work:* Includes witness research; evidence or crime scene inspection; retrieving case-related property; hearing and trial preparation including witness examinations, opening statement, and closing argument; engaging service providers including experts; drafting service provider fee requests and reviewing/certifying provider bill for payment; case budgeting; and review of defense-generated materials including documents, charts, and memos.
- ✓ *Travel Time:* If you combine travel on multiple cases charge all the travel and expenses for a single day to one case and make a note on the vouchers for all of the cases (identify all cases that the travel related to). Billing travel for more than one case on a single day (i.e. splitting the time) triggers eVoucher to generate an error message.

Allowable time for travel includes only those hours actually spent traveling or awaiting travel. Use of internet mapping applications provides the presumptively reasonable amount of compensable drive time. If weather/road construction, etc. increase drive time that should be noted. Include origin/destination, whether roundtrip/one way, and method if not driving. If travel time (e.g. on a flight) is spent working on another case and will be billed to another client or submitted on another voucher the travel time is not compensable as that would be double billing.

If several types of services are provided on a single day (for example, research, investigation, discovery review) each type of service should be entered separately.

Do this:

Service Type	Date ▲	Description	Hrs	Rate	Amt
d. Travel Time	08/23/2021	Round trip to Yellowstone County Detention Center	0.4	\$155.00	\$62.00
b. Obtaining and Reviewing Records	08/23/2021	Review Discovery (Bates 1- 268) and recording of client's post-arrest interview (approximately 17 minutes).	3.4	\$155.00	\$527.00
a. Interviews and Conferences	08/23/2021	Meet with client and interpreter (1.5). E-mails with AUSA re position on pretrial release (.1).	1.6	\$155.00	\$248.00
c. Legal Research and Brief Writing	08/23/2021	Prepare Motion for Detention Hearing.	0.2	\$155.00	\$31.00
a. Interviews and Conferences	08/24/2021	Phone call with (initials) and (employer) confirming client's release plan.	0.4	\$155.00	\$62.00
e. Investigative or Other Work	08/25/2021	Prepare for Detention Hearing.	0.4	\$155.00	\$62.00
a. Interviews and Conferences	08/25/2021	Meet with client and family prior to Detention Hearing	0.4	\$155.00	\$62.00
b. Bail and Detention Hearing	08/25/2021	Detention Hearing	0.5	\$155.00	\$77.50

Not this:

Service Type	Date ▲	Description	Hrs	Rate	Amt
a. Interviews and Conferences	08/23/2021	Review Discovery (3.4). Meet with client and interpreter (1.5). Round trip to Yellowstone County Detention Center (.4). E-mails with AUSA re position on pretrial release (.1). Prepare Motion for Detention Hearing (.2)	5.6	\$155.00	\$868.00
a. Interviews and Conferences	08/24/2021	Phone call with (initials) and (employer) confirming client's release plan.	0.4	\$155.00	\$62.00
e. Investigative or Other Work	08/25/2021	Prepare for Detention Hearing (.4). Meet with client and family prior to Detention Hearing (.4). Detention Hearing (.5)	0.4	\$155.00	\$62.00

## H. Billing More Than 12 Hours in a Day

If an attorney or service provider bills more than twelve (12) hours in a single day when not in trial, sufficient justification must be provided with a voucher entry for that day.

## I. Travel Expenses

Appointed counsel and experts are compensated for travel time and actual expenses reasonably incurred up to the location's per diem rate. Per Diem rates can be found on the GSA website at <https://www.gsa.gov/travel/plan-book/per-diem-rates>. When traveling as part of an appointed case, a panel attorney is entitled to, and should, request government rates at hotels, etc. If you are unable to obtain a government rate, you will need to provide justification for the higher rate. When traveling for an oral argument on an appellate case, all travel arrangements should be made through National Travel. You will receive a Travel Authorization from the Ninth Circuit.

Meals may not be claimed unless it is necessary to be away from the office for more than 12 hours in a day. **Detailed receipts for all claimed meals must be attached in the "Documents" section of eVoucher – the credit card summary receipt or your credit card statement are not sufficient.** Alcohol, and the associated portion of the gratuity, must be subtracted from the bill.

Counsel need not seek preapproval for necessary overnight travel in Montana or a bordering state to attend court, to see a client, or to investigate. Otherwise, counsel must consult with the CJA Supervising Attorney before incurring expenses for out-of-district travel.

## **J. Non-Travel Expenses**

**Receipt requirement:** Both counsel and service providers must provide itemized receipts for expenses. Receipts are required for all meal expenses, expenditures of more than \$50.00, and for expenses less than \$50.00 whenever they are available. Receipts should be saved and scanned in chronological order, by type, and uploaded to the “Documents” section of the CJA 20 or CJA 21.

### **1. Postage and Delivery Expenses**

The use of couriers, messengers, and other premium delivery services such as Express Mail, Federal Express, and United Parcel Service, is discouraged unless there is a genuine necessity for this service or unless the cost of the premium service does not exceed United States Postal Service express mail rates. Explanations and receipts for all such services are required.

### **2. Copies and Printing**

In-house copying is encouraged and is reimbursable at a rate not to exceed ten cents (\$0.10) per page. Color copies are reimbursable at a rate not to exceed twenty-five cents (0.25) per page. If in-house duplication is neither feasible nor cost effective, counsel are expected to negotiate the lowest rate possible from an outside vendor. Counsel should use the most fiscally responsible method for discovery duplication. In some instances, this will require coordination among co-counsel, a “meet and confer” with the AUSA, and potential use of an outside vendor.

### **3. Computer Assisted Legal Research**

The cost of computer-assisted legal research (e.g., Westlaw/Lexis) may be allowed as a reimbursable out-of-pocket expense, provided the research pertains to the case and the amount claimed is reasonable and properly documented as pertaining to the case.

### **4. Transcripts**

Whenever possible panel members should use a lower cost transcription service rather than a court-reporter to transcribe recorded interviews, etc. provided in discovery.

Transcripts are not reimbursable as an expense on the panel member’s CJA 20. Rather, transcript costs are payable directly to the court reporter or transcriber and must be submitted on either through the AUTH 24/CJA 24 (in-court transcripts) or AUTH/CJA 21 (transcripts of discovery, etc.) procedures discussed previously.

## **K. Non-reimbursable Expenses**

Certain expenses are not reimbursable under the CJA Act. They include:

### **1. Witness Fees and Expenses**

Fees and expenses of fact witnesses and costs of service of process cannot be paid from CJA funds. See CJA Guidelines § 230.66.50. Expenses related to the testimony of a fact witness,

either at trial or deposition, including service of subpoenas, transportation, and other expenses, are paid by the Department of Justice through the United State's Marshal's Office. The DOJ form required for reimbursement of witness fees is the [DOJ-3](#). The form is provided by the U.S. Marshal's Service to the attorney.

Motions for subpoenas under Fed. R. Crim. P. 17(b) or for fees and expenses for fact witnesses or a defendant under 28 U.S.C. § 1825 must:

- a. Comply with D. Mont. L.R. CR 17.
- b. State that fees and expenses of fact witnesses and costs of service of process cannot be paid from CJA funds under CJA Guidelines § 230.66.50.
- c. Request that the U.S. Marshals Service be ordered to pay witness fees and expenses.
- d. If formal service of subpoenas is required, request that the Marshals Service be ordered to effect or pay for service of process.

To preserve the confidentiality of defense preparation, motions for subpoenas should be filed ex-parte.

## **2. Office Overhead**

General office overhead - expenses that are normally reflected in the fee charged to the client - are not reimbursable. These include but are not limited to:

- administrative assistance (whether regularly or specially employed – see §3(E), above)
- rent
- land and cellular telephone
- billing
- maintenance fees
- books and publications
- office supplies and equipment
- training or CLEs

## **3. Certain Client Expenses**

Personal items and services for the client such as new clothing, haircuts, cigarettes, lodging, travel, and meals are not payable under the Criminal Justice Act. Payments by counsel for such items cannot be reimbursed.

## **4. PACER fees**

Pacer now has a toggle feature that lets you switch from non-exempt to exempt status when performing CJA related work which is exempt from PACER fees. This feature is available only for use on cases where you have been appointed as a CJA attorney.

## **5. Other Non-Reimbursable Expenses**

Alcoholic beverages, entertainment (e.g., movies), travel insurance taken while traveling, parking fines or fees for traffic violations, personal automobile expenses, expenses incurred in traveling by indirect routes for personal reasons, use of taxis to obtain meals, and expenses submitted without itemized receipts are not reimbursable.

### **L. Contemporaneous Time Keeping**

Attorneys and experts are required to maintain contemporaneous time records for all CJA work. Information in eVoucher timesheets is sufficient, provided the information is timely entered and based on contemporaneous notes. It is advisable to maintain a record outside of eVoucher as well.

### **M. How is a Voucher Processed?**

In typical cases when an attorney's or service provider's voucher is submitted in eVoucher the CJA Administrator conducts an initial review for mathematical accuracy, which includes ensuring the voucher comports with the CJA Guidelines, that receipts are attached, and expenses are within the government rate. Thereafter, the CJA Supervising Attorney reviews the voucher for reasonableness and submits it to the Clerk's Office for payment. Where a voucher exceeds the statutory maximum (or where this voucher combined with others for this case and defendant) exceed the statutory maximum, the voucher goes to the Ninth Circuit CJA Unit for review after the CJA Supervising Attorney reviews the voucher. It is then returned and forwarded to the Clerk's Office for payment. Absent extraordinary circumstances, the CJA Team will act on CJA compensation claims within 30 days of submission.

The Chief District Judge has appointed Magistrate Judge DeSoto as the District's CJA Judge. The CJA Judge has ultimate review and approval authority over all requests for payment of CJA funds. She reviews all atypical or high-cost vouchers and vouchers on which the CJA Supervising Attorney has a conflict.

Records are subject to audit by the Administrative Office of the U.S. Courts. The Court performs an annual review of approved vouchers and additional audits as circumstances warrant. Counsel must retain all billing records, including those received from service providers, for at least three years after final approval or rejection of a voucher.

### **N. My Voucher Has Been Adjusted - What Are My Rights?**

The CJA Team or the CJA Judge may communicate informally with counsel about billing questions. If a determination is made that a claim for compensation should be adjusted, counsel will receive prior notice from the CJA Team of the proposed adjustment with a brief statement of the reason for it and an opportunity to address the matter. No notice is required for adjustments under \$500.



If counsel disagrees with the CJA Supervising Attorney's reduction of a voucher, counsel may submit a statement explaining counsel's disagreement with the reduction and requesting review by the CJA Judge. The CJA Judge will review all relevant materials and make a final decision. This option is not available for voucher reductions based on billing or mathematical errors.

**O. 1099 Reporting**

The Taxpayer Relief Act of 1997 requires that the court track and report to the IRS all payments made to CJA appointed attorneys and service providers, regardless of the amount. If the attorney has a pre-existing agreement with their law firm, the 1099 will be reported under the law firm's tax identification number and not the attorney's number. If the attorney received payments on behalf of an in-house service provider, this is included in the 1099 amount. Please contact the CJA Team in these circumstances to ensure the 1099 reporting is accurately reflected.

# APPENDIX

# APPENDIX 1 – ATTORNEY HOURLY RATES

## VII. APPENDIX 1 – ATTORNEY HOURLY RATES

For services performed by appointed counsel on or after January 1, 2021: <sup>1</sup>	
<b>A. CAPITAL-ELIGIBLE PROSECUTIONS</b>	
Learned Counsel	\$197
Co-Counsel	\$197
Associate Counsel <sup>2</sup>	\$107 – \$142
<b>B. CAPITAL HABEAS CASES</b>	
Lead Counsel <sup>3</sup>	\$177 – \$197
Co-Counsel (other than co-lead)	\$157 – \$177
Associate Counsel	\$107 – \$142
<b>C. NON-CAPITAL CASES</b>	
Lead Counsel	\$155
Co-Counsel	\$155
Associate Counsel	\$85 – \$125

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<sup>1</sup> Consult CJA Guidelines § 230.16 and § 630.10.10 for the maximum hourly rates paid to capital and non-capital counsel for services performed prior to January 1, 2021.

<sup>2</sup> The hourly rate authorized for associate counsel in both capital and non-capital cases should be based on years of experience as a licensed attorney.

<sup>3</sup> The maximum rate is reserved for lead counsel who have substantial experience and skill in federal capital habeas corpus proceedings.

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## APPENDIX 2 – SERVICE PROVIDER HOURLY RATES

### VIII. APPENDIX 2 – SERVICE PROVIDER HOURLY RATES

The below table encompasses district variances within the Ninth Circuit and the revised experience-based hourly rate ranges approved by the Judicial Conference Committee on Defender Services in June 2019. For paralegals, investigators, and capital-case mitigation specialists only, the low end of the below range is the circuit's presumptive maximum. Compensation above this rate is reserved for paralegals, investigators, and capital-case mitigation specialists with extraordinary skills or to address unusual difficulties with availability of these providers. Courts may develop district-specific presumptive rates in excess of the circuit's maximums only if approved by the Ninth Circuit Chief Judge and may approve an excess rate in an individual case upon a showing of good cause, as explained in Section V of these policies.

Accident Reconstruction	\$150 – \$200	
Accountant	\$150 – \$275	
Attorney Expert – Capital	CJA Hourly Rate	
Attorney Expert – Non-Capital	CJA Hourly Rate	E.g., immigration law expert.
Audio, Video, Photo Analyst	\$100 – \$200	
Ballistics/Firearms Expert	\$200 – \$300	
Chemist/Toxicologist (non-M.D.)	\$175 – \$275	
Crime Scene/Police Practices/Use-of-Force Expert	\$150 – \$250	
Document Translation	16.5 cents per word	Rate prescribed by the <a href="#">United States Department of State, Office of Language Services, Translation Division</a> for non-technical translation.
Document Transcription	\$3.65 per page	<a href="#">Contract court reporter rate</a> (without foreign translation) for non-automated transcription services.
DNA	\$150 – \$250	
Fingerprint Analyst	\$150 – \$250	
Forensic Computer/Cellphone	\$150 – \$250	
Gang Expert	\$150 – \$200	
Handwriting Analyst	\$150 – \$250	
Interpreter/Translator	\$50 – \$80*	Range accommodates both certified and non-certified providers. <a href="#">Half-day rate</a> is \$226 for certified and \$111 for non-certified.
Investigator	\$85 – \$125 *	On September 10, 2021, Judge Thomas approved a presumptive rate of \$85 for investigators in Montana. Rates above \$85 reserved for those with case-needed foreign language fluency, capital case expertise, mastery of one or more relevant areas of forensic science (e.g., forensic psychology or digital forensics), or a high level of investigative experience (particularly in the type of alleged offense).
Jury Consultant	\$150 – \$225	

\* This rate has been modified from the 9th Circuit rate.

## APPENDIX 2 – SERVICE PROVIDER HOURLY RATES

Law Student	\$15 – \$25	
Legal Analyst/Consultant (Non-Attorney)	\$75 – \$100	E.g., Sentencing Guidelines consultant.
Mitigation Specialist – Capital	\$125 – \$175	Rates above \$125 reserved for those with case-needed foreign language fluency, mental health expertise, or mastery of relevant legal standards, such as the <i>Atkins</i> intellectual disability exemption from execution.
Mitigation Specialist – Non-Capital	\$75 – \$125	
Neurologist (M.D.)	\$275 – \$400	
Neuropsychologist (Ph.D.)	\$225 – \$375	
Other Medical (M.D. or D.O.)	\$275 – \$400	
Paralegal (including Litigation Support Services)	\$55 – \$100* In house  \$65-\$125 Contract	Rates above \$55, in-house, and \$65, contract, are reserved for those with the technology skills necessary to perform complex litigation support or discovery database management (including subjective coding experience), case needed foreign language fluency, or capital case expertise.
Psychiatrist (M.D.)	\$275 – \$400	
Psychologist (Ph.D.)	\$150 – \$300	

\* This rate has been modified from the 9th Circuit rate.

# APPENDIX 3 – SAMPLE ENGAGEMENT LETTER

## IX. APPENDIX 3 – SAMPLE ENGAGEMENT LETTER

### Sample Engagement Letter: Contents of Financial Arrangements

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

The engagement of your services for this case is subject to the following:

- 1) You will be compensated at a rate of \$\_\_\_\_\_ per hour for services and \$\_\_\_\_\_ per hour for travel time. The maximum payment amount authorized by the court as of this date for your services is \$\_\_\_\_\_, excluding properly documented reimbursable expenses.
  - 2) A CJA Form 21 (non-capital) or 31 (capital) will be created for you in the court's electronic voucher system which either you or I will complete and submit. Instructions on how to use the eVoucher system will be provided to you.
  - 3) It is my responsibility as counsel to certify to the court that the services were rendered. Payment for your services is subject to approval by the CJA Supervising Attorney, the District Court CJA Judge and, in certain circumstances, the Chief Judge of the Ninth Circuit (or the Chief Judge's delegate). Approved payments are made by the Department of the Treasury out of the federal judiciary's Defender Services account, **not by me or my law firm.**
  - 4) The CJA Supervising Attorney and the District Court CJA Judge (as well as the Chief Judge of the Ninth Circuit or the Chief Judge's delegate, if applicable) have discretion to reduce a voucher. Specific reasons include: (a) a mathematical error; (b) non-compliance with circuit policy, district court policies or the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), *Guide to Judiciary Policy*, Volume 7, Part A, or (c) a determination that the services claimed are unreasonable either in terms of the work performed or the amount of time and expenses submitted. Accordingly, this Engagement Letter is not a guarantee of payment for all services rendered or expenses incurred.
  - 5) **Do not perform services or incur expenses that would result in an invoice in excess of the maximum payment amount authorized by the court** (as set forth in paragraph 1)). Doing so creates a risk that the court will not authorize the payment for the work done or expenses incurred in excess of the maximum authorized amount, even if the services performed or expenses incurred are necessary. You must advise me **before** you exceed the court's maximum authorized payment amount, and if I determine such additional work and/or expenses are necessary for the representation, I will seek approval
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## APPENDIX 3 – SAMPLE ENGAGEMENT LETTER

for a new maximum authorization level, before such work is performed or expenses incurred.

- 6) Travel expenses will be reimbursed on the basis of actual expenses incurred. Detailed receipts are required. Please consult with me regarding the maximum reimbursement amounts for travel expenses. Airline travel must be authorized by the court by my application. If airline travel is authorized, I will provide guidance to you regarding the purchase of a ticket.
- 7) Record Keeping – Consistent with CJA Guidelines § 320.90, you are required to maintain contemporaneous time and attendance records for all work/services billed, as well as expense records. If you bill in time increments, you are required to bill in six minute increments. These records should be attached to your CJA eVoucher that is submitted for payment. Any separate time and attendance records must be retained for three years after approval of the appointed counsel's or the service provider's final voucher, whichever is later.
- 8) Unless otherwise authorized by the court, a voucher for services performed and expenses incurred for the representation should be submitted at the conclusion of your services. While the court attempts to process invoices as quickly as possible, there may be delays in payment due to workload and other factors.

9) Scope of Work – You are authorized to do the following work:

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Accepted by: \_\_\_\_\_

Date: \_\_\_\_\_

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