

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
CJA Voucher Submissions Instructions and Policies

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I. General Statutory Provisions and Procedures

Counsel should be familiar with the Criminal Justice Act (18 U.S.C. § 3006A), the Fifth Circuit’s Plan for Representation on Appeal under the Criminal Justice Act, and the Instructions and Policies contained in this document. Additional resources are available at: <http://www.lb5.uscourts.gov/cja2/>

Counsel appointed to provide appellate representation under the CJA may be compensated for time “reasonably expended” and expenses “reasonably incurred.” 18 U.S.C. § 3006A(d)(1). The presumptive compensation maximums are below. These presumptive maximums may be exceeded if the representation provided was “extended or complex” and there is a judicial certification that excess payment is necessary to afford fair compensation. Excess payment must also be approved by the chief circuit judge or his delegate. See § 3006A(d)(3).

Presumptive Maximum Compensation Limits:

NON-DEATH PENALTY APPEALS

Date of Last Fee Worksheet Entry	Non-Death Penalty Felony Appeals	Other Appeals ¹
March 23, 2018 to present	\$7800	\$2300
May 5, 2017 to March 22, 2018	\$7300	\$2200
Jan. 1, 2016 to May 4, 2017	\$7200	\$2100
Jan. 1, 2015 to Dec. 31, 2015	\$7100	\$2100

Please call for information about compensation maximums for earlier periods.

DEATH PENALTY APPEALS

Any request for compensation in excess of a total of \$50,000 in federal capital prosecutions and any request for compensation in excess of \$15,000 in § 2254 and § 2255 cases is presumptively excessive. These compensation thresholds apply to the total compensation requested by all attorneys appointed to represent the defendant and include any interim payments.

II. When to File

Generally, a voucher must be submitted via eVoucher within 45 days of final disposition of the case, unless good cause is shown for delay. “Final disposition” is the later of: (a) the date the decision becomes final or the appeal is otherwise terminated, if no petition for certiorari will be filed; (b) the date a petition for certiorari is filed or denied; or (c) the date an order is filed granting counsel permission to withdraw if the defendant will proceed *pro se*.

III. How to File a CJA 20 or 30 Voucher

¹ This category, other representations required or authorized by the CJA, includes, but is not limited to, appeals from the following representations: **probation violations, revocations of supervised release, parole proceedings, and retroactive applications of crack cocaine amendment.**

Effective December 1, 2015, all appellate CJA voucher must be prepared and submitted electronically through the Fifth Circuit's CJA eVoucher system, which can be accessed at:

https://evsdweb.ev.uscourts.gov/CJA_c05_prod/CJAeVoucher/

Effective December 1, 2015, the Fifth Circuit will no longer accept hard copies of CJA vouchers. All CJA vouchers and supporting documentation must be submitted electronically through eVoucher.

Important information about eVoucher, including training and reference materials for CJA counsel, can be found at: <http://www.lb5.uscourts.gov/cja2/>

IV. Excess Compensation Claims

If compensation in excess of the statutory maximum is sought, counsel must submit – via eVoucher, as an attachment to the electronic CJA 20 voucher – a CJA 27 form or memorandum in lieu thereof explaining why (1) the representation was extended or complex, (2) excess payment is necessary for fair compensation, and (3) the time and expenses were “reasonable and necessary” to the particular appeal. If the legal or factual issues in a case are unusual, this requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case, the case is “complex.” If more time is reasonably required for the total proceeding than the average case, the case is “extended.”

In the alternative, counsel may attach a letter of acceptance of the maximum compensation stating that all fees over the statutory maximum are waived.

V. Interim Compensation and Case Budgeting

Interim compensation in non-capital cases may only be authorized upon the filing of a motion for interim payment.² Such payments remain the exception and are reserved for situations in which delays in payment will result in substantial hardship to attorneys. Please refer to the CJA Guidelines §230.73.10 (interim reimbursement for expenses), § 230.63.50 and § 310.60.10 (interim payments) for more information.³

Case budgeting is appropriate in complex or extended representations that appear likely to become or have become extraordinary in terms of potential cost (ordinarily, a representation in which counsel expects to exceed 300 hours). If the court determines that case budgeting is appropriate (either on its own or upon request of counsel), counsel must submit a proposed budget for court approval, subject to modification in light of facts and developments that emerge as the case proceeds.

² The motion may be filed *ex parte* and under seal.

³ The CJA Guidelines can be found at: <http://www.uscourts.gov/rules-policies/judiciary-policies/criminal-justice-act-cja-guidelines>

VI. What to File with a CJA 20 or 30 Voucher⁴

- a. **Use eVoucher to Complete and Submit the Voucher.** A CJA 20 or 30 voucher is created by entering time, expenses and required supporting documentation into the Fifth Circuit's eVoucher system.
- b. **Attorney Certification, Supporting Documentation and Other Explanatory Material.** A pdf copy of any petition for certiorari, supporting documentation, and any explanations of unusual circumstances (e.g., voucher filed more than 45 days after final disposition, unusual expenditures, etc.) should be attached to the voucher using the "Documents" tab in eVoucher.

The Fifth Circuit requires attorneys to submit a signed attorney certification form with each voucher, certifying that all work reported in the voucher was performed by appointed counsel, or, if compensation is sought for work performed by anyone else, that any such work has been clearly identified and that person's business relationship with appointed counsel is accurately described. The attorney certification form can be found under the "Links" menu in eVoucher or can be downloaded from:

<http://www.lb5.uscourts.gov/CJA/CJADocs/certification.pdf>

Pursuant to §230.40 of the CJA Guidelines and Section 6 of the Fifth Circuit's Plan for Representation on Appeal under the Criminal Justice Act, no one appointed under the CJA may accept any payment from or on behalf of the person represented without prior authorization by a judge of the court of appeals.

- c. **Entering Attorney Time in the "Services" Tab of eVoucher.** Time must be itemized by date, description of services, amount of time spent in tenths of hours, and must be properly categorized. If the voucher claims time for work performed by associated counsel, that attorney's initials for each task must be inserted in the line item description.

Failure to provide sufficient detail to permit meaningful review of a claim may result in delay or denial of approval of the claim.

Note: Contemporaneous time records must be retained by counsel for three years after the approval of the voucher.

- d. **Expense Receipts.** Receipts are required for all outside copy services, regardless of the amount; all travel expenses, regardless of the amount; and any single item over \$50. Credit card slips and credit card statements might not be sufficient because they lack detail that would permit approval of the expense as reasonable and reimbursable.

⁴ ["Submitting Fifth Circuit CJA Vouchers"](#) is another useful reference when submitting a voucher.

See §VIII below for further instructions and information. Expenses not properly documented may be disallowed in their entirety.

- e. **Excess-Fee Memorandum or Completed CJA 27 Form.** If the compensation request (excluding expenses) exceeds the applicable presumptive maximum, a CJA 27 or memorandum in lieu thereof must be submitted in the “Documents” tab in eVoucher. The CJA 27 or memorandum must explain why (1) the appeal is complex and/or extended, (2) payment over the cap is necessary to provide fair compensation, and (3) the payment(s) requested is for time and/or expenses reasonably and necessarily incurred.

VII. Claims for Hourly Compensation – General Rules

- a. **Hourly and Mileage Rates.** The eVoucher system will automatically use the applicable hourly and mileage rates based on the date of the service/expense entered by counsel.
- b. **In-Court Time.** In-court time is limited to the actual time or argument. Time spent waiting for oral argument should be claimed as out-of-court time and is only compensable if the attorney is performing substantive legal work and/or engaging in oral argument preparation.
- c. **Partners and Associates (Within Firm).** Compensation may be claimed for services provided by a partner or associate in the appointed counsel’s law firm, but extra tasks or other work inefficiencies resulting from such division of labor (e.g., attorney conferencing) are not compensable. Electronic vouchers must separately identify the provider of *each* service with counsel’s initials in the line item description. The court expects court appointed counsel to have taken the lead in the preparation of the brief and to present oral argument, if argument is allowed.
- d. **Compensation of Counsel (Outside Firm).** With prior authorization by the court, appointed counsel may claim compensation for services furnished by counsel who works outside of the appointed counsel’s law firm. Extra tasks or other work inefficiencies resulting for such division of labor (e.g., attorney conferencing) are not compensable. Separate vouchers must be submitted for each attorney. The court expects court appointed counsel to have taken the lead in the preparation of the brief and to present oral argument, if argument is allowed.
- e. **Substitution of CJA Counsel and Excess Compensation.** If a CJA attorney is substituted for a previous CJA attorney appointed in the same case, the total CJA compensation to both attorneys will not exceed the statutory maximum for one attorney, unless the court determines that the requirements for excess compensation are met. Vouchers for both counsel will be considered together after final disposition of the appeal.

f. Time Spent on District Court Matters or Matters Unrelated to the Appeal.

Time spent on district court matters or other matters unrelated to appellate representation, even if incidental to arrest, incarceration or on remand, is not compensable on an appellate voucher. Compensation for preparation and submission of preliminary appellate pleadings (e.g., notice of appeal, designation of record, transcript order forms) may be claimed on the appellate voucher, but not if compensated on the district court voucher.

g. Oral Argument. Time & expenses for travel to oral argument are reimbursable. Prior authorization must be obtained if counsel wishes to have airfare paid for directly by the government or if expenses will be more than would be required to travel to the location of the oral argument by the most economical means and lodging for a single night's stay. If counsel wishes to have travel paid for directly by the government, travel arrangements may be made through National Travel, by calling 1-800-445-0668 after travel authorization is obtained. Tickets arranged through National Travel will be billed directly to the government. Travel must be by method of transportation which will result in the greatest advantage to the government, cost and travel time considered, and must be claimed on an actual expense basis.

h. Travel Time. Necessary and reasonable travel is compensable in accordance with the Fifth Circuit's travel policy: time and expenses for travel are reimbursable but must be pre-authorized by the Chief Circuit Mediator unless the total round trip travel time does not exceed 4 hours. All travel requiring overnight accommodations, air travel, or more than 4 hours driving time – round trip – must be authorized in advance in writing (by e-mail). **Please contact cja_travel@ca5.uscourts.gov for travel authorizations.**

Time spent traveling by car over long distances ordinarily traversed by air is not reasonable, unless required by special circumstances. If a trip required overnight lodging, compensable travel time includes time traveling from counsel's office or home to the place of accommodation, as well as travel time returning directly to counsel's office or home. Time spent traveling to the court to file a pleading is not compensable.

i. Petition for Writ of Certiorari. Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari, or responding to a petition for writ of certiorari filed by the government, are considered part of the appeal and should be included on the voucher for services performed in this court.

j. Voucher Preparation. Time spent preparing the voucher is not compensable.

VIII. Expenses Generally

Reimbursement is limited to reasonable actual expenditures. Travel expenses are limited to the amounts authorized by the travel authorization.

Receipts are required for all outside copy services, regardless of the amount; all travel expenses, regardless of the amount; and any single item over \$50. Credit card slips and credit card statements may not be sufficient because they lack detail that would permit approval of the expense as reasonable and reimbursable.

See Sections IX and X below for further instructions and information. Expenses not properly documented may be disallowed in their entirety.

IX. Travel Expenses – General Rules

- a. **Itemization and Proration.** Claims for travel expenses must be itemized by date and charge and reported on the travel expenses portion of the voucher. If travel involves time spent on more than one case, then expenses must be prorated by the number of cases to which the travel relates.
- b. **Supporting Documentation for General Travel Expenses.** Itemized receipts must always be submitted to support reimbursement of meals, lodging and all other travel expenses. Credit cards slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable. Expenses not properly documented may be disallowed.
- c. **Supporting Documentation for Lodging.** Receipts for lodging must be sufficiently itemized to establish that reimbursement is not being sought for safe deposit boxes, hotel safes, in-room movies, or other expenses that are not reimbursable under the CJA. Accordingly, itemized hotel bills must be submitted. Credit cards slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable. Expenses not properly documented may be disallowed. Expenses incurred outside of the dates authorized by counsel's travel authorization are not compensable.
- d. **Supporting Documentation for Meals.** Receipts for meals must be sufficiently itemized to establish that reimbursement is not being sought for alcoholic beverages, charges for persons other than appointed counsel or other expenses that are not reimbursable under the CJA. Hotel restaurant, in-room beverages and room-service meals must also be supported by an itemized receipt. Credit cards slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable. Expenses not properly documented may be disallowed. Expenses incurred outside of the dates authorized by counsel's travel authorization are not compensable.

- e. **Travel Reservations.** Air travel, lodging, and rental car arrangements, if authorized, can be made at government rates through National Travel Service. Further information about making such reservations will be provided to counsel in a travel authorization. **Please contact cja_travel@ca5.uscourts.gov for travel authorizations.**
- f. **Oral Argument Travel Expenses.** Time & expenses for travel to oral argument are reimbursable. Prior authorization must be obtained if counsel wishes to have airfare paid for directly by the government or if expenses will be more than would be required to travel to the location of the oral argument by the most economical means and lodging for a single night's stay. If counsel wishes to have travel paid for directly by the government, travel arrangements may be made through National Travel, by calling 1-800-445-0668 after travel authorization is obtained. Tickets arranged through National Travel will be billed directly to the government. Travel must be by method of transportation which will result in the greatest advantage to the government, cost and travel time considered, and must be claimed on an actual expense basis.

Any special travel expenses other than for travel to and from the place of hearing and maintenance should not be incurred by any attorney or other representative appointed under this Plan without prior approval.

- g. **Travel by Private Automobile.** Mileage is reimbursable at the rate prescribed for federal judiciary employees conducting official business. Travel in excess of four hours round-trip must pre-authorized by the Chief Circuit Mediator. Absent an emergency or other unusual circumstance, if travel is by automobile, reimbursement of mileage expense will not exceed the airfare charge had National Travel Service made counsel's travel arrangements. Counsel should contact National Travel *before* driving to determine then-current government airfare rates.
- h. **Non-Reimbursable Travel Expenses.** Personal items (e.g., alcoholic beverages, in-room movies) are not reimbursable. Charges that exceed the amount authorized by counsel's travel authorization are not reimbursable.

X. Reimbursement of Other Expenses – General Rules

- a. **Itemization.**
Claims for other expenses incurred must be itemized by date and charge and reported in the "Expenses" tab of eVoucher.
- b. **Supporting Documentation for Other Expenses.** Receipts are required for all outside copy services, regardless of the amount; all travel expenses, regardless of the amount; and any single item over \$50. Credit card clips and credit card statements

may not be sufficient because they lack detail that would permit approval of the expense as reasonable and reimbursable.

- c. **Copying and Binding.** Reimbursement for in-house copying is limited to actual page cost, not to exceed \$0.15/page. In-house copy expenses must be itemized.

Reimbursement for outside copy services is limited to \$0.25/page and must be supported by an itemized receipt. Credit card clips and credit card statements may not be sufficient because they lack detail that would permit approval of the expense as reasonable and reimbursable.

Commercial copying charges to prepare 40 copies of a petition for certiorari in booklet format **will not be reimbursed** because this requirement may be waived upon proper filing of a motion to proceed *in forma pauperis*, see S. Ct. Rules 12, 33.2 and 39.

- d. **Long distance phone calls.** Long distance calls must be accomplished by the most economical means possible and claimed on an actual expense basis. Receipts are required for all claims over \$50.
- e. **Postage.** This must be accomplished by the most economical means possible and claimed on an actual expense basis. The court will not reimburse for certified mail, return receipt, or tracking. In non-capital cases, overnight or one-day shipping is not reimbursable. Receipts are required for all claims over \$50.
- f. **Expert Services.** Appointed counsel may obtain investigative, expert, and other services necessary for adequate representation in accordance with the procedures set forth in subsection (e) of the Criminal Justice Act (CJA), 18 U.S.C. §3006A. **Prior authorization is required for all such services where the cost, excluding expenses, will exceed \$800.** Failure to obtain prior authorization will result in the disallowance of any amount claimed for compensation in excess of \$800, unless the presiding judicial officer, in the interest of justice, finds that timely procurement of necessary services could not await prior authorization. Payment for these services should be claimed directly by the service provider in eVoucher on a CJA 21 for non-death penalty appeals or on a CJA 31 for death penalty appeals.

If the total services will exceed \$2,500, counsel must also obtain a court order certifying the expenses as “necessary to provide fair compensation for services of an unusual character or duration.”

- g. **Legal Research Services by Law Students, Law Clerks, of Paralegals.** Work performed by a law student, legal assistant, and/or paralegal must be submitted separately on a CJA21 in eVoucher. Without prior approval, attorneys will be reimbursed a maximum \$25 per hour up to \$800 for Law Student/Legal Assistant/Paralegal fees. Compensation exceeding \$800, or higher hourly rates, must

be pre-approved by the Chief Circuit Mediator. An attorney's written request to exceed the maximum should be submitted **via email to** cja_request@ca5.uscourts.gov.

- h. Interpreter/Translation Services.** Time incurred by these individuals must be claimed on a CJA 21 or CJA 31. If the amount for this service will total more than \$800, it must be pre-approved by the Chief Circuit Mediator. An attorney's written request to exceed the maximum should be submitted **via email to** cja_request@ca5.uscourts.gov.
- i. Computer Assisted Legal Research (e.g., Westlaw/Lexis).** If charges for computer-assisted legal research total more than \$50, a pdf copy of each bill itemized by date must be included with counsel's voucher. The bill must indicate to which specific client the charge relates. If such services total more than \$500, counsel should include a statement of justification. Flat fees for subscriptions to research services, charges for equipment and the like are considered overhead and are not reimbursable.
- j. General Office Overhead and Clerical Work.** General office overhead is not reimbursable. This includes, but is not limited to: supplies, overtime, rent, telephone services, mailers/envelopes, secretarial services, and other administrative/clerical services. Nor is professional time spent on secretarial or clerical tasks compensable as part of counsel's fee. Secretarial or clerical tasks include, but are not limited to: printing documents, making copies, preparing mailings, dropping off or arranging mailings or copies, filing or checking ECF notices.
- k. Other Expenses of a Personal Nature for Individual Represented.** The cost of items of a personal nature purchased for or on behalf of the person represented is not reimbursable.
- l. Expenses Related to District Court Matters or Matters Unrelated to Appeal.** Expenses related to district court matters, or otherwise unrelated to appellate representation, even if incidental to arrest, incarceration, or remand, are not reimbursable on an appellate voucher. Reimbursement for preparation and submission of preliminary appellate proceedings (e.g., notice of appeal and designation of record) may be claimed on the appellate voucher, but not if reimbursed on the district court voucher.
- m. Filing Fees, Court Admission Fees and PACER Charges.** Filing fees and court admission fees are not reimbursable. This includes filing fees related to a petition for certiorari because such fees may be waived upon proper filing of a motion to proceed *in forma pauperis*, see S. Ct. Rules 12, 33.2 and 39. PACER charges are not reimbursable because upon proper application, CJA counsel is entitled to a free

PACER account for use in CJA cases only.

- n. **Transcript Fees.** As of December 1, 2015, CJA 24s are no longer processed by the Court of Appeals for payment in eVoucher. Please contact the CJA administrator at the originating district court for information about that district's processing of CJA 24 vouchers.

XI. General Information

- a. **Public Disclosure.** CJA 20 vouchers filed by counsel may be subject to public disclosure unless disclosure should be limited based upon: (1) protection of any person's Fifth Amendment right against self-incrimination; (2) protection of the defendant's Sixth Amendment right to effective assistance of counsel; (3) the defendant's attorney-client privilege; (4) the work-product privilege of the defendant's counsel; (5) the safety of any person; or (6) any other interest that justice may require.
- b. **Counsel's Responsibility to Keep Contact and Billing Information Up to Date.** Counsel must keep their contact and billing information up to date in eVoucher. **IF YOU MOVE, CHANGE FIRMS, OR OTHERWISE CHANGE THE ASSIGNMENT OF TAX CONSEQUENCES FOR CJA PAYMENTS, YOU ARE RESPONSIBLE FOR UPDATING YOUR PROFILE AND BILLING INFORMATION IN eVOUCHER.**
- c. **Additional Resources.** Counsel is encouraged to review the court's website at <http://www.lb5.uscourts.gov/cja2/> to obtain current forms, rates, and general CJA information.
- d. **Contacts.** For assistance with CJA vouchers, please contact the CJA Administrator at cja_request@ca5.uscourts.gov or (504) 310-7765
- e. **Retain CJA Billing Records for Three Years.** CJA billing records must be retained by counsel for three years after approval of the voucher.