

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**GUIDELINES FOR CLAIMS SUBMITTED FOR REIMBURSEMENT
UNDER THE CRIMINAL JUSTICE ACT**

November 14, 2013

The Sixth Amendment provides that in all criminal prosecutions the accused has the right to assistance of counsel for his defense. Where a defendant is financially unable to retain private counsel, the Court will appoint counsel to be paid from public funds pursuant to the Criminal Justice Act (18 U.S.C. § 3006A) (“CJA”) and the Criminal Justice Act Plan for the District of Massachusetts. These Guidelines have been adopted by the United States District Court for the District of Massachusetts in order to provide a comprehensive and uniform set of rules and policies governing the payment of fees and expenses of private counsel appointed under the CJA.

The United States District Court for the District of Massachusetts has a long and proud tradition of providing high-quality representation to indigent defendants. It is an honor and a privilege to be appointed as counsel by the Court. With that honor, however, comes certain responsibilities, including the responsibility to exercise prudence and restraint in the expenditure of public resources.

The Court expects counsel to exercise reasonable professional judgment, both in deciding what work should be performed and whether the cost of that work should be properly borne by the taxpayers. The Court recognizes that the nature of the legal services performed by defense counsel depends in large part on actions taken by the prosecution and the Court itself, and that therefore counsel’s ability to control costs is at least somewhat limited. The Court also recognizes that no two cases are exactly alike, and that it is not possible to predict with certainty what legal services will prove to be necessary as a case develops. Nonetheless, CJA attorneys have an obligation to limit expenses to the extent reasonably possible while still providing effective representation of their clients.

It is likewise the responsibility of the Court to ensure that all services and expenses funded under the CJA are necessary and reasonable for effective representation. The Court has the authority and the obligation to disapprove claims for compensation that are unreasonable or otherwise excessive. However, that authority—which is exercised after a voucher has been submitted—is often difficult to administer effectively, and may involve substantial adjustments by the reviewing judge that could have been avoided with the exercise of due care by counsel. There is no substitute for the exercise of careful and responsible professional judgment by the attorney.

1. Payment for Legal Services

1.1 General Policies

1.11 Only Actual Work Performed. Counsel may only submit claims for actual legal services performed.

1.12 Only Reasonably Necessary Services. Counsel may only submit claims for legal services that were reasonably necessary to perform. Whether a claim is “reasonable” requires that counsel make at least two types of professional judgment: first, whether a particular task is reasonably necessary to perform, and second, whether the time that task took to accomplish was reasonable under the circumstances.

1.13 Knowledge of Basics Presumed. Counsel are expected to know basic principles of federal criminal law, practice, and procedure, including the basic framework of statutes, case law, rules, and sentencing guidelines. Counsel should not submit claims for time incurred learning such fundamental matters.

1.14 Use of Other Attorneys. Counsel may use partners or associates when reasonably necessary to provide services efficiently and at the lowest possible cost. Under these guidelines, the term “associates” may include both a salaried employee and an attorney who shares or uses office space with counsel and whose work on a CJA case is directly supervised by counsel. The use of such counsel is subject to judicial approval under certain circumstances, as set forth in §§ 1.31 and 1.32. Counsel may not submit claims for time incurred by an attorney who is not a partner or associate of CJA counsel without prior judicial authorization, as set forth in § 1.33. *See Guide to Judiciary Policy, § 230.53.10.*

1.15 Use of Paralegals and Law Students. Counsel may use paralegals or law students when reasonably necessary to provide services efficiently and at the lowest possible cost. The use of such individuals is subject to judicial approval under certain circumstances, as set forth in §§ 1.31, 1.32, and 4.7. Claims for compensation of such individuals are governed by §§ 5.1 and 5.2. *See Guide to Judiciary Policy, §§ 320.70.10, 320.70.50.*

1.16 Use of Standardized Pleadings. The Court encourages the use of standardized templates for pleadings, particularly routine motions (such as motions to continue) that do not require legal research. Counsel should not, however, submit claims for preparing such pleadings unless new time was actually incurred.

1.17 Review of Evidence. Counsel are expected to exercise reasonable professional judgment when performing a review of the evidence produced by the prosecution. Among other things, counsel should consider mitigating expenses by utilizing paralegals or other lower-cost assistants (and, where appropriate, the client) to make the review as efficient as possible. Counsel are expected to work with the government not only to ensure that it is complying with its discovery obligations, but also to attempt to have the government identify key items of evidence in order to promote a timely and efficient review.

1.18 Substitution of Counsel. As a general rule, it is very inefficient and expensive for the Court to replace appointed counsel in response to a request to withdraw from a

representation. The Court recognizes that the representation of indigent clients often presents great challenges, and that such clients may demand new counsel on unreasonable or even irrational grounds. Nonetheless, the Court expects counsel to make every effort to maintain a working relationship with his or her clients, and to attempt reconciliation when it appears that the relationship has broken down. Claims for compensation of former and successor counsel are governed in part by § 1.51.

1.19 Writing Off Time. As with a private client, the Court expects that from time to time counsel will write off time charged to a matter, because it would be unreasonable under the circumstances to bill the time. For example, an attorney might have conducted unnecessary legal research under a mistaken assumption, or might have performed at a lower level of efficiency than normal. An attorney may advise the Court when this occurs, in order to help demonstrate the reasonableness of his or her voucher.

1.2 Tasks for Which Compensation May Not Be Claimed

1.21 Services Not Reasonably Necessary. In accordance with §§ 1.11 and 1.12, counsel may not submit claims for time incurred performing services that were not actually performed or not reasonably necessary to perform.

1.22 Training and Education. In accordance with § 1.13, counsel may not submit claims for time incurred by CJA counsel (or by a partner, associate, paralegal, or law student) to learn basic principles of federal criminal law, practice, or procedure.

1.23 Clerical Work. Counsel may not submit claims for attorney time incurred performing clerical work, even if actually performed by an attorney. Clerical work includes both work that is customarily performed by non-professional employees and work that can be capably performed by a non-attorney. Work performed by a paralegal may be claimed in accordance with §§ 1.15 and 5.1.

1.24 Services of Personal Nature. Counsel may not submit claims for time or expenses incurred performing tasks for a client of a personal nature, rather than legal representation. *See Guide to Judiciary Policy, § 230.66.20(b).* Counsel may, however, in appropriate circumstances submit claims for time or expenses incurred performing tasks relating to the conditions of confinement of a client.

1.25 Retrieving Property. Counsel may not submit claims for time incurred retrieving or holding property of the defendant, absent extraordinary circumstances. Counsel may, however, submit claims for time or expenses incurred performing tasks relating to the return of client property held by law enforcement, or in forfeiture matters when appointed to handle such matters.

1.26 Record-Keeping and Voucher Preparation. Counsel may not submit claims for time incurred in connection with record-keeping and preparation of CJA vouchers.

1.3 Legal Services for Which Advance Judicial Approval Is Required

1.31 Participation of Others at Trial or Hearing. Counsel may not submit claims for time incurred for a partner, associate, paralegal, or law student to participate in (or attend) trial or participate in (or attend) an in-court judicial proceeding, without advance approval of the Court.

1.32 Participation of Others at Client Meetings. Counsel may not submit claims for time incurred for a partner, associate, paralegal, or law student to participate in (or attend) a client meeting if the CJA counsel also attends the meeting, without advance approval of the Court.

1.33 Services of Attorney Who Is Not a Partner or Associate. Counsel may not submit claims for time incurred by an attorney who is not a partner or associate of CJA counsel, without advance approval of the Court. *See Guide to Judiciary Policy, § 230.53.10.*

1.34 Out-of-District Travel. Counsel may not submit claims for travel outside of the district, other than travel to New Hampshire, Rhode Island, Maine, Connecticut, or Vermont, or to a pretrial detention facility, without advance approval of the Court or as otherwise provided in § 2.4.

1.4 Allocation of Time Between Multiple Cases

1.41 Overlapping Time. Time spent in common on more than one case must be prorated among the cases on which the time was spent, and each case must be cross-referenced in the supporting materials to the vouchers. Time spent exclusively on any one case must properly be charged on the voucher for that case. Counsel may not submit a claim that exceeds the actual time expended. *See Guide to Judiciary Policy, § 230.50(d).*

1.42 Overlapping Expenses. While time incurred in common on more than one CJA representation must be prorated among the individual cases, the entire amount of expenses applicable to more than one CJA representation must be billed to one representation. The supporting materials to the voucher must cross-reference the other CJA representations, with an explanation of the circumstances. *See Guide to Judiciary Policy, § 230.50(f).*

1.5 Claims for Services When Counsel Is Substituted

1.51 Generally. Where there has been a substitution of counsel, and where former counsel has cooperated in the transition and has reasonably and promptly provided the benefit of his or her work product to successor counsel, the reviewing judge should normally approve the voucher of the former counsel without waiting until the conclusion of the matter, absent good cause to do otherwise. *See Guide to Judiciary Policy, § 230.56.*

2. Payment for Travel

2.1 In-District Travel Generally. Prior authorization is not required for reasonable in-district travel for meetings with a client, court appearances, or investigative purposes. Only the actual time and mileage spent traveling may be claimed. *See Guide to Judiciary Policy, § 230.60.*

2.2 Travel to Courthouse. Counsel should consider appearing by telephone for relatively short court conferences, and should, when appropriate, seek leave of Court to do so. Travel time and mileage to and from a courthouse should be computed from the attorney's office unless the actual time and mileage is less.

2.3 Travel to Detention Facility. The Court encourages frequent contact with detained clients. Counsel should nonetheless take reasonable steps to reduce costs where practicable. Among

other things, counsel should consider combining client visits in a single trip to the facility; visiting with clients when they are detained in the lockup at the courthouse; and communicating with clients by telephone. Travel time and mileage to and from a detention facility should be computed from the attorney's office unless the actual time and mileage is less.

2.4 Out-of-District Travel Generally. As set forth in § 1.34, attorneys must obtain advance authorization from the Court for compensable travel outside the district, other than travel within New England or to a pretrial detention facility. Counsel will be issued a travel authorization form and referred to the Clerk's Travel Guidelines for CJA Attorneys and Experts. The guidelines set forth the procedures for obtaining government travel rates and provide a summary of recurring allowable and non-allowable charges.

2.5 Reasonableness of Out-of-District Travel Costs. The reasonableness of out-of-district travel costs will be determined in light of prevailing limitations for travel and subsistence expenses governing federal judiciary employees. *See Guide to Judiciary Policy, § 230.63.40(c).*

2.6 Time and Mileage Claims. Claims for travel must include starting and ending destinations. Voucher reviewers will use Google Maps, or a similar on-line service, to review travel time and mileage claims. Absent any specific justification for travel time or mileage in excess of normal amounts, the voucher reviewer will reduce the claimant's voucher without further notification.

2.7 Overnight Travel. Absent authorization of the Court, compensable time for travel includes only those hours actually spent in or awaiting transit. Accordingly, if a trip necessarily and reasonably requires overnight lodging, travel time to the destination should be calculated from the attorney's office to arrival at the place of accommodation, and not beyond. Travel time from the destination should be calculated based on a return directly to the attorney's office. *See Guide to Judiciary Policy, § 230.60(b).*

2.8 Meals. Meals are not reimbursable when overnight lodging is not required.

2.9 Evidence of Payment for In-District Travel. Any claim in excess of \$25 for in-district travel, other than a claim for mileage, must be accompanied by a receipt.

2.10 Evidence of Payment for Out-of-District Travel. Any claim for out-of-district travel, other than a claim for mileage, must be accompanied by a receipt. This includes all claims for parking, tolls, taxi fares, airfare, hotels, and meals.

2.11 Allocation of Overlapping Travel Expenses. The entire amount of travel expenses applicable to more than one representation must be billed to one representation. The materials supporting the voucher on which the expenses are billed must cross-reference to the other case, with an explanation of the circumstances. *See Guide to Judiciary Policy, § 230.50(e) and (f).*

2.12 CJA Form 20. Out-of-pocket travel expenses must be claimed as an "other expense" on CJA Form 20.

3. Payment for Other Expenses

3.1 Expenses That May Be Claimed

3.11 Expenses Generally. Counsel may submit claims for reasonably necessary out-of-pocket expenses incurred in connection with a representation. *See Guide to Judiciary Policy, § 230.63.10.*

3.12 Evidence of Payment. Proof of payment is required for all itemized expenses in excess of \$50. This may include, for example, a receipt, a copy of a canceled check, or a credit card statement. An invoice alone is not sufficient.

3.13 Copying. Charges for in-house copy work is limited to \$0.10 per page or actual cost, whichever is less. The actual number of pages for any such copy work must be set forth on the expense worksheet.

3.14 Postage. Postage reimbursement is limited to the actual cost of case-related regular U.S. postage.

3.15 Expedited Delivery Service. Use of overnight or two-day delivery will be reimbursed only if reasonably necessary under the circumstances. Any such claim must be supported by an explanation of the circumstances. Expedited delivery cost for routine correspondence will not be reimbursed.

3.16 Faxes. Charges for a facsimile transmission is limited to the actual cost of any out-of-pocket charge associated with the transmission of an outgoing document. No reimbursement is allowed for receipt of a facsimile.

3.2 Expenses That May Not Be Claimed

3.21 PACER Charges. Because PACER is available free of charge to panel attorneys, counsel may not submit claims for reimbursement for PACER charges.

3.22 General Office Overhead. Counsel may not submit claims for general office overhead (for example, rent, telephone service, and secretarial expenses). *See Guide to Judiciary Policy, § 230.66.10.*

3.23 Items of Personal Nature. Counsel may not submit claims for purchasing items of a personal nature (for example, clothing, haircuts, or food) on behalf of a client. *See Guide to Judiciary Policy, § 230.66.20.*

3.24 Costs and Fees of Witnesses. Counsel may not submit claims for fees, costs, or expenses of subpoenaed witnesses. The payment of such items is governed by Fed. R. Civ. P. 17 and 28 U.S.C. § 1825. *See Guide to Judiciary Policy, § 230.66.50.*

4. Payment for Expert and Other Services

4.1 Advance Authorization Required Over \$800. Any expenditure over \$800 for

expert or other outside services must be authorized in advance by the Court. For expert services, this maximum applies to each representation, not to each service provider or type of service. *See Guide to Judiciary Policy, § 310.20.30.*

4.2 Disclosure of Total Anticipated Cost. Any request for authorization of services made to the Court must disclose the entire anticipated cost, notwithstanding the \$800 exemption. Thus, for example, if an expert's fees are expected to be \$2,000, the request must clearly state that the anticipated cost is \$2,000, not \$1,200.

4.3 Requests for *Nunc Pro Tunc* Authorization. If the cost of services for a case is anticipated to surpass the \$800 limit, an application to exceed that amount must be made in advance. Any request seeking *nunc pro tunc* authorization for services rendered will not be approved absent a finding by the Court, upon good cause shown, that timely procurement of such services could not reasonably await prior authorization.

4.4 Supplemental Requests. Counsel should make every reasonable effort to obtain a realistic up-front estimate from the expert for all fees likely to be required in connection with the engagement. In some cases, changed circumstances may require additional expenses that were not reasonably foreseeable at the outset. Nonetheless, the practice of seeking supplemental requests for expert fees, after a lower initial amount has been approved, is generally discouraged.

4.5 No Retainers. The Court cannot pay a retainer for an expert. If a fee or retainer money is required up front by an expert or other service provider, counsel must pay and then submit a voucher for reimbursement after services have been provided. Requests may be made for reimbursement prior to the conclusion of the case if the district court finds that the request is reasonable.

4.6 Presumptive Rates. The presumptive rates for expert services shall be the rates paid by the Commonwealth of Massachusetts Committee for Public Counsel Services (CPCS). Those rates are published at the CPCS website at www.publiccounsel.net. Approval to exceed the presumptive hourly rate must be obtained in advance. If a particular type of service is not listed on the CPCS fee schedule, the requested rate must be based on the market rate.

4.7 Paralegals and Law Students. Paralegals and law students are considered "outside services" subject to the \$800 limit, even when the paralegal or law student is employed by CJA counsel. *See Guide to Judiciary Policy, § 230.70.10.*

4.8 Psychiatric or Psychological Experts. Counsel should not seek to obtain the services of a psychiatrist or psychologist as a routine matter, but only where there is a genuine issue of serious mental impairment that may have a material effect on matters of criminal responsibility, sentencing, or conditions of confinement.

4.9 Sentencing Experts. Counsel should not seek to obtain the services of a sentencing expert except in extraordinary cases with highly unusual sentencing issues.

4.10 CJA Form 21. The cost of expert services must be claimed on CJA Form 21.

5. Payment for Paralegals, Law Students, and Interns

5.1 Rate of Compensation. When the use of paralegals or law students is reasonably required, the time incurred by such individuals may be claimed at a rate that is not higher than the rate customarily charged by the law firm for their services, not to exceed \$50. *See Guide to Judiciary Policy, § 320.70.50(a).*

5.2 Unpaid Law Students and Interns. Counsel may not submit claims for time incurred by law students or interns who are otherwise performing services without compensation.

5.3 CJA Form 21. The use of paralegal and law-student services must be claimed on a CJA Form 21.

6. Payment for Computer Systems/Support

6.1 Advance Authorization Required. Before seeking court approval for any computer hardware or software with a cost exceeding \$800, or for the utilization of computer systems or automation litigation support personnel or experts with an expected combined cost exceeding \$10,000, counsel must consult with the Office of Defender Services (ODS) (510-367-3500) for guidance and inform the court in writing of the ODS's advice and recommendation concerning counsel's proposed expenditure. *See Guide to Judiciary Policy, § 320.70.40(a)(2).*

6.2 Return of Equipment. Upon completion of the case, any computer hardware or software acquired with CJA funds remains the property of the United States and must be returned in good condition to a federal defender organization or office designated by ODS. *See Guide to Judiciary Policy, § 320.70.40(b)(5).*

7. Record-Keeping

7.1 Time Records Generally. Counsel must maintain contemporaneous time and attendance records daily for all work performed, including work performed by partners, associates, paralegals, and law students. *See Guide to Judiciary Policy, § 230.76.*

7.2 Time Increments. All time records must be kept in increments of one-tenth of an hour (that is, six minutes), until implementation of the electronic vouchering program. Once that program is implemented, all time records must be kept according to the actual number of minutes spent.

7.3 Description of Services Provided. The description of the services provided must be sufficiently detailed so that the reviewing judge can understand the nature of the service performed and evaluate the reasonableness of the time claimed. Broad descriptions, such as "review file" or "review evidence," should not be used.

7.31 Claims for Legal Research. Claims for legal research must state the specific issue researched, provided, however, that the description should not reveal otherwise-privileged information.

7.32 Claims for Document Review. Claims for document review must state the

specific nature of material reviewed and the volume of the materials reviewed.

7.33 Claims for Conferences with Family Members. Claims for conferences with family representatives should be limited to matters necessary to provide an effective defense, and must describe the subject of the communication.

7.4 Differentiation of Cases. All time records must allow determination of all time worked on all CJA cases in a single day.

7.5 Expense Records. Counsel must maintain complete and accurate records of all expenses for which reimbursement is claimed. *See Guide to Judiciary Policy, § 230.76.*

7.6 Audit and Maintenance of Records. Records are subject to audit and must be retained for three years after approval of a final voucher for appointment. *See Guide to Judiciary Policy, §§ 230.76, 320.90.*

8. Interim Billing

8.1 Generally. Individual judges may by written order require or permit counsel to submit interim vouchers under such circumstances and upon such terms as they deem reasonable. *See Guide to Judiciary Policy, § 230.73.10.*

8.2 Terms. When interim billing is required or permitted, counsel must submit interim vouchers no less than quarterly, unless the order of the individual judge states otherwise.

8.3 Referral to Magistrate Judge. In some circumstances, such as where the case has involved extensive discovery and pretrial practice, the magistrate judge may be in a better position to understand and evaluate an interim voucher than the district judge. Under such circumstances, it may be appropriate for the district judge to refer an interim voucher to the assigned magistrate judge for a report and recommendation.

9. Budgeting

9.1 Budgeting Generally. Any case budget required under these guidelines should be approved only after consultation with counsel and must provide sufficient resources to provide effective representation of the client under the circumstances. A district judge may refer a proposed budget to a magistrate judge for a report and recommendation. Court-approved budgets may be modified for good cause shown to reflect changed circumstances. Vouchers seeking payments for claims in excess of a court-approved budget will be approved only for good cause shown. *See Guide to Judiciary Policy, § 230.26.20.*

9.2 Discretionary Budgeting. Individual judges may by written order require case budgeting under such circumstances and upon such terms as they deem reasonable.

9.3 Budgeting in Large Cases. Case budgets are required for any representation that is reasonably likely, at the time counsel is appointed, to exceed 300 hours or \$30,000 in total claims. Proposed budgets should be provided no later than 60 days after appointment of counsel. The Court shall either approve the budget as proposed or, after consultation with counsel, approve it with such

adjustments as may be appropriate. *See Guide to Judiciary Policy, § 230.26.10.*

10. Change in Client's Ability to Pay

10.1 Generally. If, at any time after appointment, counsel obtains information that a client is financially able to afford private counsel, in whole or in part, counsel must advise the Court of that fact unless the source of the information is a privileged communication or if its disclosure would otherwise violate the attorney's ethical duty. *See Guide to Judiciary Policy, § 210.10.30.*

11. Review of Claims

11.1 Reduction or Denial of Claim. Violations of these Guidelines, or the submission of unreasonable or excessive claims, may result in reduction or denial of claims. Any such adjustments shall be made in accordance with these guidelines.

11.2 Adjustments by Clerk's Office. The Clerk's office may make technical or mathematic adjustments or reductions to claims to conform to the policies of the District Court and the Judiciary and to correct clerical errors. *See Guide to Judiciary Policy, § 230.36.*

11.3 Adjustments by Judge. The reviewing judge may adjust or reduce claims that are unreasonable or excessive, after notice to counsel submitting the claim and an opportunity to be heard, either in person, in writing, or by telephone conference, as the judge may direct. *See Guide to Judiciary Policy, § 230.36.*

11.4 Presumptive 15% Discount. Where a time entry appears to reflect work that was actually performed, but is insufficiently detailed (for example, a claim for "legal research," "prepare for court," or "draft pleading") or appears to reflect inadequate record-keeping practices (for example, a series of time entries in whole-hour increments) the Court may apply a presumptive 15% discount to the entry. The presumptive discount may be rebutted by the attorney by a showing that the entry was in fact accurate and proper.

11.5 Annual Review. The Court will conduct an annual review of attorneys who have claimed compensation of more than 1,000 hours in the preceding fiscal year. *See Guide to Judiciary Policy, § 230.80.* The Court will also conduct periodic reviews to ascertain whether any panel attorneys have unusually high billing practices compared to other panel attorneys in comparable cases.

11.6 Audits. An attorney may be required to perform a self-audit or submit to an independent audit for the Court.

12. Violation of Guidelines

12.1 Generally. Recurring or serious violations of these Guidelines may result, among other things, in suspension or removal from the CJA Panel.

13. Compliance with Other Requirements

13.1 Generally. In addition to these Guidelines, each CJA attorney must also comply

with the *Guidelines for Administering the CJA and Related Statutes* and any applicable local rules and court orders.