

FUNDING THE CJA DEFENSE CASE

2025 CJA PANEL ATTORNEYS TRAINING SEMINAR

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Presented by the Office of the Federal Public Defender

OHSD

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FUNDING AND BUDGETING

ATTORNEY FEES

SERVICE PROVIDERS

EXPERTS

AUTHORITY:

- Counsel duty to be familiar with
- 18 U.S.C § 3006A
- 18 U.S.C § 3599 (Capital cases)
- CJA GUIDELINES
- CJA PLAN – Circuit, District & Division
 - Court websites/fd.org

ATTORNEY FEES GUIDELINES SEC. 230.26

Why budget?

- Costs expected to be extraordinary - 300+ attorney hours
- Promote high quality representation and cost efficiencies
- Map out litigation strategy
- Identify cost drivers and obtain resources
- Help with discovery

Budget in stages in complex cases

- Discovery
- Pretrial litigation
- Excess travel time and expenses
- Trial, post-verdict litigation and sentence

Advantages

- Alert court to cost drivers and likely costs of the representation
- Interim payments
- No need for excess memo for fees w/in budget
- Pre-approval required for service providers
- Pre-approval for extraordinary expenses

Technology is Driving Change



Gone are the days of sitting down to review discovery page-by-page

Voluminous discovery and seized devices

Ethical obligation to be technologically competent

Studies show linear review is less effective

Technology-assisted (**search-based**) review is faster and more accurate

**DUTY TO CONSIDER USING A
PARALEGAL, INTERN,
LITIGATION SUPPORT OR
INVESTIGATOR TO FURTHER
YOUR CASE**

Voluminous discovery can be
insurmountable

1 TB = 3.5 million documents

1 TB = 2 million photos

USE A PARALEGAL, INTERN AND/OR LITIGATION SUPPORT TO FURTHER YOUR CASE

- ❖ Organize, Index and Analyze Documents and Information
- ❖ Prepare Summaries, Outlines and Chronologies
- ❖ Review calls and other discovery with the client
- ❖ Create, Update and Maintain eDiscovery Data
- ❖ Conduct Automated Searches of eDiscovery (dtSearch, Adobe)
- ❖ Draft Affidavits, Motions , Trial Memorandum, Subpoenas, etc.
- ❖ Obtain Jury List and Biographical Information on Jurors
- ❖ Prepare Trial Notebooks, Organize and Mark Trial Exhibits
- ❖ Work with Experts, Consultants and Witnesses
- ❖ Gather and Prepare Sentencing Information

AI TOOLS

Translations / Jail or Title III call transcriptions / Document summaries

No substitute for certified transcription; accuracy not guaranteed, but may narrow down the field of what does need to be transcribed

Contact National Litigation Support w FD.org for recommended resources

Some available programs:

JUSTICE TEXT (no human QC)

REDUCT.VIDEO (no human QC)

SONIX (no human QC)

TRIALKIT

AXON cloud based – transcripts of a/v files, bodycam video etc

ETHICAL CONSIDERATIONS

AI tools may enhance efficiency but, there are serious ethical concerns that counsel need to be aware of, particularly regarding protective orders and attorney-client privilege.

Be aware that AI models will store information as it builds its database.

AI cannot distinguish between confidential and non-sensitive data.

“Is the case law you swear exists in the room with us right now?”



DISCOVERY MANAGEMENT and LITIGATION SUPPORT SERVICES

- Costs for computer systems, litigation support products, experts expected to exceed \$10,000: CJA Guidelines require that National Litigation Support be contacted § 320.70.40
- Litigation support vendor services available (CJA funded for case)
- Software discounts available (licenses for purchase)
 - secure cloud storage (box.com)
 - document and case information tools (CaseMap / Docmanager)
 - document review platform (Casepoint)
 - document search programs (dtSearch)

<https://www.fedcourts.org/litigation-support/cja-panel-attorney-software-discounts>

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COORDINATING DISCOVERY ATTORNEYS (CDAS)

- **available in multi-defendant cases with voluminous or complicated ESI issues**
 - Appointed by the court to manage discovery for multiple defendants
 - Contracts with third party vendor for hosting
- Alternatively, designate an appointed attorney to act as the discovery liaison attorney for multiple defendants

YOU MAY NEED

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EXPERTS:

- Computer // Cell phone // location tower
- DNA // Ballistics // Forensics // CPA // fraud examiner // K-9
- **Mental health experts** – guilt / sentence mitigation / competency

SERVICE PROVIDERS

- Investigators
- Paralegals
- Assistance to catalogue and review numerous jail calls
- Mitigation specialists

ASSOCIATE COUNSEL

- ❑ CJA Guidelines § 230.53.10 – need prior court approval if seeking associate counsel who is ***not*** an associate or partner of appointed counsel's firm; budget if likely to exceed case comp max.
- ❑ Voucher / Audit Issues
 - **Same Firm:** both on the same voucher (RATE!)
 - Identify tasks performed by associate on voucher
 - *** Do NOT claim time for anyone else's work on the voucher
 - **Separate CJA 20 or 30 if appointed or not in same firm**
 - AVOID: Appointed counsel delegating most of the work to associate
- ❑ **District CJA Plan – e.g mentoring programs**
- ❑ NOTE – if more than one attorney is appointed in an extremely difficult case, each attorney is entitled to claim the case compensation maximum

TRAVEL

- ☐ Necessary & reasonable travel includes travel time to meet with clients even if videoconferencing is available. CJA Guidelines § 230.60

Importance of in person meetings is stressed as necessary to build & maintain client relationship

- ☐ Include in attorney budget

Estimate attorney time/mileage expense for anticipated number of trips to see client; meet AUSA; attend court

- ☐ Travel authorization request

For overnight travel – airfare; lodging M&I and ground transportation

May need order or letter from the court to obtain government rate at hotels

- ☐ Appeals – travel authorization for OA or client visit

Airfare booked and paid for through National Travel

This guidance applies to attorneys, experts, and service providers

ATTORNEY BUDGET MOTION

- *Consult with the CBA*
- Description of charges / factual & procedural overview
- Description of cost drivers
 - Voluminous ESI - Client mental health issues; multiple co-defendants; long-running conspiracy; travel issues
- Estimate hours for tasks
- Division of work if more than one attorney appointed or associate counsel assisting
- Request to submit interim vouchers

18 U.S.C § 3006A (E) – EXPERTS AND SERVICE PROVIDERS

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.

18 U.S.C § 3006A

NO PRE-APPROVAL

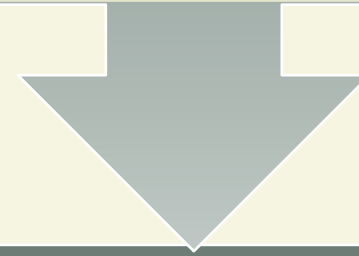
Total costs for
investigative, expert, or
other services obtained
without prior request:

\$1,000 plus expenses

**18 U.S.C §
3006A (E)
DISTRICT
COURT
APPROVAL**

For **each** service provider or expert:

\$3,000 per provider (2025) +
expenses



pre-approval may be waived in the
interests of justice where judge finds
that timely procurement of services
could not wait prior authorization

18 U.S.C § 3006A (E)
CIRCUIT APPROVAL

Any service provider or expert whose services are expected to exceed \$3,000

Must be certified by the district court as “necessary to provide fair compensation for services of an unusual character or duration”

Must be approved by the Chief Judge of the Circuit or his/her designee

May seek supplemental funding

WHEN TO APPLY FOR FUNDS

Once the need becomes apparent

BEFORE YOU AUTHORIZE THE WORK

BUT - district court may authorize the services nunc pro tunc, if the presiding judge “in the interests of justice, finds that timely procurement of necessary services could not await prior authorization”. CJA Guidelines, §§ 310.20.30(b)

Monitor expenditures

Ask for additional funds BEFORE you authorize more work

**SOURCE OF
FUNDING**

**MENTAL HEALTH
EXPERTS**

COMPETENCY

OR

**DEFENSE
EVALUATION**

§ 320.20.50

- who requested the examination
- the specific purpose(s) of the examination
- Who gets copies of the report

§ 320.20.60 - Chart

- DOJ pays for competency evaluations

FUNDING MOTION REQUIREMENTS

Factual support for the need for assistance

Description of services to be performed / time required – EBA

Resume or CV

Hourly rate or fee schedule

Vet the expert

Shop around for competitive rates

Travel issues

CBA available to discuss / review draft

CALCULATING THE EXPERT'S TIME

Document review

Interviews

- Client (incl travel time to jails)
- Witnesses

Evidence examination and testing

Preparation of reports

Consultation with counsel

Preparation to testify

Testimony

Travel (time and expenses)

RATE RANGES

CIRCUIT HAS ADOPTED PRESUMPTIVE RATE RANGES

- Point of reference
- Contact the CBA re proposed rate

EXPERIENCE BASED HOURLY RATES

- Training, experience, specialized skills
- Specific skills for specific case needs, e.g. paralegal with training in medical billing in health care fraud cases; paralegal/nurse who can read medical records; investigator who worked in a crime lab and can read/analyze DNA reports
- Need for the specialized skill that justifies higher rate must be present in the case
- Provide CV or resume and fee schedule where available

FUNDS AVAILABLE TO NON-CJA APPOINTMENTS

Retained
counsel may
seek funding

Pro Se
defendants /
standby
counsel

RETAINED COUNSEL

- § 310.10.10
 - Defendant with retained counsel may seek funding where
 - the defendant's resources are in excess of the amount needed to provide the defendant and his/her dependents with the necessities of life, defendant's release on bond, and pay a reasonable fee to retained counsel, **but are insufficient to pay for the necessary services**
- § 310.10.20
 - (a) the court should inquire into counsel's fee arrangement
 - (b) If the court finds the fee arrangement unreasonable in relation to fees customarily paid to qualified practitioners in the community for services in criminal matters of similar duration and complexity, or that it was made with a gross disregard of the defendant's trial expenses, the court may order the retained attorney to pay out of such fees all or such part of the costs and expenses as the court may direct.

RECAP – FUNDING ORDER

- Name of provider / ## hours / rate \$\$ / resume or CV
- Incumbent on attorney to monitor the work and request additional funds, if needed, **before the work is performed.**
- Budget is not a guarantee of payment; all vouchers still subject to audit for compensability and reasonableness review

VOUCHER REVIEW

CJA DOES NOT PAY

Witness fees and expenses - § 230.66.50

- DOJ – Rule 17 **Subpoenas**; § 2254 proceedings – Rule 6; 28 U.S.C. § 1825
- If U.S. Marshals n/a, may incur expense; should seek prior approval
- But service while incidental to witness interviews o.k.

Competency Exam– DOJ pays CJA Guidelines § 320.20

Travel for non-custodial defendant

- 18 U.S.C. § 4285: US Marshals
- 3006A: *may be interpreted as “other services necessary to the defense”*

Filing Fees / PACER Fees (CJA account)

Defendant clothing, personal items CJA Guidelines § 230.66.20

- Assisting with disposition of defendant’s personal property compensable if obtaining the property contributes to a “representational purpose.”

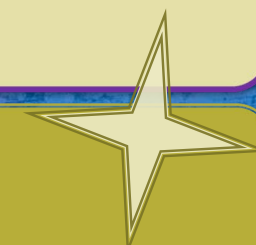
NON-COMPENSABLE – § 230.66.10 GENERAL OFFICE OVERHEAD

(a) General office overhead includes general office expenses that would normally be reflected in the fee charged to the client. **The statutory fee is intended to include compensation for these general office expenses.**



(b) Except in extraordinary circumstances (Guidelines § 320.70.30), **whether work is performed by counsel or other personnel**, the following expenses associated with CJA representation are not reimbursable: • personnel – rent – telephone & internet -- secretarial.

§ 320.70.30 a) CJA attorneys are expected to use their own office resources, including secretarial help, for work on CJA cases.



WHAT DOES COMPENSABLE MEAN?

Case-Specific

- e.g., training events and PACER account set-up are not case-specific

Has a Representational Purpose

- Tasks must serve the representation.
- “Appropriate” ancillary matters are compensable. Guide, Vol. 7A § 210.20.30

Not Clerical

- Requires professional judgment or legal knowledge or representational strategy is otherwise involved.

NOT COMPENSABLE REGARDLESS OF WHO DOES THE WORK



Filing, mailing, circulating, sending intraoffice communications, routine texts to check availability



Printing and Scanning



Downloading and saving, including ECF notices, pleadings, etc.

NOTE – counsel should not claim time for reviewing CM/ECF notices generated by their own filings



Invoicing, setting up eVoucher accounts; memo in support of excess comp

BUT must certify work by service providers & experts



Calendaring and scheduling; rote communications requiring minimal effort

Trips to copy center / post office / USAO to copy, scan, mail, pick up discovery etc



** state in voucher if met with AUSA while picking up discovery

WHAT DOES REASONABLE MEAN?

~6 mins to leave a vm

Discovery review – no
description given

There are no fixed
benchmarks, but
this is what we
usually see

~0.5 hour for
boilerplate motions

If there's a question,
you will get contacted
and opportunity to
explain

AGGREGATE TASKS < 6 MINUTES (.1 HR)

Tasks taking less than 6 mins (e.g. email exchanges; non-substantive CM/ECF notices)

Aggregate multiple ECF notices and emails. Include ECF doc. #

Do NOT “bill the docket”

Use PROFESSIONAL JUDGMENT when billing for reading for notices that do not require a substantive response especially in multi-defendant cases.

Reading and responding to intra-team emails should be aggregated over the course of the day

EXCEEDING THE CASE COMPENSATION MAX

**\$13,600 – district court
\$9,700 – appeals**

§ 3006A (d)(3) – judge must
certify; circuit approval required

**§ 230.30 Supporting
Memorandum Justifying
Compensation Claimed**

In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel will submit with the voucher a detailed memorandum supporting and justifying counsel's claim that:

- the representation given was in an extended or complex case (**see**: § 230.23.40(b)), and
- the excess payment is necessary to provide fair compensation (**see**: § 230.23.40(c)).

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, including pre-trial and post-trial hearings, the case is “extended”.

LETTER IN SUPPORT OF EXCESS VOUCHER

- CASE BACKGROUND
 - charges, unique or complex challenges, outcome.
- COST DRIVERS
 - Discovery (describe amount and challenges);
 - Client (detained in remote location, mental health issues, demanding)
 - Witnesses or evidence in remote areas
 - Suppression, evidentiary or issues requiring expert evaluation
- TRAVEL
 - Travel distances office/court/client/USAO
 - Pro rate when possible
- PLEA & SENTENCE
 - Extended negotiations, eve of trial, cooperation, sentencing hearings, verdict, post-verdict litigation

INTERIM VOUCHERS

Budgeted Cases

- District court authorization to submit interim vouchers
- Payments within budget approved and paid by district court; circuit approval not required
- 20% withheld until end of budget period; then all billing reviewed by circuit per budget period
- Expenses paid in full by district court

No Case Budget

- District court authorization to submit interim vouchers at regular intervals if case is 90+ days or > \$4,000
- District court may approve and pay up to case compensation maximum
- Circuit review once case compensation maximum exceeded
- 100% payment (no withholding)

TRAVEL POLICIES

Voucher Audit Issues and Red Flags

- Within GSA per diem rates <https://www.gsa.gov/travel/plan-book/per-diem-rates>
- Alcohol; more than one person on a bill
- Change of flight – necessity or convenience
- Receipts necessary for anything over \$75

45 DAY RULE

GUIDELINES § 230.13

**VOUCHERS SHOULD BE
SUBMITTED WITHIN 45
DAYS OF CONCLUSION
OF THE
REPRESENTATION
ABSENT A SHOWING OF
GOOD CAUSE**

- Provide a memo or letter to judge with explanation for delay in submitting bill
- Upload in docs tab in eVoucher

CONTACT THE CASE BUDGETING ATTORNEY!

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