

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

CRIMINAL JUSTICE ACT PLAN

APPENDIX B

CJA Panel Attorney Compensation and Funding for Services

I. Court Compensation Policies.

A. Providing fair compensation to appointed counsel is a critical component of the administration of justice. Attorneys on the CJA Panel must be compensated for time expended in and out of court and reimbursed for expenses reasonably incurred. In determining the reasonableness of out-of-court time, three factors will be considered:

1. Whether the work was performed;
2. Whether the work performed was a reasonable means of protecting the client's interests in the litigation; and
3. Whether the time spent to accomplish that work was reasonable.

B. Voucher reductions will be limited to mathematical errors, instances in which work billed was not compensable or undertaken, instances in which the hours billed clearly exceed what was reasonably required to complete the task; and instances in which services and expenses incurred are not compensable or reasonable.

C. Vouchers and funding requests for service providers, excess attorney compensation, and other litigation costs will not be delayed or reduced to lessen costs in response to adverse government-funding circumstances.

D. Absent extraordinary circumstances, review of CJA-related requests will be initiated within 30 days of submission.

II. Obtaining Resources and Submitting Compensation Claims.

A. Obtaining Investigative, Expert and Other Services. Counsel may obtain authorization to engage interpreters, investigators, paralegals, and other experts when reasonably necessary for the defense of the case.

1. Requesting Funds. Except for services under the threshold amount, see 18 U.S.C. § 3006A(e)(2)(A) and CJA Guidelines § 310.20.30(a), counsel must

submit an authorization request in eVoucher to obtain services other than counsel. The preauthorized amounts are per case, per defendant, regardless of whether the panel member is the first or subsequently appointed panel member on the case.

2. When Service Provider Funding Requests (AUTHs) Are Required. If expenditures for service providers will exceed the amounts provided by 18 U.S.C. § 3006A(e)(2)(A) and CJA Guidelines § 310.20.30(a), a Service Provider Funding Request—for the entire amount requested—must be submitted and approved in eVoucher prior to exceeding those amounts. Counsel must provide justification establishing the reasonableness of the request for expert services.
3. New Service Provider on Appointment of Second or Subsequent CJA Counsel. CJA counsel appointed after another has withdrawn must utilize the same service providers retained by previous counsel unless new counsel shows compelling reasons to retain a new service provider. Second or subsequent counsel must obtain approval, using the AUTH process, for all services provided during their representation.
4. Multiple Defendants Using One Service Provider. In multi-defendant cases, counsel should consider sharing one expert where possible and consistent with effective and conflict free representation for each defendant.
5. Transcripts. Authorization to order transcripts of court proceedings is obtained using the AUTH 24 process in eVoucher. Such transcripts are ordered using the Transcript Designation and Ordering form filed in CM/ECF. Payment is obtained by filing a CJA 24 in eVoucher. Authorization to obtain transcripts of discovery, or other out of court proceedings, is obtained using the AUTH process for service providers. Payment is obtained by filing a CJA 21 in eVoucher.
6. Presumptive Rates for Service Providers. The District of Montana adopts the Ninth Circuit presumptive rate schedule for service providers available in Appendix 2 of the Ninth Circuit Policy and Procedures Manual. With the exception of interpreters, the low end of the range is the District's presumptive rate. The presumptive rate for interpreters is \$50 per hour. Compensation above this rate is reserved for providers with extraordinary skills or to address unusual difficulties with availability.

B. Expenses.

1. Expenses. Reasonable and necessary expenses will be reimbursed consistent with Appendix 7 of the Ninth Circuit's CJA Policies.

2. Travel Out of District and/or Overnight. 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.
3. Government Rates and Per Diem. When travel is necessary in an appointed case, counsel is entitled to, and should, request government rates at hotels, etc. Reimbursement is available for travel time and actual expenses reasonably incurred up to the location's per diem rate found on the GSA website.
4. Receipt Requirement. Detailed receipts are required for all meal expenditures, expenditures over \$50.00, and expenditures of less than \$50.00 whenever they are available.
5. Unusual or Large Expenses. Counsel must consult with the CJA Supervising Attorney before incurring unusual expenses and non-travel expenses greater than \$800.00.
6. Non-Reimbursable Expenses.
 - a. Subpoenas and Witness Fees and Expenses. A service provider cannot be compensated for serving subpoenas unless such service is accomplished while the provider performs other services, such as investigating. Otherwise, fees and expenses of fact witnesses and costs of service of process cannot be paid from CJA funds. Expenses related to the testimony of a fact witness are paid by the Department of Justice through the United States Marshals Service.
 - b. Motions to Court. 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:
 - i. comply with D. Mont. L.R. CR 17;
 - ii. 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;
 - iii. request that the U.S. Marshals Service be ordered to pay witness fees and expenses; and
 - iv. if formal service of subpoenas is required, request that the Marshals Service be ordered to effect or pay for service of process.

- c. Overhead. General office overhead and administrative tasks, regardless of who performs them, are not reimbursable.
- d. Personal Items. Personal items and services for the client are not reimbursable.

C. Submitting Compensation Claims for Payment.

1. Submitting Claims. Panel attorneys' and service providers' claims for payment are submitted in eVoucher.
 - a. Recording Time. Counsel and service providers must record time and service in eVoucher, or by other detailed notation, contemporaneously with performance of services.
 - b. Billing Increment. Counsel and service providers who bill in time increments must bill in tenths of an hour.
 - c. Aggregation. Counsel must aggregate time spent on one type of task that is performed at various times over the course of a day to accurately reflect the total time spent.
2. Time to Submit in eVoucher.
 - a. CJA Panel members must submit vouchers seeking payment for their services and services other than counsel through eVoucher with appropriate documentation, no later than 60 days after judgment or dismissal.
 - b. Interim vouchers for CJA Panel members and service providers may be submitted no more frequently than every 60 days, provided the amount claimed exceeds \$500.00.
3. Claims for Counsel Services Over the Statutory Maximum. Submission of a CJA 20 and Request for Excess Compensation (REC) Form in eVoucher constitutes a request for payment over the statutory maximum. 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.
4. Review of Claims. The CJA Supervising Attorney will review all claims for reasonableness, mathematical and technical accuracy, and compliance with CJA Guidelines. The CJA Judge will be consulted on requests that are atypical or high cost.

5. Voucher Adjustments. The FDOM CJA Unit 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 Supervising Attorney 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.
 6. Review of Voucher Reduction. If counsel disagrees with the CJA Supervising Attorney's proposed reduction of a voucher, the CJA Supervising Attorney will notify the CJA Judge in writing. 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.
- D. Case Budgeting. CJA Panel members are encouraged to use case-budgeting for representations that will likely exceed 300 attorney hours or if total case costs might exceed \$50,000.00. Counsel should contact the CJA Supervising Attorney or the 9th Circuit Case Budgeting Attorney to discuss whether a case may be appropriate for budgeting and the procedures for submitting a case budget.
- E. Record Retention and Production.
1. Record Retention. CJA Panel members must retain all billing records, including those received from service providers for at least three years after final approval or rejection of a voucher.
 2. Confidentiality and Disclosure. Counsel's time sheets and supporting documents will not be filed and are confidential but may be discoverable in a proceeding under 28 U.S.C. § 2255.
- F. Guide to Counsel. A comprehensive CJA Billing and Compensability Guide to submitting claims in eVoucher is available on the website of the Federal Defenders of Montana or by contacting the Federal Defenders' CJA Unit.

IT IS SO ORDERED, effective November 28, 2022.



Brian Morris Chief Judge
United States District Court