

United States Court of Appeals - Tenth Circuit

CRIMINAL JUSTICE ACT

CLAIMS FOR HOURLY COMPENSATION AND EXPENSE REIMBURSEMENT

DEATH PENALTY MATTERS

21 U.S.C. § 8489(q)

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ADVICE TO COUNSEL  
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# United States Court of Appeals - Tenth Circuit

## CRIMINAL JUSTICE ACT

### CLAIMS FOR HOURLY COMPENSATION AND EXPENSE REIMBURSEMENT

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#### ADVICE TO COUNSEL

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#### **I. General Statutory Provisions and Procedures**

As a general matter, counsel appointed under the Criminal Justice Act may be compensated for time “reasonably expended” and expenses “reasonably incurred.” 18 U.S.C. § 3006A(d)(1). In capital cases, the statutory authority for appointment derives from 21 U.S.C. § 848(q). For work after May 20, 2007, hourly compensation in both direct capital appeals and post-conviction capital cases may be set up to \$166 per hour. *See* § 848(q)(10)(A).

Upon receipt of an appeal involving imposition of a death sentence, the court will issue an ex parte case management order setting a date and time to discuss issues related to appointment and payment of counsel. In that case management order, the court will direct counsel to prepare a proposed litigation budget for submission to the court. **The proposed budget must be submitted at least 14 days prior to the conference. Please use the proposed budget form found at the CJA Forms and Links portion of the court’s website (<http://www.ca10.uscourts.gov>).** At the time the proposed budget is filed, counsel may also submit any requests for interim payment and motions to set rates of pay. Following the conference, the Chief Judge or her designee will review, modify where necessary, and approve, the proposed budget.

Counsel is encouraged to visit the CJA link on the court’s website (<http://www.ca10.uscourts.gov>) to review current rates, forms, and general information.

#### **II. When to File**

Counsel may request interim payments. *Counsel should note, however, that the court will retain 25% of all approved interim fee payments subject to reapplication at the conclusion of the appeal. After final disposition of the case, the claim for retainage must be reported in Block No. 17 (Other Expenses) of the final CJA 30 form. The panel rendering the decision will consider release of retained amounts.* The final CJA 30 voucher should be submitted after any petition for certiorari is filed.

### **III. What to File with CJA 30 Form**

#### **A. Documents**

If the following pleadings filed in the appeal by CJA appointed counsel are *not* available on PACER, a paper copy of each (without attachments) *must* be submitted with any CJA 30 voucher request: any brief, dispositive motion or response, motion for release, petition for rehearing and/or certiorari.

#### **B. Compensation Worksheets**

Attorney time must be documented on the attached “In-Court” and “Out-of-Court” worksheets, or on a substantially similar form. Time must be broken down according to date (in chronological order), description of services, amount of time in hours and tenths of an hour, and according to the categories established for payment on the CJA 30 voucher. If billing records are not reported in tenths of an hour, the court will round down the total hours claimed.

Use of the enclosed worksheets facilitates the court’s review of counsel’s request for compensation, but billing records may be submitted in place of the worksheet so long as they are in chronological order, all hours claimed are assigned to one of the ten CJA 30 voucher categories, and the totals for each category are listed on the face of the voucher.

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

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

#### **C. Expense Worksheets**

Expenses must be documented on the attached expense worksheets, or on a substantially similar form. With certain exceptions (e.g. room service meals, CALR, commercial copying), counsel must provide documentation to support claims for reimbursement, such as itemized bills, receipts, or invoices, only for single item expenses that exceed \$50.00. 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 V and VI below for further instructions and information. Expenses not properly documented may be disallowed in their entirety.

### **IV. Claims for Hourly Compensation - General Rules**

#### **A. Partners and Associates**

With prior court authorization and provided that the employment of such additional counsel (at a reduced hourly rate) diminishes the total cost of

representation or is required to meet time limits, compensation may be claimed for services provided by a partner or associate in appointed counsel's law firm. 18 U.S.C. § 3006A, § 6.01. The tasks to be completed by such personnel should be described in the proposed litigation budget. However, extra tasks or other work inefficiencies resulting from such division of labor (e.g. attorney conferencing) is not compensable. The compensation worksheets must separately identify the provider of each service.

#### **B. Withdrawal of Counsel**

An attorney appointed to represent a defendant in the lower court may continue representation on appeal. After ordering the transcript(s), and filing the docketing statement and designation of record for the appeal, an attorney who does not desire to continue representation must file a motion to withdraw with the clerk of this court in accordance with 10th Cir. R. 46.4. Failure to comply with this rule will result in denial of the motion.

#### **C. Time Spent on Matters Unrelated to Appeal**

Time spent on matters unrelated to appellate representation, even if incidental to arrest or incarceration, is not compensable.

#### **D. Travel Time**

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

#### **E. 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 as applicable to the case before the United States Court of Appeals, and should be included on the voucher for services performed in that court.

#### **F. District Court Work**

Claims for work done incidental to representation in district court (even if on remand), including time spent preparing the Notice of Appeal, may not be included on an appellate voucher.

## **G. Voucher Preparation**

Time spent preparing the voucher is not compensable.

## **V. Reimbursement of Travel Expenses - General Rules**

### **A. Reporting Travel Expenses on Voucher**

Claims for travel expenses must be itemized and reported in Block 16 of the CJA 30 voucher.

### **B. Supporting Documentation for General Travel Expenses**

Single item travel expenses that exceed \$50.00 (surface transportation, lodging, mileage, parking, tolls, etc.) must be supported by itemized receipts; credit cards slips and credit card statements may not be sufficient because they do not include details that allow approval of the expense as reasonable and reimbursable. Expenses not properly documented may be disallowed in their entirety.

### **C. Determination of Reasonable Expenses**

Reimbursement is limited to reasonable, actual expenditures. To determine whether expenses are reasonable, counsel should be guided by limitations on travel expenses applicable to federal judiciary employees, contained on the attached *Criminal Justice Act Payment Rates*, page 10. Rate updates are available at GSA website, <http://www.gsa.gov>.

### **D. 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 Criminal Justice Act. For this reason, itemized hotel bills should be submitted; credit card receipts and statements typically do not provide sufficient detail to ensure that reimbursement is not sought for non-reimbursable expenses.

### **E. 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 Criminal Justice Act. If counsel seeks reimbursement for a meal at the hotel restaurant or for an room service meal, counsel should provide an itemized receipt; hotel statements do not include sufficient detail to ensure that reimbursement is not sought for non-reimbursable expenses. Similarly, itemized restaurant receipts should be submitted; credit card receipts and statements typically do not provide

sufficient detail to facilitate approval of the request as reasonable and reimbursable.

#### **F. Air and Lodging Reservations**

Air travel should be arranged through either Omega World Travel or Travel Company of Montana, Inc. (Travco). Toll-free reservations can be made through Omega by calling 1-866-450-0401, Monday through Friday from 7:00 a.m. to 9:00 p.m., Eastern Standard Time. Toll-free reservations can be made through Travco by calling 1-877-890-5474, Monday through Friday from 8:30 a.m. to 8:00 p.m., Eastern Standard Time. Government rates should be obtained for both transportation and lodging. All reservations needed (airfare, hotel) should be made at the same time and any itinerary changes must be made through the same company. Copies of the travel authorization issued by this court, travel itinerary, and passenger receipt should be attached to the CJA 30 voucher. Reimbursement for travel not made through Omega or Travco will be limited to the government rates.

#### **G. Travel by Private Automobile**

Automobile mileage is reimbursable at the rate prescribed for federal judiciary employees conducting official business. *See* rate sheet page 10. Claims should be supported by a statement showing the date, distance, origin and destination of travel. If travel is by automobile, the total mileage expense shall not exceed the airfare authorized by Omega and Travco for coach accommodation, except in an emergency, or other unusual circumstances.

#### **H. Hotel Telephone & Internet**

Hotel telephone charges will be reimbursed up to \$5.00 per day. Hotel internet charges will be reimbursed up to \$10.00 per day. If any additional charges are sought, to receive reimbursement counsel must submit a brief statement of how the charge is incidental to representational duties.

#### **I. Non-Reimbursable Expenses**

Personal items (alcoholic beverages, in-room movies, etc.) are not reimbursable.

### **VI. Reimbursement of Other Expenses - General Rules**

#### **A. Reporting Other Expenses on Voucher**

Claims for non-travel expenses must be itemized and reported in Block 17 of the CJA 30 voucher.

## **B. Supporting Documentation for Other Expenses**

Counsel must provide expense documentation to support claims for reimbursement, such as itemized bills, receipts, or invoices, for single item expense charges that exceed \$50.00. Credit card slips and credit card statements typically do not provide sufficient detail to permit reimbursement. Expenses not properly documented may be disallowed in their entirety.

## **C. Copying**

In-house copying is limited to actual costs, at no more than 20¢ per page. If a higher rate is sought, counsel must submit a brief statement showing why the rate is justified. In-house copy logs or other information (identifying what was copied, how many copies were made and the rate) must be submitted for single event charges that exceed \$50.00 (e.g., copying the principal brief). Claims for commercial copying services must be supported by an itemized invoice; credit cards slips and statements typically do not provide sufficient detail to permit approval of the expense as reasonable and reimbursable. Commercial charges for preparing 40 copies in booklet format of a petition for certiorari will not be reimbursed as such preparation 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 Telephone Calls**

Itemized statements must be submitted to support claims for long-distance telephone calls that exceed \$50.00 per appeal. The supporting documentation must contain the date, cost, and recipient of each call.

## **E. Facsimile Transmissions**

In-house facsimile logs must be submitted in support of claims for reimbursement of fax charges that exceed \$50.00 per appeal. Claims for facsimiles transmitted at a commercial establishment must be supported by an itemized receipt. Costs in excess of \$1.00 per page will not be reimbursed.

## **F. Postage/Expedited Mail/Courier**

Single item expenses that exceed \$50.00 (postage, expedited mail and courier) must be supported by itemized receipts. The supporting documentation must be an itemized receipt including the date, nature of service, and cost. Expedited mail and courier charges are disfavored other than to confirm delivery of the principal brief (or answer brief, if defendant is the appellant). The use of expedited mail or courier services for other filings may be reimbursed if counsel adequately explains the need for such services and provides proper supporting documentation.

### **G. Legal Research by Law Student, Law Clerk, Paralegal**

Claims for the actual cost of legal research by a qualified law student, law clerk, legal assistant, or paralegal, must be itemized. The task to be completed by such personnel should be described in the proposed litigation budget. Time must be broken down according to date (in chronological order), description of services, amount of time in hours and tenths of an hour, and according to the categories established for payment on the CJA 30 voucher. If billing records are not reported in tenths of an hour, the court will round down the total hours claimed. Time expended by these individuals is claimed as an expense on Line 17 of the CJA 30 voucher (other expenses), not as attorney time. Counsel must also submit a brief statement of the need for an subject matter of the research, an estimate of the cost of attorney time that would have been required to do the research, and the usual hourly rate of such personnel.

### **H. Computer Assisted Legal Research**

Whenever appointed counsel incurs charges for computer-assisted legal research, counsel should attach to the CJA 30 voucher a copy of the itemized bill from the use of the legal research services or an explanation of the precise basis of the charge. If the amount claimed is in excess of the approved budget, counsel should include a brief statement of justification.

### **I. General Office Overhead**

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.

### **J. Expenses of Personal Nature for Individual Representing**

The cost of items of a personal nature purchased for or on behalf of the person represented is not reimbursable.

### **K. Expenses Unrelated to Appeal**

Expenses unrelated to appellate representation, even if incidental to arrest or incarceration, are not reimbursable. Expenses related to the filing of the Notice of Appeal in the district court may not be included on an appellate voucher.

## **L. Interpreter Services**

Prior authorization from the presiding judicial officer must be secured for all interpreter services where the cost will exceed \$500. Prior authorization is sought by filing a motion including an estimation of the costs and a statement why the expense is reasonable and necessary. Failure to obtain prior authorization may result in the disallowance of any amount claimed in excess of \$500, unless the court finds that, in the interest of justice, timely procurement of necessary services could not await prior authorization. 18 U.S.C. § 3006(e)(3).

## **M. Filing Fees**

Filing fees are not reimbursable. This includes filing fees related to a petition for certiorari as 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).

## **N. Transcript Fees**

The cost of court-authorized transcripts should be claimed by the court reporter or reporting service on a CJA 24 form; if counsel has elected to pay for these, counsel should likewise seek reimbursement on a CJA 24 form, not a CJA 30 form.

# **VII. General Information**

## **A. Public Disclosure**

CJA 30 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 defendant's counsel; (5) the safety of any person; or (6) any other interest that justice may require. If counsel wishes to request redaction or non-disclosure of any portion of the voucher based upon one of these interests, counsel should seek such relief by motion at the time the CJA 30 voucher is filed. Absent such a motion, the face of the voucher will be made available to the public upon request.

## **B. Panel Attorney Data Form**

Counsel is required to submit a Panel Attorney Data (PAD) Form CJA 5 with each voucher request. Every form must be completed with contact information for appointed counsel, including e-mail address.

If the earnings for the representation on appeal belong to the attorney individually, then the PAD Form is completed by entering the attorney's social security number and leaving blank the lines for the law firm or corporation and

its Employer Identification Number (EIN). Earnings will then be reported to the IRS on a 1099 Statement as earnings of the appointed attorney individually.

If prior to appointment, the attorney appointed had a pre-existing agreement with a law firm or corporation, including a professional corporation, under which the earnings for this appeal belong to the law firm or corporation, rather than to counsel individually, then the PAD form is completed by inserting the name, address and EIN of that law firm or corporation. Earnings will then be reported IRS on a 1099 Statement as earnings of the law firm or corporation and not as earnings of the individual attorney. However, the attorney's individual social security number must still be entered on the PAD Form.

### **C. Additional Resources**

Counsel is encouraged to visit the CJA Forms & Links portion of the court's website (<http://www.ca10.uscourts.gov>) to review current rates, forms, and general information. Please also review the *Guide to Judiciary Policies and Procedures* available at <http://www.uscourts.gov/defenderservices/index.html>. Finally, you may find the following websites provide substantial assistance: The Defender Services Division Training Branch website at <http://www.uscourts.gov/defenderservices/mission.html>, and the Federal Public Defenders' website, <http://www.fd.org>.

### **D. Contacts**

If there are questions, counsel is encouraged to contact the court's CJA staff before submitting a CJA 30 voucher to the clerk; by telephone as set out below or by e-mail at [CJA\\_Vouchers@ca10.uscourts.gov](mailto:CJA_Vouchers@ca10.uscourts.gov):

CJA Supervising Attorney  
303.335.2846

CJA Case Analyst  
303.844.5306

## **VIII. Note to Counsel**

This letter addresses only subjects of repeated error or frequent inquiry and is not inclusive. Questions regarding the completion of vouchers are welcome.

*Source: Guide to Judiciary Policies and Procedures, Volume VII, Chapter VI, §§ 6.01-6.03.*

## CRIMINAL JUSTICE ACT PAYMENT RATES

### HOURLY RATES

<u>Professional Services Delivered</u>		<u>Hourly Rate</u>
Before February 1, 2005	In-Court & Out-of-Court	\$125.00/hr.
February 1, 2005 through December 31, 2005	In-Court & Out-of-Court	\$160.00/hr.
After January 1, 2006	In-Court & Out-of-Court	\$163.00/hr.
After May 20, 2007	In-Court & Out-of-Court	\$166.00/hr.

### MILEAGE (Travel Expenses Incurred)

<u>Mileage</u>	<u>2004</u>	<u>2005</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
(privately owned vehicle)	(1/1/04 & after) \$.37.5/mile	(2/4/05 & after) \$.40.5/mile	(9/1/05 & after) \$.48.5/mile	(1/1/07 & after) \$.44.5/mile	(1/1/07 & after) \$.48.5/mile

### SUBSISTENCE (Lodging & Meals)

Counsel should be guided by prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees with existing government travel regulations. For per diem allowance *see* GSA website, <http://www.gsa.gov>.



**United States Court of Appeals  
for the Tenth Circuit**

Case No. \_\_\_\_\_

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

**Court-Appointed Counsel Worksheets (CJA 30)**

**Travel Expenses**

<u>Date</u>	<u>Brief Explanation of Expenses</u> (Travel expenses exceeding \$50, and meals, must be supported with itemized receipts; credit card receipts and credit card statements often are not sufficient documentation.)	Lodging <sup>1</sup>	Meals	Parking	Transportation	Other Travel Expenses
<b>PAGE TOTAL:</b>						

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<sup>1</sup> Customarily, CJA counsel is allowed one night of lodging, unless good cause is shown why a second night was necessary.

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Case No. \_\_\_\_\_  
Case Name: \_\_\_\_\_

Court-Appointed Counsel Worksheets (CJA 30)

**Other Expenses**

<u>Date</u>	<u>Brief Explanation of Expenses</u> (Other expenses exceeding \$50 must be supported with itemized receipts; credit card receipts and credit card statements often are not sufficient documentation.)	<b>In-House Copies</b> (20¢/copy max.)	<b>Commercial Copying</b>	<b>Postage</b>	<b>Telephone</b>	<b>Other Expenses</b>
<b>PAGE TOTAL:</b>						