

Notice of Changes to Procedures for CJA Reimbursement for Computer-Assisted Legal Research Expenses

Changes to the CJA Guidelines that would simplify procedures for reimbursing CJA panel attorneys for computer-assisted legal research (CALR) expenses are under consideration. As part of an Administrative Office of the U.S. Courts pilot program designed to assess the potential budgetary impact of these proposed changes, the **District of Massachusetts** will apply the proposed guidelines, effective April 1, 2004. The proposed amended guidelines are attached to this notice as Attachment A; examples of reasonable documentation for CALR expenses are attached as Attachment B.

Beginning on April 1, 2004, and continuing for a 15-month period, reasonable CALR expenses (including, but not limited to, legal research performed on Westlaw and Lexis-Nexis) for research performed on or after April 1, 2004, will be reimbursed under either paragraph 2.27 of the CJA Guidelines as a reimbursable out-of-pocket expense or paragraph 3.15 of the Guidelines as an expert service, as long as the expenses are itemized and reasonably documented. Under the pilot program guideline amendments set forth in Attachment A, attorneys will be required to document their CALR expenses, but will not be required to describe the subject matter of the research or estimate the number of hours required to do the research manually, as required under the existing guidelines. Similarly, attorneys may be reimbursed for the use of commercial computer-assisted legal research services, as long as the usage is deemed reasonable and the expenses are documented.

Attorneys with flat-rate computer-assisted legal research contracts may claim expenses derived by prorating monthly charges. Examples of appropriate proration methods and reasonable documentation of prorated expenses are set forth in Attachment B.

Attachment A: Pilot Program Guideline Amendments

CHAPTER II. APPOINTMENT AND PAYMENT OF COUNSEL

- 2.27 Reimbursable Out-of-Pocket Expenses. Out-of-pocket expenses reasonably incurred may be claimed on the voucher, and must be itemized and reasonably documented. Expenses for investigations or other services under subsection (e) of the Act shall not be considered out-of-pocket expenses.

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- B. Computer-Assisted Legal Research. The cost of use, by appointed counsel, of computer-assisted legal research services, may be allowed as a reimbursable out-of-pocket expense, provided that the amount claimed is reasonable. Whenever appointed counsel incurs charges for computer-assisted legal research, counsel should attach to the compensation voucher a copy of the bill and receipt for the use of the legal research services or an explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges, or by charges identifiable to the specific research). If the amount claimed is in excess of \$500 or if it includes costs for downloading or printing, counsel should include a brief statement of justification.**

~~B.C. Travel Expenses. * * *~~

~~C.D. Interim Reimbursement for Expenses. * * *~~

~~D.E. Reimbursement for Expenses Incurred Defending Malpractice Allegations.
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~~E.F. Other. * * *~~

2.31 Law Students Assisting Legal Counsel and Computer Assisted Legal Research

- ~~A. Law Student. In some districts and circuits, arrangements have been made for the use of qualified law students to assist assigned counsel in trial preparation and in drafting briefs and arguments on appeal. Payment under the CJA in such instances may be made to assigned counsel only for compensable time spent by counsel plus allowable expenses. Allowable expenses for the attorney may include compensation paid to law students for legal research, but do not include reimbursement for expenses incurred by a law student in assisting appointed counsel.~~
- ~~B. Computer Assisted Legal Research. The cost of use, by appointed counsel, of computer assisted legal research equipment, may be allowed as a reimbursable out-of-pocket expense, provided that the total amount approved for computer assisted legal research does not exceed the total amount of attorney compensation that reasonably would have been approved if counsel had performed the research manually. Whenever appointed counsel incurs charges~~

~~for computer-assisted legal research, counsel should attach to the compensation voucher the following:~~

- ~~1) a brief statement setting forth the issue or issues that were the subject matter of the research; and~~
- ~~2) an estimate of the number of hours of attorney-time that would have been required to do the research manually; and~~
- ~~3) a copy of the bill and receipt for the use of the equipment or an explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges, or by charges identifiable to the specific research).~~

~~(See paragraph 3.15 concerning claims for compensation for computer-assisted legal research services performed by employees of commercial legal research firms or organizations):~~

CHAPTER III.

AUTHORIZATION AND PAYMENT FOR INVESTIGATIVE EXPERT AND OTHER SERVICES

3.15

Commercial Computer-Assisted Legal Research Services. The court may authorize counsel to obtain computer-assisted legal research services, where the research is performed by employees of a commercial legal research firm or organization rather than by appointed counsel, provided that the total amount charged for computer-assisted legal research services **is reasonable. does not exceed the total amount of attorney compensation that would reasonably be approved if the appointed counsel had performed the research manually.** Requests by counsel for authority to obtain such computer-assisted legal research services should include the following:

- A. a brief explanation of the need for the research services; and
- B. an estimate of the **charges. number of hours of attorney time that would be required to do the research manually.**

Claims for compensation for such services should be submitted on CJA Form 21, "Authorization and Voucher for Expert and Other Services," or, in a death penalty proceeding, CJA Form 31, "Death Penalty Proceeding: *Ex Parte* Request for Authorization and Voucher for Expert and Other Services."

~~(See paragraph 2.31~~ **2.27B** concerning reimbursement for the cost of direct use, by appointed counsel, of computer-assisted legal research **services. equipment.**)

Attachment B: Examples of reasonable documentation

As with all other expenses, under the pilot program guidelines, attorneys will be required to document CALR expenses. See Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures*, paragraph 2.27. Attorneys with contracts that bill for actual expenses (whether per hour or per transaction) may simply submit their bill as documentation. Attorneys with flat-rate contracts may prorate their expenses. Examples of acceptable proration formulas follow:

1. Lexis-Nexis

Attorneys who use monthly flat-rate contracts with Lexis-Nexis can obtain itemized billing reports of CALR usage, with the charges for each client prorated as a portion of the monthly cost. The default billing report (the report mailed with the monthly bill) is broken down by client. More specific summaries can be accessed online via “powerinvoice” or the attorney may request monthly specific summaries. Attorneys may access their invoices at any time online. (There is a 48-hour lag time between usage and posting online.) To ensure proper documentation for purposes of reimbursement under the CJA Guidelines, attorneys must accurately type in the client name when prompted during research; attorneys may find it convenient to type in “CJA-client name.” For attorneys who use monthly flat-rate contracts with Lexis-Nexis, the billing report broken down by client with proration charges listed is sufficient documentation.

2. Westlaw and other vendors

Westlaw provides similar record-keeping options, in that it itemizes research by the client name the attorney enters when prompted during research. However, it does not provide a “net amount,” i.e., Westlaw does not perform the calculation to show the amount charged based on proration. The following formula should be used for any vendor that does not calculate proration: prorate client research expenses as a percentage of all research expenses for the month, then multiply the percentage by the monthly rate.

For example, if the billing report lists “gross amounts,” the attorney would determine the percentage of the monthly bill attributable to the CJA client, then multiply that percentage by the monthly rate. That is, if the gross amounts listed for the entire month were \$100, the gross amount attributable to the CJA client was \$10, and the monthly rate was \$60, the eligible amount would be \$6. (\$10 is 10% of \$100; 10% of \$60 is \$6).

If the billing report lists the number of hours spent, the attorney would determine the percentage of the hours attributable to the CJA client, then multiply that percentage by the monthly rate. That is, if the hours spent for the entire month were 100 hours, the hours spent on the CJA client were 10 hours, and the monthly rate was \$60, the eligible amount would be \$6.

If the billing report lists the number of transactions performed, the attorney would determine the percentage of the transactions performed attributable to the CJA client, then multiply that percentage by the monthly rate. That is, if the transactions performed for the entire month totaled 100, the transactions performed for the CJA client totaled 10, and the

monthly rate was \$60, the eligible amount would be \$6.

For attorneys who use monthly flat-rate contracts with Westlaw or other vendors, a billing report broken down by client suffices to document the percentages used in this calculation. In the absence of an appropriate billing report or invoice, the attorney is required to submit an affidavit or an equivalent document showing the percentage.