

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

**CRIMINAL JUSTICE ACT (CJA)  
ATTORNEY HANDBOOK**  
*non-capital appeals*

**For more information contact:**

CJA Supervising Attorney  
303.335.2846 (phone)  
CJA Case Analyst  
303.844.5306 (phone)  
303.844.3733 (fax)

**September 19, 2007**

## **INTRODUCTION**

This handbook has been prepared to assist you in handling the cases you accept under the Criminal Justice Act (CJA). Appointments under the CJA are intended to protect the rights of the indigent accused, and, in that spirit, counsel undertakes an important public service. The court understands the burdens of CJA counsel and appreciates your good work.

When researching procedures under the CJA, the primary resources are:

1. The Criminal Justice Act, 18 U.S.C. § 3006A;
2. Guide to Judiciary Policies and Procedures, Vol. VII, Sect. A, *Guidelines for the Administration of the Criminal Justice Act* (the *Guidelines*) available online at: <http://www.uscourts.gov/defenderservices/index.html>
3. The Tenth Circuit's Criminal Justice Act Plan, Addendum I, pp. 183-188, to the Local Rules, available at: [http://www.ck10.uscourts.gov/downloads/2007\\_Rules.pdf](http://www.ck10.uscourts.gov/downloads/2007_Rules.pdf) and,
4. The Tenth Circuit *Advice to CJA Counsel* letter, online at <http://www.ck10.uscourts.gov/clerk/showcja.php>

CJA Forms and the associated instructions are online at [http://www.uscourts.gov/defenderservices/Guide/criminal\\_justiceact.html](http://www.uscourts.gov/defenderservices/Guide/criminal_justiceact.html)

You are always welcome to contact the Court's CJA staff to answer any questions. Again, thank you.

*United States Court of Appeals  
for the Tenth Circuit*

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## CONTACTS

**CJA QUESTIONS:** If there are questions regarding Criminal Justice Act (CJA) vouchers or procedures, counsel is encouraged to contact the court's CJA staff by telephone as set out below or by e-mail at [CJA\\_Vouchers@ca10.uscourts.gov](mailto:CJA_Vouchers@ca10.uscourts.gov):

SueAnn Fitch	or:	
CJA Supervising Attorney		CJA Case Analyst
303.335.2846 (phone)		303.844.5306 (phone)
303.844.3733 (fax)		303.844.3733 (fax)

**CJA VOUCHERS:** Submit CJA vouchers to:

Clerk of Court  
U.S. Court of Appeals for the Tenth Circuit  
1823 Stout Street  
Denver, CO 80257

(E-submission of CJA vouchers not accepted as of 9/19/07)

**E-FILING QUESTIONS:** See 10th Cir. General Order, at <http://www.ck10.uscourts.gov/downloads/generalorder-efile.pdf> or pages 23-26 of this CJA Attorney Handbook. E-filings should be submitted to: [esubmission@ca10.uscourts.gov](mailto:esubmission@ca10.uscourts.gov)

**PACER QUESTIONS:** PACER personnel can be reached at 800.676.6856 or [pacer@psc.uscourts.gov](mailto:pacer@psc.uscourts.gov)

**OTHER QUESTIONS:** Questions regarding local rules and procedures, or other non-CJA questions should be directed to the Clerk of Court at 303.844.3157 or more specifically to:

Team 1 (Oklahoma & Agency cases): 303-335-2729  
Team 2 (Colorado & New Mexico cases): 303-335-2727  
Team 3 (Kansas, Wyoming, Utah & Tax cases): 303-335-2728

The link <http://www.ck10.uscourts.gov/contactus.php?id=2> will also assist you to contact the Clerk's office.

## CONTACTS (cont.)

### Federal Public Defenders of the Tenth Circuit

Federal Public Defender for the Districts of **COLORADO & WYOMING:**

*Ask for an "appellate attorney" when you call:*  
633 17<sup>th</sup> Street, Suite 1000  
Denver, Colorado 80202  
Phone: 303.294.7002 Fax: 303.294.1192

Federal Public Defender for the District of **KANSAS:**

*Ask for FPD Dave Phillips or any other attorney at:*  
201 Dole US Courthouse, 500 State Avenue,  
Kansas City, KS 66101  
Phone: 913.551.6712 Fax: 913.551.6562  
205 US Post Office & Courthouse, 424 S. Kansas Avenue  
Topeka, KS 66603  
Ph: 785.232.9828 Fax: 785.232.9886  
8850 Epic Center, 301 North Main Street  
Wichita, KS 67202-4800  
Phone: 316.269.6445 Fax: 316.269.6175

Federal Public Defender for the District of **NEW MEXICO:**

*Ask for FPD Steve McCue or any other attorney at:*  
111 Lomas Blvd, NW., Suite 501  
Albuquerque, NM 87102  
Phone: 505.346.2489 Fax: 505.346.2494  
500 S. Main Street, Suite 600  
Las Cruces, NM 88800  
Phone: 505.527.6930 Fax: 505.527.6933

Federal Public Defender for the District of **WESTERN OKLAHOMA:**

109 Old Post Office Building, 215 Dean A. McGee Avenue  
Oklahoma City, OK 73102  
Phone: 405.609.5930 Fax: 405.609.5932

Federal Public Defender for **EASTERN & NORTHERN OKLAHOMA:**

One West 3<sup>rd</sup> St., Williams Center, Tower One, Suite 1225  
Tulsa, OK 74103  
Phone: 918.581.7656 Fax: 918.581.7630

Federal Public Defender for the District of **UTAH:**

*Ask for appellate attorney Scott\_Wilson@fd.org*  
46 W. Broadway, American Towers, Suite 110  
Salt Lake City, UT 84101-2028  
Phone: 801.524.4010 Fax: 801.524.4023

# **THE CRIMINAL JUSTICE ACT**

## **18 U.S.C. § 3006A**

### **Adequate representation of defendants**

*(Emphasis added)*

**(A) CHOICE OF PLAN.**--Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation in accordance with this section. **Representation under each plan shall include counsel and investigative, expert, and other services necessary for adequate representation.** Each plan shall provide the following:

**(1) Representation shall be provided for any financially eligible person who--**

- (A) is charged with a felony or with a Class A misdemeanor;
- (B) is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of this title;
- (C) is charged with a violation of probation;
- (D) is under arrest, when such representation is required by law;
- (E) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
- (F) is subject to a mental condition hearing under chapter 313 of this title;
- (G) is in custody as a material witness;
- (H) is entitled to appointment of counsel under the sixth amendment to the Constitution;
- (I) faces loss of liberty in a case, and Federal law requires the appointment of counsel; or
- (J) is entitled to the appointment of counsel under Section 4109 of this title.

(2) Whenever the United States magistrate judge or the court determines that the interests of justice so require, **representation may be provided for any financially eligible person who--**

- (A) is charged with a Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized; or
- (B) is seeking relief under section 2241, 2254, or 2255 of title 28.

(3) Private attorneys shall be appointed in a substantial proportion of the cases. Each plan may include, in addition to the provisions for private attorneys, either of the following or both:

- (A) Attorneys furnished by a bar association or a legal aid agency.

(B) Attorneys furnished by a defender organization established in accordance with the provisions of subsection (g).

Prior to approving the plan for a district, the judicial council of the circuit shall supplement the plan with provisions for representation on appeal. The district court may modify the plan at any time with the approval of the judicial council of the circuit. It shall modify the plan when directed by the judicial council of the circuit. The district court shall notify the Administrative Office of the United States Courts of any modification of its plan.

**(B) APPOINTMENT OF COUNSEL.**--Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan. In every case in which a person entitled to representation under a plan approved under subsection (a) appears without counsel, the United States magistrate judge or the court shall advise the person that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the person waives representation by counsel, the United States magistrate judge or the court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The United States magistrate judge or the court shall appoint separate counsel for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

**(C) DURATION AND SUBSTITUTION OF APPOINTMENTS.**--A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate judge or the court through appeal, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the United States magistrate judge or the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the United States magistrate judge or the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The United States magistrate judge or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

**(D) PAYMENT FOR REPRESENTATION.--**

**(1) Hourly rate.--**Any attorney appointed pursuant to this section or a bar association or legal aid agency or community defender organization which has provided the appointed attorney shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding \$60 per hour for time expended in court or before a United States magistrate judge and \$40 per hour for time reasonably expended out of court, unless the Judicial Conference determines that a higher rate of not in excess of \$75 per hour is justified for a circuit or for particular districts within a circuit, for time expended in court or before a United States magistrate judge and for time expended out of court. The Judicial Conference shall develop guidelines for determining the maximum hourly rates for each circuit in accordance with the preceding sentence, with variations by district, where appropriate, taking into account such factors as the minimum range of the prevailing hourly rates for qualified attorneys in the district in which the representation is provided and the recommendations of the judicial councils of the circuits. Not less than 3 years after the effective date of the Criminal Justice Act Revision of 1986, the Judicial Conference is authorized to raise the maximum hourly rates specified in this paragraph up to the aggregate of the overall average percentages of the adjustments in the rates of pay under the General Schedule made pursuant to section 5305 of title 5 on or after such effective date. After the rates are raised under the preceding sentence, such maximum hourly rates may be raised at intervals of not less than 1 year each, up to the aggregate of the overall average percentages of such adjustments made since the last raise was made under this paragraph. **Attorneys may be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate judge or the court, and the costs of defending actions alleging malpractice of counsel in furnishing representational services under this section. No reimbursement for expenses in defending against malpractice claims shall be made if a judgment of malpractice is rendered against the counsel furnishing representational services under this section.** The United States magistrate judge or the court shall make determinations relating to reimbursement of expenses under this paragraph.

**(2) Maximum amounts.--**For representation of a defendant before the United States magistrate judge or the district court, or both, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed \$7,000 for each attorney in a case in which one or more felonies are charged, and \$2,000 for each attorney in a case in which only misdemeanors are charged. **For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed \$5,000**

**for each attorney in each court.** For representation of a petitioner in a non-capital habeas corpus proceeding, the compensation for each attorney shall not exceed the amount applicable to a felony in this paragraph for representation of a defendant before a judicial officer of the district court. **For representation of such a petitioner in an appellate court, the compensation for each attorney shall not exceed the amount applicable for representation of a defendant in an appellate court.** For representation of an offender before the United States Parole Commission in a proceeding under section 4106A of this title, the compensation shall not exceed \$1,500 for each attorney in each proceeding; **for representation of an offender in an appeal from a determination of such Commission under such section the compensation shall not exceed \$5,000 for each attorney in each court.** For any other representation required or authorized by this section, the compensation shall not exceed \$1,500 for each attorney in each proceeding.

**(3) Waiving maximum amounts.--**Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for **extended or complex** representation whenever the court in which the representation was rendered, or the United States magistrate judge if the representation was furnished exclusively before him, certifies that the amount of the **excess payment is necessary to provide fair compensation** and the payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active circuit judge.

**(4) Disclosure of fees.—**

(A) In general. --Subject to subparagraphs (B) through (E), the amounts paid under this subsection for services in any case shall be made available to the public by the court upon the court's approval of the payment.

(B) Pre-trial or trial in progress. -- If a trial is in pre-trial status or still in progress and after considering the defendant's interests as set forth in subparagraph (D), the court shall—

(i) redact any detailed information on the payment voucher provided by defense counsel to justify the expenses to the court; and

(ii) make public only the amounts approved for payment to defense counsel by dividing those amounts into the following categories:

(I) Arraignment and or plea.

- (II) Bail and detention hearings.
- (III) Motions.
- (IV) Hearings.
- (V) Interviews and conferences.
- (VI) Obtaining and reviewing records.
- (VII) Legal research and brief writing.
- (VIII) Travel time.
- (IX) Investigative work.
- (X) Experts.
- (XI) Trial and appeals.
- (XII) Other.

(C) Trial completed. --

(I) In general. -- If a request for payment is not submitted until after the completion of the trial and subject to consideration of the defendant's interests as set forth in subparagraph (D), the court shall make available to the public an unredacted copy of the expense voucher.

(ii) Protection of the rights of the defendant. -- If the court determines that the defendant's interests as set forth in subparagraph (D) require a limited disclosure, the court shall disclose amounts as provided in subparagraph (B).

(D) Considerations. -- The interests referred to in subparagraphs (B) and (C) are—

- (i) to protect any person's 5th amendment right against self-incrimination;
- (ii) to protect the defendant's 6th amendment rights to effective assistance of counsel;
- (iii) the defendant's attorney-client privilege;
- (iv) the work product privilege of the defendant's counsel;
- (v) the safety of any person; and
- (vi) any other interest that justice may require, except that the amount of the fees shall not be considered a reason justifying any limited disclosure under section 3006A(d)(4) of title 18, United States Code.

(E) Notice. -- The court shall provide reasonable notice of disclosure to the counsel of the defendant prior to the approval of the payments in order to allow the counsel to request redaction based on the considerations set forth in subparagraph (D). Upon completion of the trial, the court shall release unredacted copies of the vouchers provided by defense counsel to justify the expenses to the court. If there is an appeal, the court shall not release unredacted copies of the vouchers provided by defense counsel to justify the expenses to the court until such time as the appeals process is completed, unless the

court determines that none of the defendant's interests set forth in subparagraph (D) will be compromised.

(F) Effective date. -- The amendment made by paragraph (4) shall become effective 60 days after enactment of this Act, will apply only to cases filed on or after the effective date, and shall be in effect for no longer than 24 months after the effective date.

**(5) Filing claims.--A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States magistrate judge and the court, and to each appellate court** before which the attorney provided representation to the person involved. **Each claim shall be supported by a sworn written statement** specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States magistrate judge and the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney or to the bar association or legal aid agency or community defender organization which provided the appointed attorney. In cases where representation is furnished exclusively before a United States magistrate judge, the claim shall be submitted to him and he shall fix the compensation and reimbursement to be paid. In cases where representation is furnished other than before the United States magistrate judge, the district court, or an appellate court, claims shall be submitted to the district court which shall fix the compensation and reimbursement to be paid.

**(6) New trials.--**For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

**(7) Proceedings before appellate courts.--**If a person for whom counsel is appointed under this section appeals to an appellate court or petitions for a writ of certiorari, he may do so without prepayment of fees and costs or security therefore and without filing the affidavit required by section 1915(a) of title 28.

**(E) SERVICES OTHER THAN COUNSEL.--**

**(1) Upon request.--**Counsel for a person who is financially unable to obtain investigative, expert, or other services **necessary for adequate representation** may request them in an **ex parte** application. Upon finding, after appropriate inquiry in an **ex parte** proceeding, that the services are **necessary** and that the person is financially unable to obtain them, the court, or the United States magistrate judge if the services are required in connection with a matter over which he has jurisdiction, shall authorize counsel to obtain the services.

**(2) Without prior request.--**

(A) Counsel appointed under this section may obtain, subject to later review, investigative, expert, and other services without prior authorization if necessary for adequate representation. Except as provided in subparagraph (B) of this paragraph, **the total cost of services obtained without prior authorization may not exceed \$500** and expenses reasonably incurred.

(B) The court, or the United States magistrate judge (if the services were rendered in a case disposed of entirely before the United States magistrate judge), may, **in the interest of justice, and upon the finding that timely procurement of necessary services could not await prior authorization, approve payment for such services after they have been obtained, even if the cost of such services exceeds \$500.**

**(3) Maximum amounts.--**Compensation to be paid to a person for services rendered by him to a person under this subsection, or to be paid to an organization for services rendered by an employee thereof, **shall not exceed \$1,600**, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, or by the United States magistrate judge if the services were rendered in connection with a case disposed of entirely before him, as **necessary to provide fair compensation for services of an unusual character or duration**, and the amount of the excess payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active circuit judge.

**(4) Disclosure of fees.--**The amounts paid under this subsection for services in any case shall be made available to the public.

**(F) RECEIPT OF OTHER PAYMENTS.--**Whenever the United States magistrate judge or the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency or community defender organization which provided the appointed attorney, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

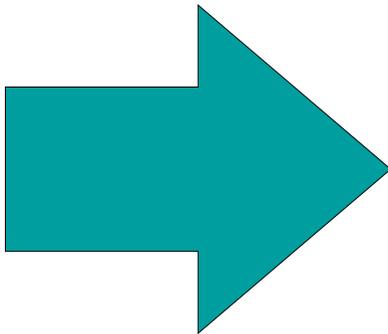
**The Guide to  
Judiciary Policies and  
Procedures, Vol. VII,  
Sect. A, *Guidelines for  
the Administration of  
the Criminal Justice  
Act* (“*Guidelines*”),  
can be found online at:**

<http://www.uscourts.gov/defenderservices/index.html>

# Selected Local Rules

You may download the 2007 rules at:

[http://www.ck10.uscourts.gov/downloads/2007\\_Rules.pdf](http://www.ck10.uscourts.gov/downloads/2007_Rules.pdf)



## **10th Circuit Rule 27.2** **Motions to Enforce Plea Agreements**

27.2 Summary disposition on motion by a party or the court.

**(A) Motions to dismiss or affirm.**

(1) **Types.** A party may file only the following dispositive motions: . . .

(d) **a motion by the government to enforce an appeal waiver.** (*Emphasis added*)

**(2) Contents.**

(a) The motion must discuss the grounds for the motion.

(b) A motion under (A)(1)(d) must include copies of the plea agreement and copies of transcripts for both the plea hearing and the sentencing hearing.

**(3) Time to file.**

(a) A motion under (A)(1)(a) through (c) should be filed within 15 days after the notice of appeal is filed, unless good cause is shown.

(b) A motion under (A)(1)(d) must be filed within 20 days after:

(i) the district court's notice, pursuant to 10th Cir. R. 11.1, that the record is complete, or;

(ii) the district court's notice that it is transmitting the record pursuant to 10th Cir. R. 11.2.

Failure to file a timely motion to enforce a plea agreement does not preclude a party from raising the issue in a merits brief.

**(4) Time to respond.** If a party chooses to respond to a motion, the response must be filed within 10 days after the motion is served.

**(5) Number of copies.** An original and 7 copies of the motion or response are required unless the pleading is submitted per the court's [General Order regarding E-Submission].

**WARNING: THIS IS THE TEXT OF THE PROPOSED  
2008 RULE. THE PUBLIC COMMENT PERIOD  
CLOSES 10/10/07. CHECK THE COURT'S WEBSITE  
TO CONFIRM THE ACTUAL, CURRENT TEXT.**

**10th Circuit Rule 27.3(C)**  
**Duty to Confer & Report**  
**Opposing Party's Position**

27.3 Clerk authorized to act on certain motions; required recitation.

(A) **Motions**. Subject to review by the court, the clerk is authorized to act for the court on any of the following motions:

- (1) to extend time to file a pleading or perform an act required by Fed. R. App. P. 10, 11, 12, 13(d), 17, 24, 27, 29, 30, 31, 39, or 40, or by Rule 3, 10, 11, 14, 15, 17, 20, 24, 27, 30, 31, 40, or 46;
- (2) to correct a brief or pleading;
- (3) to supplement or correct records or to incorporate records from previous appeals;
- (4) to consolidate appeals;
- (5) to substitute parties;
- (6) to appear as amicus curiae;
- (7) to expedite or continue cases;
- (8) to withdraw or substitute counsel in a civil case or, after compliance with Rule 46.4, in a criminal case;
- (9) by appellant to dismiss an appeal (in criminal and postconviction cases, see Rule 46.3(B)), or a stipulation for dismissal, with or without an agreement on payment of costs (if an appeal is dismissed, the clerk may issue a certified copy of the dismissal order as the mandate);
- (10) for extension of time to file a petition for rehearing, limited to one extension of 15 days or less;
- (11) a motion under Rule 30.2 or 30.3; or
- (12) any other motion the court may authorize.

(B) **Opposed motions**. If any motion listed in (A) is opposed, the clerk will submit the matter to the court.

(C) **Disclosure of opponent's position**. Every motion filed under Fed. R. App. P. 27 and this rule must contain a statement of the opposing party's position on the relief requested or why the moving party was unable to learn the opposing party's position. (*Emphasis added*)

**Criminal & CJA Case Responsibilities**

See [http://www.ck10.uscourts.gov/downloads/2007\\_Rules.pdf](http://www.ck10.uscourts.gov/downloads/2007_Rules.pdf)

**10th Circuit Rule 46**

46.1(C) Change of Address. Once an appearance has been entered, the clerk must be notified of any subsequent change in address.

46.5(A) Signature. . . Every . . . paper must state the signer's street address, email address and telephone number. .

46.3 Responsibilities in criminal and postconviction cases.

(A) **Prosecution of appeal**. Trial counsel must continue to represent the defendant until either the time for appeal has elapsed and no appeal has been taken or this court has relieved counsel of that duty. An attorney who files a notice of appeal in a criminal case or a postconviction proceeding under 28 U.S.C. § 2254 or § 2255 has entered an appearance in this court and may not withdraw without the court's permission.

(B) **Voluntary dismissal**. A voluntary motion to dismiss a criminal appeal or an appeal in a postconviction proceeding must contain a statement, signed by the appellant, demonstrating knowledge of the right to appeal and expressly electing to withdraw the appeal. If the statement is not included, counsel must show that exceptional circumstances prevented its inclusion. Proof of service must include service on the appellant him or herself.

**10th Circuit CJA Plan**

**Addendum I to 2007 Local Rules, pp. 183-188**

VII. QUALITY OF REPRESENTATION. Attorneys appointed pursuant to any provisions of the [Criminal Justice] Act must conform to the highest standards of professional conduct, including, but not limited to, the provisions of the American Bar Association's Code of Professional Responsibility.

## 10th Circuit Rule 46.4(A) Withdrawing as Counsel on Appeal

### 46.4 Withdrawal.

(A) **Motion requirements.** Every motion to withdraw in a criminal appeal or in an appeal in a postconviction proceeding must include:

- (1) the reasons for withdrawal;
- (2) a statement that counsel has advised the client to obtain other counsel promptly, unless the client wishes to proceed pro se;
- (3) if the client intends to proceed pro se, a statement that counsel has advised the client of the right to representation, if any, and of any pending obligations under the Federal Rules of Appellate Procedure or these rules;
- (4) proof of service on the client and on all opposing parties; and
- (5) one of the following:
  - (a) a showing that new counsel has been retained or appointed;
  - (b) a showing that the defendant has been granted leave to proceed on appeal without prepayment of fees or has been found eligible for benefits under 18 U.S.C. § 3006A, or that a completed motion for leave to proceed without prepayment of fees or for a finding of eligibility under 18 U.S.C. § 3006A has been filed in the district court;
  - (c) a signed statement from the client demonstrating knowledge of the right to retain new counsel or apply for appointment of counsel and expressly electing to appear without counsel; or
  - (d) a showing that exceptional circumstances prevent counsel from meeting any of the other requirements of this subsection.

### *CJA PRACTICE HINTS on withdrawing as counsel:*

Closely adhere to 10th Cir. Rules 46.4 (Withdrawal) and 27 (Motions). ***YOU WILL NOT BE ALLOWED TO WITHDRAW UNTIL YOU PERFECT THE APPEAL.***

To perfect the appeal you must properly complete, file and serve a Designation of Record, a Transcript Order Form, a Docketing Statement and an Entry of Appearance. As with any motion, you should recite defendant's custody status.

Whether you are withdrawing in favor of substitute CJA or retained appellate counsel, ***you*** must perfect the appeal before a motion to withdraw will be considered. Three possible scenarios exist:

**1. CJA counsel withdrawing/seeking appointment of substitute CJA counsel.** Once the motion to withdraw is granted, the court will enter an order appointing substitute CJA counsel. You are entitled to compensation for the preliminary work perfecting the appeal, but your voucher cannot be submitted and/or paid until after final disposition of the appeal, which may be 12 months, or more, later. Presumably due to that delay and the small amount of time and expense involved, most counsel simply don't submit an appellate CJA voucher when they withdraw at this early stage of the appeal.

**2. Retained counsel withdrawing/seeking appointment of CJA counsel.** Again, you must perfect the appeal as described above before a motion to withdraw will be considered. In addition, the ***district*** court must make the initial necessary finding of indigency before CJA counsel can be appointed. Your client must complete CJA Form 23 (see <http://www.uscourts.gov/forms/CJA/CJA23.pdf>) affidavit of indigency or the equivalent form used by the local district court. Once that finding is made, the Tenth Circuit can take action on your motion to withdraw.

**3. CJA counsel withdrawing/appellate counsel has been retained.** Finally, if you were trial court CJA counsel and retained counsel will handle the appeal, the simplest way to request the substitution is *after the appeal is perfected* to jointly file and serve a ***Motion to Substitute Counsel***. See #1 above re payment.

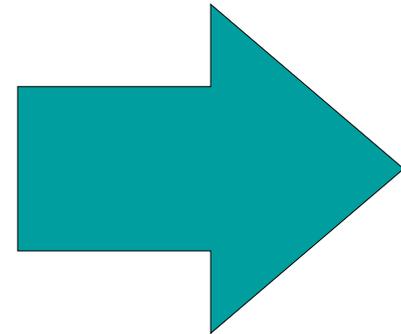
**10th Circuit Rule 46.4(B)**  
***Anders* Briefs**

46.4 Withdrawal.

**(B) *Frivolous appeals.***

- (1) Duty of counsel. In a direct criminal appeal, counsel who believes the appeal is frivolous and moves to withdraw or who believes opposition to a motion to dismiss would be frivolous must file an *Anders* brief and advise the court of the defendant's current address. See *Anders v. California*, 386 U.S. 738 (1967).
- (2) Notice to defendant. Except as provided in (3), the clerk will send the defendant by certified mail, return receipt requested, a copy of the brief, the motion to withdraw, and a notice in the form set out in Appendix A, Form 4. [[http://www.ck10.uscourts.gov/downloads/2007\\_Rules.pdf](http://www.ck10.uscourts.gov/downloads/2007_Rules.pdf)]
- (3) Incompetent defendant. If the defendant has been found incompetent or there is reason to believe that the defendant is incompetent, the motion to withdraw must so state, and the matter will be referred to the court for appropriate action.

**During  
the  
Appeal**



## **BORROWING THE RECORD ON APPEAL**

Because all of the trial courts in the Tenth Circuit now use electronic case management systems, district court pleadings are generally available electronically from the district court PACER docket. However, if you need to review the record on appeal and you office outside the Denver area, you may file a ***Motion of CJA Counsel to Borrow the Record*** in compliance with the general motions rule, 10th Cir. R. 27. Be sure to cite your client's custody status and whether opposing counsel objects.

When granted, the record will be mailed to you. Please return the record on or before the deadline set for filing your client's optional reply brief. You are responsible for ensuring the safety and integrity of the court's materials while in your custody. Please return the record in the same condition as you receive it (e.g., remove all yellow stickies). We greatly appreciate your help.

## **INTERIM PAYMENT ?**

It is highly unusual for the Tenth Circuit to grant interim CJA compensation/reimbursement in non-death-penalty related appeals. In non-capital cases, the court prefers to receive a single CJA voucher after final disposition (i.e., after either a favorable decision, or after a petition for certiorari is filed, or after you decide *not* to file a certiorari petition).

First please note the *Guidelines* provisions on case budgeting.

***Guidelines, § 2.22 (B)(4) Case Budgeting.*** Courts are encouraged to use case budgeting techniques in representations that appear likely to become or have become extraordinary in terms of potential cost (ordinarily, a representation in which **attorney hours are expected to exceed 300 hours or total expenditures are expected to exceed \$30,000** for appointed counsel and services other than counsel on behalf of an individual CJA defendant). If a court determines that case budgeting is appropriate (either on its own or upon request of counsel), counsel should submit a proposed initial litigation budget for court approval, subject to modification in light of facts and developments that emerge as the case proceeds. Case budgets should be submitted ex parte and filed and maintained under seal. See generally the case budgeting principles pertaining to capital cases in paragraph 6.02F of these *Guidelines*. [<http://www.uscourts.gov/defenderservices/Guide/appointmentofcounsel.html#eligibility>] (*Emphasis added*)

You are encouraged to avail yourself of the budgeting process in extraordinary cases. A copy of the 10th Circuit's CJA budgeting forms can be found at the court's website, in both MSWord and WordPerfect, at <http://www.ck10.uscourts.gov/clerk/showcja.php>.

Please also refer to *Guidelines, § 2.30(A)* (interim compensation) and *§ 2.27(D)* (interim reimbursement). The court adheres strictly to the requirements of these sections regarding interim payments.

***Guidelines, § 2.30 Interim Payments to Counsel. A. Non-Death Penalty Cases.*** Where it is considered **necessary and appropriate in a specific case**, the presiding trial judge may arrange for periodic or interim payments to counsel.

[Guidelines] Appendix E (pages E-1 through E-6) contains instructions on the procedures for effecting interim payments to counsel, as well as a sample memorandum order on this subject which provides for two alternative payment methods. The payment options provided in the order are **designed to strike a balance between the interest in relieving court-appointed attorneys of financial hardships in extended and complex cases, and the practical application of the statutorily imposed responsibility of the chief judge of the circuit to provide a meaningful review of claims for excess compensation.** Other interim payment arrangements which effectuate this balance may be devised in consultation with the Office of Defender Services of the Administrative Office of the United States Courts. (*Emphasis added*)

**Guidelines, § 2.27 Reimbursable Out-of-Pocket Expenses. D. Interim Reimbursement for Expenses.** Where it is considered **necessary and appropriate in a specific case**, the presiding judge or United States magistrate judge may, in consultation with the Administrative Office, arrange for interim reimbursement to counsel of **extraordinary and substantial expenses** incurred in providing representation in a case. Interim reimbursement should be authorized when counsel's reasonably-incurred, out-of-pocket expenses for duplication of discoverable materials made available by the prosecution exceed \$500. (*Emphasis added*)

In addition to meeting the criteria **in bold** above relative to fees, expenses or both, you must also meet the usual criteria that the appeal (not the trial level case) is **(1) complex and/or extended, and (2) payment over the cap is necessary to provide fair compensation, and (3) that the payment(s) you request is for charges both reasonably and necessarily incurred.** Please refer both to the *Guidelines*, § 2.22(B)(1) and the court's *Advice to CJA Counsel* letter (included in this CJA Attorney Handbook, at pp. 34-47) for further information on these latter provisions.

**Cases that are complex or extended at the trial level are not necessarily so on appeal.**

## **OBTAINING A FREE CJA PACER ACCOUNT**

To obtain a free PACER account for use on your CJA cases (a quarterly report is prepared for every court indicating use of these free accounts), follow this procedure:

1. Go to the PACER online registration page at: <https://pacer.psc.uscourts.gov/psco/cgi-bin/regform.pl>
2. For "Firm Name," put in "CJA" and then your name.
3. For "Contact Person," put in "CJA" and then your name.
4. Fill out everything else as you usually would, except do not put in any credit card information.
5. PACER recommends that you fill in the password security information so that if you forget or lose the password specific to this free CJA PACER account, PACER can send it to you by e-mail. Otherwise the replacement info must be sent by snail mail -- delay inherent.

If you still have questions, contact:

**PACER Service Center  
P.O. Box 780549  
San Antonio, TX 78278  
(800) 676-6856  
(210) 301-6440  
pacer@psc.uscourts.gov**

PACER Service Center hours are 8:00am- 5:00pm Mon - Fri CST.

## **ELECTRONIC FILING**

General Order Filed 8/10/07 (effective 9/4/07)

### **Introduction**

On September 4, 2007, the court will convert to a new electronic case management system. This order defines the requirements for filing pleadings in the new system. At this stage, the conversion will not include direct attorney internet filing. The clerk's office will continue to docket pleadings. All counsel will be required, however, to submit all pleadings as attachments to emails to [esubmission@ca10.uscourts.gov](mailto:esubmission@ca10.uscourts.gov).

The only exceptions will be appendices (including those filed per 10th Circuit Rule 9.2(B)), supplemental appendices, and addenda filed under Federal Rule of Appellate Procedure 28(f). In counseled cases, exemptions to the requirements contained in this order will be allowed only upon motion and for good cause. Pro se parties who are able may also submit pleadings via e-mail. Those pleadings must meet technical requirements. In this order, all e-filers will be referred to as Digital Submitters.

### **General Requirements**

All pleadings submitted pursuant to this Order must be filed in Portable Document Format (PDF or Acrobat format, sometimes referred to as Native PDF). Native PDF files are generated from original word processing files and are text searchable. Except as delineated in this order, PDF images created by scanning documents will not be accepted. Digital Submitters should be aware there is a 45 megabyte limit per email (including all text, attachments etc.).

### **Pleadings Filed**

**A. Briefs.** Digital Submitters must furnish the full contents of briefs (from cover through conclusion) in digital form. Any attachment(s) to a brief available in digital form (native PDF) must be included with the brief in the same document (that is, if the attachments required under 10th Cir. R. 28.2 are in Native PDF they may be included with the brief in a single document and e-filed). Required attachments to briefs that are not available in Native PDF may be submitted in scanned PDF format. In that instance, however, the attachments should be forwarded as a single, separate PDF document. If some of the attachments are available in Native PDF

and some are not, all the attachments should be scanned as one document and attached separately in the e-submission. If a brief has PDF attachments the cover page must so state. The cover must also state whether the attachments are included in Native PDF or scanned PDF.

Within 2 business days of submitting the brief via e-filing, the Digital Submitter must also file an original and 7 hard copies of the brief with the clerk's office. Briefs may contain hyperlinks to cases and authorities.

**B. All other pleadings.** Digital Submitters must submit all other pleadings via email as well. This includes all preliminary pleadings and materials, motions, notices, petitions for rehearing, cost bills and submissions per Federal Rule of Appellate Procedure 28j. The only materials which may not be submitted via email are appendices and addenda. Documents attached to pleadings that are not available in Native PDF may be submitted in scanned PDF format. Those materials should be included in the esubmission as a single separate attachment. If the only attachments are in Native PDF they may be emailed as a single document with the pleading.

Within 2 business days of submitting a pleading under this section via e-filing, the Digital Submitter must also submit a single hard copy of the document to the clerk's office unless the pleading is a Petition For Rehearing or Petition For Rehearing En Banc. With panel petitions, the Digital Submitter must follow up by filing an original and 3hard copies with the clerk's office within 2 business days. For en banc petitions, an original and 18 hard copies must be filed, also within 2 business days.

**C. Appendices and Addenda** Unlike other pleadings, Digital Submitters must file these materials in hard copy format (only) per Federal Rules of Appellate Procedure 10 and 30 and 10th Circuit Rules 10 and 30. The court will not accept appendix materials via esubmission (including appendices filed per 10th Cir. R. 9.2(B)). Filers must submit the original hard copy and one additional copy of these materials.

### **Privacy Protection and Redactions**

In the interest of privacy, Digital Submitters must redact pleadings and briefs consistent with the privacy policy of the Judicial Conference of the United States. See

<http://www.privacy.uscourts.gov/b4amend.htm>. Required redactions include social security numbers and taxpayer identification numbers (filers may disclose the last four digits of a social security or tax identification number), birth dates (use year of birth only), minors' names (initials may be used), and financial-account numbers (except those identifying property allegedly subject to forfeiture in a forfeiture proceeding). It is the sole responsibility of the filer to redact pleadings appropriately.

#### Social Security and Immigration Appeals

Pursuant to the privacy policy of the Judicial Conference and applicable statutory provisions, remote electronic access to immigration and social security dockets must be restricted. In this regard, the Clerk is directed to restrict electronic public access in these cases to judges, court staff, and the parties and attorneys in the appeal or agency proceeding. The court will not restrict access to orders and opinions in these cases. Parties seeking to restrict access to Orders and Opinions must file a motion explaining why that relief is required in a given case.

#### Sealed Materials

Sealed documents shall be filed only in hard copy paper format. Digital Submitters must file a single hard copy of all sealed pleadings and materials with the Clerk, with the exception of briefs. Digital Submitters must file an original and 7 hard copies of briefs submitted under seal. Motions to submit materials under seal shall also be filed in hard copy format. A single hard copy of the motion must be filed.

#### E-Submission of Materials

All pleadings and briefs filed pursuant to this Order must be furnished to the Clerk via e-mail to [esubmission@ca10.uscourts.gov](mailto:esubmission@ca10.uscourts.gov). The subject line of the email must include the case name and docket number (including, where appropriate, all case numbers in consolidated or cross appeals). Counsel and pro se parties must include a signature block on all email submissions which includes the attorney or pro se party's name, address, telephone number and email address.

#### Digital Signatures and Certification

A. Digital Signatures. All submissions requiring an attorney or pro se party's signature shall be signed in the following manner:

s/ Attorney or Pro Se Party  
Street Address  
Telephone Number  
Email address

B. Certification of Digital Submission. In addition to the certificate of service required by the Federal Rules of Appellate Procedure and Tenth Circuit Rules, all Digital Submitters must certify that:

(1) all required privacy redactions have been made and, with the exception of those redactions, every document submitted in Digital Form or scanned PDF format is an exact copy of the written document filed with the Clerk, and;

(2) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program (naming the program, version, and the date of the most recent update) and, according to the program, are free of viruses.

C. Service Requirements. All Digital Submitters shall serve copies of the materials submitted to the court on all parties to the proceeding. Where email is available parties may serve pleadings and briefs through that method. All certificates of service must reflect that proper service was made and must delineate the method used. If a party receives an exemption from this order or is a pro se party who does not have email access, all service must be made via regular mail or commercial carrier. The court will serve parties exclusively via email where it has an email address for counsel or a pro se party. Where an email address is not available the court will serve counsel and pro se parties via regular mail.

The Court invites comment on these procedures and also invites parties to contact the office of the Clerk [see pages 1-2 of this CJA Attorney Handbook for contact information] with questions.

## **ORAL ARGUMENT TRAVEL COMMENTS**

Generally the court reimburses for one night, absent a good explanation for why you stayed longer. If you spend more than one night at the site of your oral argument and expect to be reimbursed from CJA funds, be sure to put an explanation for any extra night(s) in your voucher cover letter or excess-fee memo.

*After* you have contacted the Clerk's office calendar team that manages the oral argument schedule (303.844.2693/2695), call Omega World Travel (1-866-450-0401, Monday through Friday from 7:00 a.m. to 9:00 p.m., EST) or Travel Company of Montana, Inc. (Travco, 1-877-890-5474, Monday through Friday from 8:30 a.m. to 8:00 p.m., EST) to make the arrangements for you.

**Have your trip times firmly decided before contacting Omega or Travco – there is a charge for every itinerary change. If you must make alternative arrangements either direction, be sure to notify Omega or Travco beforehand or you may be charged for any flight reservation not used.**

Omega or Travco will arrange lodging, flight and (see comment below) car, if needed. The flight will be paid directly out of CJA funds. You then pay the lodging and ground transportation directly from the reservations and submit itemized invoices for reimbursement. Be sure to also keep your receipt for any parking fee at your local airport, and keep track of your mileage to and from the local airport. You must also present itemized meal receipts, including for room service.

The current government rate in Denver is \$127 for lodging (plus taxes) – room rates for arguments scheduled in other districts of the Tenth Circuit will vary. If you will stay more than one night on a single CJA matter, please ask Omega or Travco to arrange whichever is less expensive within the government rates, renting an economy car at the airport and staying in an outlying hotel for two nights, or two nights downtown. In Denver, if two nights downtown is less expensive, the rates charged by the blue Super Shuttle van for transportation back and forth to the hotel are known to meet the “reasonable and necessary” standard. Pay for your \$34 round trip ticket at the airport; one way is \$19.00. It will take you directly to and from your hotel. ([www.supershuttledenver.com](http://www.supershuttledenver.com))

## **OTHER NECESSARY SERVICES**

### **Paralegals, Interpreters, Computer-Assisted Legal Research**

*Guidelines*, § 2.28.A. Appointed counsel may not claim reimbursement for general office expenses which would normally be reflected in the fee charged to the client. The statutory fee is intended to include compensation for these general office expenses. Therefore, except in extraordinary circumstances (see *Guidelines*, § 3.16), personnel, rent, telephone service, and secretarial expenses associated with CJA representation, whether work is performed by counsel or other personnel, are not reimbursable.

The cost of **unusual and extraordinary “other services” necessary for an adequate defense**, such as expert counsel, paralegals, interpreters, computer-aided legal services (CALR, e.g., Westlaw, Lexis), etc., is reimbursable and *always* subject to review under the “reasonable and necessary” standard. See <http://www.uscourts.gov/defenderservices/Guide/services.html> *Guidelines*, § 3.16. Time for “other services” providers must be tracked in tenths of an hour and described in the same manner as attorney time (i.e., with specificity).

In determining whether an expense is unusual or extraordinary, consideration should be given to whether the circumstances from which the need arose would normally result in an additional charge to a fee-paying client over and above that charged for overhead expenses. (See *Decision of the Comptroller General*, B-139703, dated February 28, 1974, 53 Comp. Gen. 638). *Guidelines*, § 3.16

**IF the appeal total for “other services” will exceed \$500, you must get prior authorization for the expenditures.** See *Guidelines*, § 3.02.A. **If the total will exceed \$1600, you must also** get a court order certifying the expense as “being necessary to provide fair compensation for services of an unusual character or duration.” *Id.* The application is *ex parte*. For a sample form, see <http://www.uscourts.gov/defenderservices/Guide/AppendixC.pdf>

Without prior authorization, reimbursement of reasonable charges for “other services” is limited to \$500 *unless* the court finds that in

the interest of justice, timely procurement of necessary services could not await prior authorization. *Guidelines*, § 3.02.B.

Subject to the above dollar and prior authorization limitations, you have two options for payment. You can incur the cost yourself and submit it on your voucher at the conclusion of the appeal. Or you can arrange for direct payment to the service provider via a CJA Form 21. Again, see the *Guidelines* for CJA Form 21 at <http://www.uscourts.gov/defenderservices/Guide/criminaljusticeact.html>. In the Tenth Circuit the request is formatted as an *ex parte* motion, not a memorandum, and you need not submit it with signature areas for the judge(s). See sample application at: <http://www.uscourts.gov/defenderservices/Guide/AppendixC.pdf> *Guidelines*, Appendix C.

For CALR (Computer Assisted Legal Research) costs, see *Guidelines*, § 2.27B, §3.15 and *Advice to CJA Counsel* letter, VIII.G., at page 44 of this CJA Attorney Handbook.

For paralegals, law clerks and legal assistants, see *Guidelines*, § 3.16 and *Advice to CJA Counsel* letter, VIII.G., at page 44 of this CJA Attorney Handbook.

For interpreters, see *Guidelines*, § 3.16 and *Advice to CJA Counsel* letter, VIII.L., at page 45 of this CJA Attorney Handbook.

For transcripts, the cost of court-authorized transcripts should be claimed by the court reporter or reporting service on a CJA 24 form; if counsel elects to pay for these, counsel should likewise seek reimbursement on a CJA 24 form, not a CJA 20 form. *Advice to CJA Counsel* letter, VIII.N., page 45 of this CJA Attorney Handbook.

Cost	Reimbursement for “Other Necessary Services”
< \$500	Expense must always be properly documented
\$500- \$1600	Prior authorization also required unless the court finds that in the interest of justice, timely procurement of other necessary services could not await prior authorization
>\$1600	Prior authorization required as well as a finding that the expense is “necessary to provide fair compensation for services of an unusual character or duration”

## CERTIORARI ISSUES

Your obligation to inform a client of their post-decisional options is covered in part by the Section VI of the court's CJA Plan, Addendum I, pp. 183-188, to the Local Rules (found online at [http://www.ck10.uscourts.gov/downloads/2007\\_Rules.pdf](http://www.ck10.uscourts.gov/downloads/2007_Rules.pdf)):

### VI. Petition For Writ of Certiorari

If the judgment of this court is adverse to the client, counsel must inform the client of the right to petition the Supreme Court of the United States for a writ of certiorari. Counsel must file a petition for a writ of certiorari if the client requests that such a review be sought, and, in counsel's considered judgment, there are grounds for seeking Supreme Court review that are not frivolous and are consistent with the standards for filing a petition contained in the Rules of the Supreme Court and applicable case law. If, on the other hand, the client requests that counsel file a petition for a writ of certiorari and, in counsel's considered judgment, there are no such grounds for seeking Supreme Court review that are non-frivolous and for filing a petition as defined in the Rules of the Supreme Court and applicable case law, counsel should promptly so advise the client and submit to this court a written motion for leave to withdraw from the representation after the entry of judgment. If this court grants counsel's motion and terminates counsel's appointment, counsel must so advise the client in writing as soon as possible. The writing shall also advise the client of his or her right to file a pro se petition for a writ of certiorari.

See also the *Guide for Prospective Indigent Petitioners for Writs of Certiorari* published by the United States Supreme Court at <http://www.supremecourtus.gov/casehand/guideforifpcases.pdf>. Sample forms for both the necessary motion and the certiorari petition are included at that Supreme Court webpage.

Pursuant to the 10th Circuit's *Advice to CJA Counsel* letter, filing fees cannot be reimbursed. Nor can the extra charge for preparing a certiorari petition in booklet form be reimbursed. This is because if a client is granted IFP (*in forma pauperis*) status, filing fees are waived. In addition, at the U.S. Supreme Court level, counsel for clients granted IFP status may submit 10 copies of a certiorari

petition printed on 8½” x 11” paper instead of 40 copies in booklet form (not cheap!). Generally speaking, upon proper request IFP status follows automatically for clients who remain indigent and who have been represented by CJA counsel appointed in the district and/or appellate federal courts.

Please also re-review *at least* these rules:

S. Ct. Rule 39: A defendant may have a petition for certiorari docketed without payment of a docket fee by properly filing and serving a motion to proceed *in forma pauperis*. Part 1 of S. Ct. Rule 39 allows counsel to omit any affidavit or declaration from the motion upon recitation of the previous CJA appointment by the United States district and circuit courts.

S. Ct. Rules 12 and 33.2: Defendants proceeding IFP may submit ten (10) copies of the petitions in the common 8.5” x 11” format, rather than forty (40) copies in the more expensive booklet format.

Please remember, when reviewing appellate CJA vouchers, counsel’s time spent and expenses incurred in pursuing a certiorari petition in the Supreme Court is subject to the usual “reasonable and necessary” test. A “petition for a writ of certiorari will be granted only for compelling reasons,” S. Ct. Rule 10. And the grounds for a petition for rehearing of the denial of a petition for certiorari are “limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented,” S. Ct. Rule 44.

Your 10th Circuit appellate CJA voucher should be filed not less than 45 days after you *file* a petition for certiorari. You need not wait until the Supreme Court acts on the petition before submitting your appellate circuit voucher. Should certiorari be granted, the Supreme Court will appoint you and issue another CJA voucher upon which you will submit time and expenses from that point forward.

## **APPELLATE TRAINING OPPORTUNITIES**

From time to time the Tenth Circuit will offer and/or participate in ongoing continuing legal training opportunities. Every effort is made to keep you informed of those seminars that may be applicable to CJA counsel. In addition, *The National Legal Aid and Defender Association* has an annual appellate writing seminar and an annual appellate program (usually in January or February).

Other resources include:

The Office of Defender Services, Legal, Policy and Training Division, Training Branch, at [fd.org](http://fd.org) or

<http://www.uscourts.gov/defenderservices/training.html>

Association of Federal Defense Attorneys (AFDA) [afda.org](http://afda.org)

National Association of Criminal Defense Lawyers (NACDL)

[nacdl.org](http://nacdl.org)

National Criminal Defense College (NCDC) [ncdc.net](http://ncdc.net)

National Institute for Trial Advocacy (NITA) [nita.org](http://nita.org)

National Legal Aid and Defender Association (NLADA)

[nlada.org](http://nlada.org)

The Institute for Criminal Defense Advocacy (ICDA) [cws1.edu](http://cws1.edu)

Western Trial Advocacy Institute (WTAI) [westerntrial.com](http://westerntrial.com)

California Attorneys for Criminal Justice (CACJ)

<http://www.cacjweb.org/public/>

Michigan's State Appellate Defender Office,

[www.sado.org/training.htm](http://www.sado.org/training.htm)

There are three appellate blogs regarding the Tenth Circuit:

<http://directappeal2.blogspot.com/>

Author: Russ Wheeler out of Oklahoma

<http://www.rockymtnappellateblog.typepad.com/>

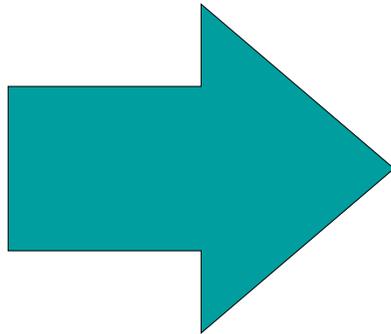
Author Peter Krumholz out of Denver

<http://circuit10.blogspot.com>

Author: Federal Defenders of the 10th Circuit

Finally, note the appellate law section of the blog for the Ninth Circuit at <http://www.crimblawg.com/>

# Getting Paid



**10th Circuit CJA20**  
**ADVICE TO CJA COUNSEL letter**  
**as of June 28, 2007 (*Emphasis added*)**

**I. General Statutory Provisions**

Counsel appointed to provide appellate representation under the Criminal Justice Act may be compensated for time “reasonably expended” and expenses “reasonably incurred.” 18 U.S.C. § 3006A(d)(1). *See* rate sheet page [48 of this CJA Attorney Handbook] for presumptive compensation maximums. However, these presumptive maximums may be exceeded if the representation provided was “extended or complex” and there is a judicial certification that such excess payment is necessary to afford fair compensation. Excess payment must also be approved by the chief circuit judge or their delegate. *See* § 3006A(d)(3).

**II. Excess Compensation Claims**

If hourly compensation is sought in excess of the statutory maximum, counsel must submit a concise memorandum showing that the representation was **extended or complex** and that **excess payment is necessary for fair compensation**. If the legal or factual issues in a case are unusual, thus 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 total processing than the average case, the case is “**extended**.”

The following criteria, among others and as applicable, should be discussed to aid the court in determining if **excess payment is necessary to provide fair compensation**: the complexity/novelty of the issues and whether any of these issues were briefed at the district court; matters researched but not briefed; responsibilities involved measured by the magnitude and precedential importance of the case; manner in which duties were performed; special skills, knowledge, efficiency, professionalism, judgment and experience required of or used by counsel; the nature of counsel’s practice and any injury thereto resulting from the representation; any unusual pressure of time or other factors under which professional services were

delivered; and any other circumstance relevant and material to a determination of a fair and reasonable fee.

### III. Case Budgeting

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 attorney hours are expected to exceed 300 hours or total expenditures are expected to exceed \$30,000 for appointed counsel and services other than counsel on behalf of an individual CJA defendant). If the court determines that case budgeting is appropriate (either on its own or upon request of counsel), counsel should submit a proposed initial litigation budget for court approval, subject to modification in light of facts and developments that emerge as the case proceeds.

**Please use the appropriate proposed budget form found in the CJA Forms and Links portion of the court's website (<http://www.ck10.uscourts.gov/clerk/showcja.php>).**

### IV. When to File

Generally, one voucher must be submitted on a CJA 20 voucher within 45 days of final disposition of the case, unless good cause is shown for delay. "Final disposition" is considered the later of: (a) after a petition for certiorari is filed; (b) after the decision becomes final or the appeal is otherwise terminated, if no petition for certiorari will be filed; or (c) upon entry of an order granting counsel permission to withdraw if no subsequent CJA counsel will be appointed (i.e., defendant will proceed with retained counsel, with the Federal Public Defender as counsel, or *pro se*). **If counsel is applying for certiorari, then the voucher must be submitted after the filing of the petition.**

### V. What to File with CJA 20 Voucher

#### 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 20 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 "In-Court" and "Out-of-Court" worksheets [appended to the Court's *Advice to CJA Counsel* letter found on the website at: <http://www.ck10.uscourts.gov/clerk/showcja.php>], 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 20 voucher, Lines 15g and 16a-e. If billing records are not reported in tenths of an hour, the court will round down the total hours claimed.

Use of the [court-provided] 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 six CJA 20 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 expense worksheets [found on the Court's website at: <http://www.ck10.uscourts.gov/clerk/showcja.php> appended to the *Advice to CJA Counsel* letter], 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 VII. and VIII. below for further instructions and information. Expenses not properly documented may be disallowed in their entirety.

## VI. Claims for Hourly Compensation - General Rules

### A. Hourly Rates

Counsel is advised to refer to the *Criminal Justice Act Payment Rates* (which may differ from the rates stated on the voucher) on page [48 of this CJA Attorney Handbook] to ensure proper hourly rates are entered on the voucher for the dates worked. Before submitting a voucher to the clerk, counsel may wish to visit the CJA Forms & Link portion of the court's website at <http://www.ck10.uscourts.gov/clerk/showcja.php> to ensure compensation at the correct hourly rates. Submission of a voucher with incorrect rates may result in payment at a lower hourly rate than that to which counsel may be entitled.

### B. In-Court Time

**In-court time is limited to one hour or the actual time of argument. Waiting time may be claimed as out-of-court time.**

### C. Partners and Associates (Within Firm)

Compensation may be claimed for services provided by a partner or associate in appointed counsel's law firm, but **extra tasks or other work inefficiencies resulting from such division of labor (e.g., attorney conferencing) is not compensable.** The amount must be within the maximum compensation allowed by the Act. **The compensation worksheets must separately identify the provider of each service.**

### 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 appointed counsel's law firm. **Extra tasks or other work inefficiencies resulting from such division of labor (e.g., attorney conferencing) is not compensable.** The amount must be within the maximum compensation allowed by the Act. **The compensation worksheets must separately identify the provider of each service.**

### E. 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. **No vouchers will be considered for payment until the final disposition of the appeal (see IV. above).**

### F. Substitution of Counsel

If an attorney is substituted for a previous CJA attorney appointed in the same case, the total CJA compensation to both attorneys shall not exceed the statutory maximum for one attorney, unless the case involves extended or complex representation. **No vouchers will be considered for payment until the final disposition of the appeal (see IV. above).**

### G. 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.**

## H. 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.**

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

If a petition for writ of certiorari is to be filed, counsel should not submit the CJA voucher until *after* the work related to the petition for writ of certiorari is completed. Submitting one comprehensive voucher that includes work related to any petition for writ of certiorari ensures consistent application of the statutory compensation limits and consistent assessment of the need for judicial certification in cases requesting compensation in excess of the statutory maximum.

## J. 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.**

## K. Voucher Preparation

Time spent preparing the voucher is not compensable.

## VII. Reimbursement of Travel Expenses - General Rules

### A. Reporting Travel Expenses on Voucher

Claims for travel expenses must be itemized and reported in Block 17 of the CJA 20 form.

### 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 *Criminal Justice Act Payment Rates* on page [48 in this CJA Attorney Handbook]. 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 a 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 20 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 [48 of this CJA

Attorney Handbook]. 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 circumstance.

#### **H. Hotel Telephone and 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.

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

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

Claims for non-travel expenses must be itemized and reported in Block 18 of the CJA 20 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. *[material intentionally omitted here]*

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

Claims for the actual cost of legal research by a qualified law student, law clerk, or paralegal should be included on the CJA 20 voucher, Line 18 (Other Expenses) and must be supported with a brief statement of the need for and 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.

**If the costs for such services will exceed \$500, the services must be pre-approved by the court** unless it determines that, in the interest of justice, procurement of necessary services could not await prior authorization. 18 U.S.C. § 3006A(e)(2).

**Reimbursement for such services may not exceed \$1600 unless the court determines that such services were of an unusual character or duration.** Excess reimbursement must also be approved by the chief circuit judge or their delegate. 18 U.S.C. § 3006A(e)(3).

### H. Computer Assisted Legal Research

Whenever appointed counsel incurs charges for computer-assisted legal research, counsel should attach to the CJA 20 voucher a copy of the itemized bill for 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 \$500.00, or if it includes costs for downloading or printing, 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 Represented**

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 20 form.

**IX. 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 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 20 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.** [See page 54 of this CJA Attorney Handbook for a PAD example.] 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 to the 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 court's website <http://www.ck10.uscourts.gov/clerk/showcja.php> 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>.

**X. Note to Counsel**

This [court's *Advice to CJA Counsel*] letter addresses only subjects of repeated error or frequent inquiry and is not inclusive. Questions regarding the completion of and attachments to vouchers are welcome. Counsel representing clients under a sentence of death should refer to the court's separate memorandum referencing procedures in capital cases. Counsel in those matters should also review 21 U.S.C. § 848(q).

*Source: Guide to Judiciary Policies and Procedures, Volume VII, Section A, Chapter II*

**CRIMINAL JUSTICE ACT  
PAYMENT RATES**

<b>HOURLY RATES</b>	1/1/00 and after	4/1/01 and after	5/1/02 and after	1/1/06 and after	5/20/07 and after
In-Court	\$70	\$75	\$90	\$92	\$94
Out-of-Court	\$50	\$55	\$90	\$92	\$94

<b>STATUTORY MAXIMUM COMPENSATION FOR FEES</b>	Maximum
Work completed on or before 11/12/00	\$2500
Work completed on or after 11/13/00	\$3700 (\$3900 for parole appeals)
Work completed on or after 12/8/04	\$5000

(voucher requests over the maximum require submission of an excess-fee memo or letter with your voucher)

**MILEAGE RATES (Travel Expenses Incurred)**

1/1/04- 2/3/05	2/4/05- 8/31/05	9/1/05- 12/31/05	1/1/06- 12/31/06	1/1/07- present
\$.375/mile	\$.405/mile	\$.485/mile	\$.445/mile	\$.485/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 the GSA website, <http://www.gsa.gov>.

## VOUCHER CHECKLIST

The following checklist provides general guidance regarding which materials must be submitted, and when, in order to receive payment under the Criminal Justice Act. The current text of the Tenth Circuit's *Advice to CJA Counsel* letter should be reviewed and can be found with a variety of other helpful CJA materials at: <http://www.ck10.uscourts.gov/clerk/showcja.php>.

Please remember that generally one voucher request is filed per non-capital appeal. Your CJA20 and supporting materials are due within 45 days after final disposition of the appeal unless good cause is shown for delay. If a petition for certiorari is filed, then your circuit voucher request should be submitted after you *file* the certiorari petition. "Final disposition" is considered the later of 45 days after: (1) the opinion issues, if no certiorari petition will be filed, or (2) the certiorari petition is filed, or (3) entry of an order granting counsel permission to withdraw if no subsequent CJA counsel will be appointed (i.e., appeal has been terminated, or defendant will proceed pro se or with the Federal Public Defender as counsel).

We suggest keeping your contemporaneous time records (tenths of hours, not quarter hours!) using the appellate billing descriptions on the CJA20 (Lines 15g, 16a-e, 17-18). Similarly, keep the expenses itemized in the CJA20 groupings shown below. Doing so will speed preparation of your voucher request. For example, you might set up the following billing entry categories and use them for all CJA work:

CJA20, Line 15g, In Court, Appeals (Oral Argument)  
CJA20, Line 16a, Out of Court, Interviews & Conferences  
CJA20, Line 16b, Out of Court, Obtaining and Reviewing Records  
CJA20, Line 16c, Out of Court, Legal Research and Brief Writing  
CJA20, Line 16d, Out of Court, Travel Time  
CJA20, Line 16e, Out of Court, Investigative and Other Work  
CJA20, Line 17, Travel Expenses, Lodging  
CJA20, Line 17, Travel Expenses, Mileage  
CJA20, Line 17, Travel Expenses, Meals  
CJA20, Line 17, Travel Expenses, Parking

CJA20, Line 17, Travel Expenses, Transportation  
CJA20, Line 17, Travel Expenses, Other  
CJA20, Line 18, Other Expenses, In-House Copies  
CJA20, Line 18, Other Expenses, Commercial Copying  
CJA20, Line 18, Other Expenses, Postage  
CJA20, Line 18, Other Expenses, Telephone  
CJA20, Line 18, Other Expenses, Other

If you keep your time and expenses in these categories, it will be simple to report and subtotal them on the CJA 20 voucher.

### **You must submit the following materials with every voucher:**

The **CJA20** that you received upon appointment. If you've misplaced it, send us an e-mail and we will explain how to submit a fillable .pdf from <http://www.uscourts.gov/forms/cja20.html> Use only the "hours claimed" and "total amount claimed" columns of the table. Correct your mailing address if needed. Complete Line 15(g) and Lines 16(a-e) with the number of hours and total amount claimed for every line. **CJA 20** Subtotal boxes 15 & 16 where shown. Fill out Lines 17 & 18. Complete "Grand Total." Fill out Line 19. Check appropriate box(es) in Line 20-21. Check "No" in Box 22 unless this is a supplemental *appellate* voucher. Sign & date.



A signed and completed **Panel Attorney Data form** (CJA Form 5). This tells us where and to whom the check should be sent and the (income) tax consequences assigned. If you e-sign it, you can submit it by e-mail. If you sign a hard copy, then either include it with your packet or fax it to 303.844.3733.



**PAD**

Completed **CJA Billing Worksheets** or annotate every chronological billing entry with the applicable CJA20 appellate line (15g, 16a-e) descriptor. Completed **CJA Expense Worksheets** and itemized receipts for single item expenditures that exceed \$50. Both worksheets are available attached to the Court's *Advice to CJA Counsel* letter at <http://www.ck10.uscourts.gov/clerk/showcja.php> There are exceptions to the "receipts over \$50" rule, e.g., meals/room service meals, commercial copying and computerized legal research (e.g. Westlaw) charges. Credit card slips and statements are not itemized and may not be acceptable as "receipts."



**WKSHTS**

**If *not*** available electronically on PACER, include a copy of any brief, dispositive motion/response, rehearing/certiorari petition, or motion for release you filed in the appeal, and the opinion or order & judgment.



COPIES?

***As needed***, you must also submit the following with a particular voucher request:



**If the attorneys' fee portion of your request exceeds \$5000, you must submit an excess-fee memo.** See guidance on pages 52-53 of this CJA Attorney Handbook.

FEE  
MEMO

**Prior approval must be sought from the court to incur charges exceeding \$500 for “other necessary services”** such as interpreters and paralegals. Attach to your voucher a copy of the order granting such pre-approval. If you failed to get pre-approval, submit an explanation sufficient for the court to determine that, in the interest of justice, procurement of necessary services could not await prior authorization. 18 U.S.C. §3006A(e)(2). Reimbursement for “other services” may not exceed \$1600 unless the court determines that such services were of an unusual character or duration. 18 U.S.C. § 3006A(e)(3).



OTHER  
SVCS

**If you are filing your voucher more than 45 days after final disposition of the appeal, you must submit a written explanation of good cause for the delay.** *Guidelines*, § 2.21A. Vouchers delayed without good cause are not favored.

If you are requesting reimbursement in excess of \$500 for computer-assisted legal research (e.g., Westlaw, Lexis), include a brief statement of justification. **An itemized receipt must be submitted in support of every request for reimbursement of CALR charges.**



CALR?

## EXCESS-FEE MEMO GUIDANCE

see also CJA Form 27 at

<http://www.uscourts.gov/forms/CJA/CJA27.pdf>

Before fees over the cap may be approved, a three-step analysis is undertaken. First, is the case either complex or extended? Second, is payment over the maximum necessary to provide fair compensation? And third, are the charges both reasonable and necessary? Please respond to all three tests in your excess-fee memo/letter. We suggest keeping your excess-fee memo/letter under three pages. Either a pleading or a letter is acceptable.

1. If the case is either **extended or complex** the statutory case maximum attorney fee compensation (currently \$5000) may be waived to provide fair compensation. 18 U.S.C. §§ 3006A(d)(3) and 4109(a)(2); *Advice to CJA Counsel* letter at I. Further,

The case is “**complex**” if the legal or factual issues in a case are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case. The case is “**extended**” if more time is reasonably required for total processing than the average case, including pre-trial and post-trial hearings. *Guidelines*, § 2.22(B)(3). (*Emphasis added*)

Using these definitions, describe how this appeal was extended and/or complex.

2. After establishing that a case is extended or complex, the approving judicial officer must determine if **excess payment is necessary to provide fair compensation**. The following criteria, among others and as applicable, should be discussed to aid the court in determining if excess payment is necessary to provide fair compensation: the complexity/novelty of the issues and whether any of these issues were briefed at the district court; matters researched but not briefed; responsibilities involved measured by the magnitude and precedential importance of the case; manner in which duties were performed; special skills, knowledge, efficiency, professionalism, judgment and experience required of or used by

counsel; the nature of counsel's practice and any injury thereto resulting from the representation; any unusual pressure of time or other factors under which professional services were delivered; and any other circumstance relevant and material to a determination of a fair and reasonable fee. 10th Circuit *Advice to CJA Counsel* letter, II, at p. 34 of this CJA Attorney Handbook.

Using these criteria, explain why excess payment is necessary to provide fair compensation in this appeal.

3. The final criteria for compensation applies in all cases. Was the work both **reasonable and necessary**? Based on your experience and any other relevant considerations, provide your analysis of how the fee in this appeal is both reasonable and necessary.

4. Please also be sure to describe any hours spent for which you do **not** seek compensation, and any expenses for which you do **not** seek reimbursement.

## **PANEL ATTORNEY DATA FORM**

*(must be filed with every voucher)*

Social Security Number:	<input type="text" value="123-45-6789"/>					
Name:	<input type="text" value="Name"/>					
Mailing Address:	<input type="text"/>					
Address Line 1						
Address Line 2						
Address Line 3						
Address Line 4 (DO NOT TYPE BELOW THIS LINE)						
City	<input type="text" value="City"/>	State	<input type="text" value="CO"/>	Zip Code	<input type="text" value="12345"/> - <input type="text" value="0000"/>	
Telephone:	<input type="text" value="555-555-1212"/>					
Email Address:	<input type="text" value="Email Address"/>					
Initial below your choice of how payments should be reported to the IRS:						
<input checked="" type="checkbox"/>	Under my Social Security Number and Name, as indicated above.					
<input type="checkbox"/>	To the law firm with which I am affiliated. I have provided my Social Security Number as indicated above <b>and</b> the law firm's Taxpayer Identification Number, Name and Address are:					
Taxpayer Identification Number of Law Firm (required if affiliated with a firm)						
<input type="text"/>						
Name of Law Firm <input type="text"/>						
Address of Law Firm						
<input type="text"/>						
Address Line 1						
Address Line 2						
Address Line 3						
Address Line 4 (DO NOT TYPE BELOW THIS LINE)						
City	<input type="text" value="City"/>	State	<input type="text" value="CO"/>	Zip Code	<input type="text" value="12345"/> - <input type="text" value="0000"/>	
Signature	<input type="text"/>				Date	<input type="text" value="01/01/2006"/>

CJA - 5 7/06

This form assures your payment is mailed to the correct address **and** that the tax consequences of the payment are properly assigned. **Please be sure to sign or e-sign the form.**

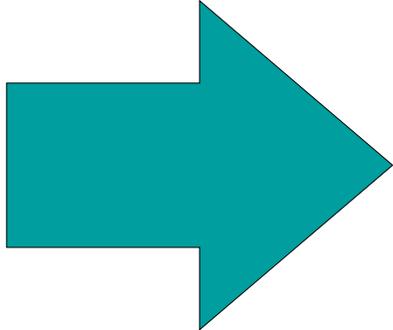
**VOUCHER REDUCTION NOTICE,**  
**PAYMENT TIMING**

You will receive e-notice of any proposed non-technical fee reductions along with an opportunity to provide the court with further justification. You will not receive notice of corrections made due either to mathematical errors or to technical non-compliance in your CJA voucher request with the requirements of the CJA, the *Guidelines* or the 10th Circuit's *Advice to CJA Counsel* letter.

*Guidelines*, §2.22. Limitations. . . . E. Reduction of CJA Compensation Vouchers by the Reviewing Judge. The Criminal Justice Act provides that the reviewing judge shall fix the compensation and reimbursement to be paid to appointed counsel. If the court determines that a claim should be reduced, appointed counsel should be provided (a) prior notice of the proposed reduction with a brief statement of the reason(s) for it, and (b) an opportunity to address the matter. **However, notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.** Nothing contained in this guideline should be construed as requiring a hearing or as discouraging the court from communicating informally with counsel about questions or concerns in person, telephonically, or electronically, as deemed appropriate or necessary.

The 10th Circuit makes every effort to complete its review of properly completed and supported vouchers within 30 days of receipt. You will receive notice when payment has been authorized. Payment should be received approximately 10-14 days after authorization.

*Guidelines*, § 2.21 Time Limits. . . .B. Absent extraordinary circumstances, judges should act upon panel attorney compensation claims within 30 days of submission.

10th Circuit  
CJA Plan,  
Standing  
Committee  
  
and CJA  
Appellate  
Attorney Panel

# **CRIMINAL JUSTICE ACT PLAN FOR THE TENTH CIRCUIT**

## **PREAMBLE**

Pursuant to the Criminal Justice Act (Act), 18 U.S.C. § 3006A(b), the court adopts the following plan for furnishing representation in criminal cases on appeal. This amends the plan adopted by the Circuit Council on February 11, 1971 and which was last amended on January 1, 1996. When requested, representation will be provided to every person who is entitled to representation under the Act.

### **I. Appointment of Counsel in the Tenth Circuit**

Absent a change in financial conditions, any determination that a person is eligible for Criminal Justice Act counsel made in the district court shall continue on appeal. In its discretion, the court of appeals may appoint the attorney who represented the eligible person in the district court, the special appellate division of the Federal Public Defender's office for the District of Colorado, another Federal Public Defender's office from the circuit, or it may appoint a lawyer from the court's Criminal Justice Act Panel.

Appointed counsel must continue to represent the appellant until relieved by the court of appeals. 10th Cir. R. 46.3(A). If filed in compliance with 10th Cir. R. 46.4(A), trial counsel's request to be relieved from representation on appeal shall be given due consideration. While the court recognizes there may be benefits to maintaining continuity of counsel, it also recognizes that the skills necessary to proceed as appellate counsel may differ from those required for trial counsel. Substitution of counsel shall not reflect negatively in any way on the conduct of the lawyer involved. The court will require, however, that trial counsel perfect the appeal prior to seeking withdrawal.

### **II. Composition of Panel of Private Attorneys**

#### **A. Criminal Justice Act Panel**

The Court will establish a panel of private attorneys (the CJA Panel) who are eligible and willing to accept appointments in cases where representation is required under 18 U.S.C. § 3006A. These attorneys, along with the lawyers from the Appellate Division of the Federal Public Defender's Office for the District of Colorado, shall constitute the core group from which appointments shall be made. The Court shall approve private attorneys for membership on

the CJA Panel after receiving recommendations from the Standing CJA Committee, established pursuant to Section III of this Plan.

#### **B. Size**

The CJA Panel will not have a size limitation, but will include adequate attorney representation from each of the districts in the circuit. The Standing Committee will view applications for membership on the panel with an eye towards identifying qualified appellate counsel from each state in the Tenth Circuit.

#### **C. Eligibility**

To be eligible for service on the CJA Panel, lawyers must be members of the Tenth Circuit bar in good standing. They must certify that they have a working knowledge of the Federal Rules of Appellate Procedure and federal criminal law. Counsel on the list must be willing to accept at least one CJA appellate appointment each year.

#### **D. Term of Service**

There are no fixed terms for panel membership. Lawyers will remain on the panel until they resign or are removed in accordance with the procedure established in section II(G).

#### **E. Application for Membership**

Applications for membership on the panel will be available in the office of the Clerk of Court and on the circuit's website at <http://www.ck10.uscourts.gov/clerk/showcja.php>. Completed applications must be submitted to the Clerk of Court for transmittal to the court's Standing Committee on the Criminal Justice Act.

#### **F. Maintenance of the List**

The Clerk of Court shall maintain a public list in the clerk's office of the members of the CJA Appellate Panel, including current street and email addresses and telephone numbers.

#### **G. Removal from the Panel**

The court is very appreciative of the time and commitment required to accept appellate appointments. Membership on the panel is not a property right, however, and the refusal to accept appointments on a consistent basis will lead the court to assume the lawyer has resigned from the panel. Counsel will be notified in writing of any change in status resulting from the failure to accept appointments. The Standing Committee may also recommend removal from the panel for other reasons. That recommendation must be in writing and will be forwarded to the court for consideration. If the court decides to accept the recommendation,

counsel will be given notice of the proposed basis for removal and will be provided an opportunity to respond in writing. The court of appeals will make all final decisions regarding removal. If a panel attorney is removed, he or she will receive a letter of explanation from the court. Any attorney whose resignation is assumed because he or she has not accepted cases may file a request to return to active status. The request must include an explanation regarding the refusal to accept appointments. The Standing Committee will make a recommendation to the court on those types of requests. Attorneys removed for any other reason may file a renewed application no earlier than one year from the date of removal. In the application, counsel must note the earlier removal and explain why they believe they should be allowed to return to the panel.

### **III. Standing Committee On The Criminal Justice Act**

#### **A. Membership and Structure**

The Chief Judge, or the Chief Judge's delegate, shall appoint the Standing Committee. It shall be composed of two lawyers from Oklahoma, and one lawyer each from the remaining states in the circuit. Members may be private attorneys or lawyers from the various Federal Public Defenders' offices. These attorneys shall serve staggered three year terms, and may serve two consecutive terms. In addition to these seven members, the Federal Public Defender for the Districts of Colorado and Wyoming shall be a permanent member of the Standing Committee. One of the other positions on the Committee must be filled with one of the other Federal Public Defenders from the circuit. The Chief Judge may also appoint a liaison to the Committee from the court's legal staff. That person will not be a Committee member, but will be available to both the court and members for committee support and consultation.

#### **B. Duties**

The Standing Committee shall review the qualifications of applicants for the panel, conduct further inquiries as may be indicated, and shall make recommendations to the court of appeals for placement of lawyers on the panel. The Standing Committee shall also review the operation of the appellate panel on a periodic basis and shall make recommendations to the court regarding any necessary changes. This review may include investigation of complaints concerning panel attorneys. The Committee may make recommendations regarding removal of a lawyer from the list to the court of appeals. The Standing Committee's recommendations to the

court shall remain confidential. The CJA Panel list, however, will be public information.

### **IV. Change In Financial Conditions**

If a party becomes financially unable to employ counsel on appeal, a motion seeking a finding that the party is eligible for the appointment of counsel must be made in district court. See 18 U.S.C. § 3006A. Because the district court must make factual findings regarding the defendant's financial eligibility, appropriate forms, particularly a CJA 20 form, should be filed in that court first. Upon issuance of an order finding the person financially eligible, counsel may file a motion in this court for appointment of counsel under the statute. The court may, at any time, examine or re-examine the financial status of the defendant. If a court finds that the defendant is financially able to obtain counsel or make partial payments for representation, the court may deny or terminate an appointment pursuant to subsection (c) of the Act or require partial payment to be made pursuant to subsection (f) of the Act.

### **V. Death Penalty Cases**

Pursuant to the *Guidelines* for Administration of the Criminal Justice Act, the court may, in an appropriate death penalty case, appoint and compensate under the Act an attorney or attorneys from a state or local public defender organization or from a legal aid agency or other non-profit organization.

### **VI. Petition For Writ of Certiorari**

If the judgment of this court is adverse to the client, counsel must inform the client of the right to petition the Supreme Court of the United States for a writ of certiorari. Counsel must file a petition for a writ of certiorari if the client requests that such a review be sought, and, in counsel's considered judgment, there are grounds for seeking Supreme Court review that are not frivolous and are consistent with the standards for filing a petition contained in the Rules of the Supreme Court and applicable case law. If, on the other hand, the client requests that counsel file a petition for a writ of certiorari and, in counsel's considered judgment, there are no such grounds for seeking Supreme Court review that are non-frivolous and for filing a petition as defined in the Rules of the Supreme Court and applicable case law, counsel should promptly so advise the client and submit to this court a written motion for leave to withdraw from the representation after the entry of judgment. If this court grants counsel's motion and terminates counsel's appointment, counsel must so advise the client in writing as soon as

possible. The writing shall also advise the client of his or her right to file a pro se petition for a writ of certiorari.

## **VII. QUALITY OF REPRESENTATION**

Attorneys appointed pursuant to any provisions of the Act must conform to the highest standards of professional conduct, including, but not limited to, the provisions of the American Bar Association's Code of Professional Responsibility.

## **VIII. COMPENSATION**

### **A. Claims.**

All claims for compensation and expenses must be submitted to the clerk, on the voucher enclosed with the appointment, at the conclusion of the representation. All claims must be supported by appropriate documentation. In each case, the court will fix the compensation to be paid the attorney as provided in the Act. Counsel appointed in direct criminal appeals and non-death penalty 28 U.S.C. §§ 2254 and 2255 matters should review the Court's general Advice To Counsel letter for detailed information and guidelines regarding compensation issues. Counsel appointed in death penalty matters should review the court's separate Death Penalty Advice To Counsel letter [at <http://www.ck10.uscourts.gov/clerk/showcja.php>] Although the Act provides for limited compensation, the court recognizes that the compensation afforded often does not reflect the true value of the services rendered. Consequently, it is the court's policy not to cut or reduce claims which are reasonable and necessary. If the court determines a claim must be cut it will provide the attorney notice and an opportunity to cure the defect.

### **B. Other Payments**

Except as authorized or directed by the court, no appointed attorney and no person or organization authorized by the court to furnish representation under the Act may request or accept any payment or promise of payment for representation of a defendant.

## **IX. Application of Guidelines**

Appointment of counsel under the Act will be governed generally by the *Guidelines* for Administration of the Criminal Justice Act. See VII Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases, Section A. [at <http://www.uscourts.gov/defenderservices/index.html>]

## **APPLYING FOR THE 10th CIRCUIT APPELLATE CJA ATTORNEY PANEL**

The Tenth Circuit recently appointed a panel of attorneys who will be eligible under the Criminal Justice Act (CJA), 18 U.S.C. §3006A, to represent indigent criminal appellants before the United States Court of Appeals for the Tenth Circuit. The court will use this appellate panel, along with the Federal Public Defender's office, as a resource in appointing new lawyers as needed. While this does not change the court's general presumption that trial counsel will continue representation for the appeal, it allows the court to develop a strong pool of qualified lawyers to take cases which, for various reasons, require the appointment of new counsel during the appellate process.

The initial round of applications have been reviewed and on March 28, 2007 the Tenth Circuit appointed its first appellate CJA panel. The court's CJA Standing Committee expects to commence the next cycle of review for later-received application materials in February-March 2008. The court's revised Criminal Justice Act Plan is Addendum I, pp. 183-188, to the Local Rules, available at: [http://www.ck10.uscourts.gov/downloads/2007\\_Rules.pdf](http://www.ck10.uscourts.gov/downloads/2007_Rules.pdf).

To apply for the appellate panel, first please review the court's CJA Plan carefully. The application form may be found at: <http://www.ck10.uscourts.gov/downloads/cjapanelapp.pdf> Submit three hard copies of the completed application, three hard copies of a resume and three hard copies of an appellate writing sample to: Clerk of Court, Tenth Circuit Court of Appeals, 1823 Stout Street, Denver, CO 80257. If you prefer, you may also e-submit your application to the Court's CJA staff at: [CJA\\_Vouchers@ca10.uscourts.gov](mailto:CJA_Vouchers@ca10.uscourts.gov) as set out in Contacts, pp 1-2 of this CJA Attorney Handbook.

Thank you for your interest in serving as a member of the Tenth Circuit's appellate CJA panel. If you decide to apply, we will be in communication with you after your materials are received. If you have any questions or concerns, please do not hesitate to call or e-mail the Court's CJA staff.

**ROSTER OF APPELLATE CJA PANEL**

(as of July 15, 2007)

**COLORADO**

Berger, Robert  
Fishman, Robert  
Foreman, Susan  
Hostetler, Richard  
Johnson, Gail F.  
Krumholz, Peter  
Levitt, Robert  
Noble, Antony  
O'Connell, Keyonyu  
Rauchway, Jonathan  
Ray, Paula  
Schwartz, Barry  
Verner, Rudy  
Viorst, Anthony  
Wesoky, Jason

**NEW MEXICO**

Baker, Mark T.  
Carson III, Joel M.  
Davidson, Scott M.  
Friedman, Caren I.  
Gorence, Robert J.  
Hannum, D. Eric  
Ives, Zachary A.  
Jarmie, Mark D.  
Johnson, Erlinda  
McGarry, Kathleen  
Pori, Brian A.  
Rabern, Trace L.  
Simmons, Nancy L.

**NEW MEXICO**

**(El Paso, TX)**  
Gates, John D.  
Harbour, Cori A.  
Schydlower, Leon

**KANSAS**

Bailey, Rick E.  
Campbell, Terrence  
Jenab, John  
Joseph, Christopher  
Kessler, Stephen  
Kunen, Jessica  
Miller, Dwight  
VanBebber, Alleen

**OKLAHOMA**

Caruso, Dennis  
Eulberg, Chris  
Hankins, James  
Lund, William  
Lynn, F. Randolph  
Morley, Randal  
Presson, Steven  
Rowan, James  
Short, Jack Marwood  
Staggs, Fred

**UTAH**

Fujino, Ronald  
George, Julie  
Leigh, Lawrence  
Stengel, Jessica  
Stevens, Gregory  
Taliaferro, Ann

**WYOMING**

Goody, Keith  
Hayes, Megan  
Kingston, Tim  
Palen, Wendy  
Reese, Michael

**10th CIRCUIT**

**CJA STANDING COMMITTEE**

Pursuant to the Tenth Circuit's Revised CJA Plan, effective January 1, 2006, the duties of its CJA Standing Committee are:

The Standing Committee shall review the qualifications of applicants for the panel, conduct further inquiries as may be indicated, and shall make recommendations to the court of appeals for placement of lawyers on the panel. The Standing Committee shall also review the operation of the appellate panel on a periodic basis and shall make recommendations to the court regarding any necessary changes. This review may include investigation of complaints concerning panel attorneys. The Committee may make recommendations regarding removal of a lawyer from the list to the court of appeals.

Counsel will be notified in writing of any change in status resulting from the failure to accept appointments. The Standing Committee may also recommend removal from the panel for other reasons. That recommendation must be in writing and will be forwarded to the court for consideration. If the court decides to accept the recommendation, counsel will be given notice of the proposed basis for removal and will be provided an opportunity to respond in writing. The court of appeals will make all final decisions regarding removal.

As of July 15, 2007, the members of the Tenth Circuit CJA Standing Committee are:

- Colorado-Wyoming FPD (currently Raymond Moore)
- Norman Mueller, Colorado
- David Phillips, District of Kansas FPD
- Robert Gorence, New Mexico
- Candace Johnson, Utah
- William Lunn, Northern/Eastern Oklahoma
- J. David Ogle, Western Oklahoma
- Michael Reese, Wyoming

The Court's liaison to the Committee is its CJA Supervising Attorney.