

Instructions for Completing the CJA Form 30:

**DEATH PENALTY PROCEEDINGS:
APPOINTMENT OF AND AUTHORITY TO PAY
COURT APPOINTED COUNSEL**

UNITED STATES COURT OF APPEALS

For the Eighth Circuit

February 1, 2002

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GENERAL INFORMATION

Personal Appointments

All attorneys appointed under the Criminal Justice Act are appointed personally and individually. Payment on a CJA claim is made to the individual rather than to the firm or organization with which the individual is associated. However, the Administrative Office (AO) has made provisions for reporting CJA income as firm income rather than personal income of the attorney. If the attorney has a pre-existing financial agreement with his or her employer that CJA earnings belong to the law firm or corporation, the clerk's office should be notified of the employer tax identification number. The Panel Attorney Data form should be submitted to the clerk's office at the time of appointment with this information. The Panel Attorney Data Form may be downloaded from the Eighth Circuit's website at: www.ca8.uscourts.gov/coa/forms/cja/index.html. Even where a pre-existing agreement exists, the attorney's social security number is required for appointment. **For privacy reasons, neither the social security number nor the tax identification number should be listed on the CJA Form 30.**

The Criminal Justice Act provides for the appointment of two attorneys where the sentence of death has been imposed. The court will consider the number of counsel needed in cases where the defendant is charged with an offense that may be punishable by death, but where the death penalty is not sought or the sentence of death has not been imposed in the district court.

Submission of Vouchers for Payment

In appeals of capital prosecutions or appeals in habeas corpus proceedings, counsel may submit CJA vouchers at the conclusion of particular stages of the proceedings. Generally, a voucher may be submitted at the conclusion of the appeal, following a petition for writ of certiorari, and following the request for a stay of execution. After counsel submits a voucher following one of the stages, the clerk's office will supply counsel with a supplemental voucher to be used for the subsequent stage, as required. Counsel must indicate on the voucher at Box 14 what stage is covered by the voucher. Only one box should be checked for any voucher. Whenever possible, the court prefers to consider together the vouchers from all counsel appointed in a case and the clerk's office may hold a voucher from one attorney until the voucher from the other attorney is submitted for that stage of proceeding.

Vouchers must be completed and submitted to the Clerk's Office in St. Louis no later than 45 days after the issuance of the court's mandate. Regulations set forth in the **Guide to Judiciary Policies and Procedures**, (Vol VII, Chapter II, Part C, ¶ 2.21(A)), state "Vouchers shall be submitted no later than 45 days after the final disposition of the case, unless good cause is shown." This Court interprets "final disposition" to mean the issuance of the mandate, i.e., the time when jurisdiction of the case is returned to the District Court. If the mandate is stayed pending the filing of a petition for writ of certiorari with the United States Supreme Court, the voucher may be submitted after the petition is filed with the Supreme Court. **Claims submitted outside of the 45 day period should be accompanied by a separate statement**

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outlining the reasons for the delay. Approval and payment of reimbursement requests outside the 45 day payment period is discretionary. Counsel are advised to submit their CJA vouchers promptly.

There are several attachments to the CJA Form 30 that must accompany each claim submitted by appointed counsel. **Counsel should submit the original and one copy of all attachments.**

Review Process

Upon submission to the Clerk's office, the claim is audited to check for mathematical errors, non-reimbursable expenses, completeness of attachments, and eligibility. Then, if there are no problems to be corrected, a cover letter is prepared and the claim is submitted to the Court. (The claim is submitted to the panel which considered and decided the case.) The award determination is made by the Court and the claim is returned to the Clerk's Office. The data related to both the appointment and the claim is entered into a computer system and then verified as complete and accurate. A check is then issued (and sent to appointed counsel) within 48 hours from the Disbursing Office in Washington D.C. On the day that the data is entered into the computer database, a letter is prepared and sent to appointed counsel indicating that processing has been completed.

CJA FORM 30

Following are instructions for completing specific portions of the CJA Form 30 DEATH PENALTY PROCEEDINGS: APPOINTMENT OF AND AUTHORITY TO PAY COURT APPOINTED COUNSEL. Please note that these instructions may differ slightly from those you may receive from the various District Courts. This is because they pertain only to claims filed as a result of representation in an appeal before the Eighth Circuit.

Representation in Death Penalty Cases

The Anti-Drug Abuse Act of 1988 removed statutory limitations for CJA representations in death penalty cases. The change allows the judge reviewing the claim to determine the amount which will fairly compensate appointed counsel without regard for previously established limits. The judge is also free to set appropriate hourly rates to compute the claim. The "Antiterrorism and Effective Death Penalty Act of 1996" has fixed the maximum hourly rate payable in death penalty cases at \$125.00 per hour for in-court **and** out-of-court time. The Judicial Conference suggests hourly rates within the range of \$75.00 to \$125.00 per hour. **Counsel should suggest an appropriate hourly rate upon submission of their claim.**

In-Court Time: (Line 15a)

In-court time directly related to the appeal may be claimed in this portion of the form. In-court time expended in relation to the presence at oral argument may be claimed on Line 15a. for the appeal. List times in **hours and tenths of hours**. Multiply total hours by the hourly rate indicated and indicate the total claimed for in-court compensation in box 15.

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Out-of-Court Time: (Lines 15b-j)

Out-of-court time expended in relationship to the appeal may be claimed on lines 15b through 15j. The period for which time may be claimed includes the interval between and including the date of the appointment and the date of the issuance of this Court's mandate (or the conclusion of the particular stage of proceeding). Indicate times in **hours and tenths of hours**. Multiply total hours by the hourly rate indicated and indicate the total claimed for out-of-court compensation in box 15. Counsel must attach a separate memorandum of out-of-court time which lists the dates on which services were performed, the type of service, and the amount of time expended.

Expenses: (Box 16, 17)

All vouchers should be accompanied by an itemized list of expenses as a separate attachment that details the date, type of expense, and amount. This itemization should be accompanied by any and all receipts obtained for the expenses incurred. For all claims, list expense totals in box 16 and 17 broken down into **travel** expenses and **other** expenses.

Non-reimbursable Expenses¹

1. General Office Overhead This includes expenses which would normally be reflected in the fee charged to the client. Therefore expenses such as personnel costs, rent, telephone service, and secretarial help (whether regularly or specially employed, performing normal, overtime, or supplemental work, and even if counsel has no regularly employed secretary) are not reimbursable.
2. Items and Services of a Personal Nature The cost of items of a personal nature purchased for or on behalf of the person represented, such as purchasing new clothing, or having clothing cleaned, getting a haircut, furnishing cigarettes, candy or meals is not reimbursable. The cost of services such as assisting the defendant in the disposition of his or her personal property, arranging for the placement of minor children of the defendant, or assisting the defendant in executing the conditions of probation is not reimbursable.
3. Filing Fees Attorneys should not be required to pay a filing fee in a Criminal Justice Act case inasmuch as such payment and reimbursement thereof is tantamount to the Government billing itself to accomplish a transfer of appropriated funds into the General Fund of the Treasury. If a

¹ This information is adapted from Vol. VII, Chapter 2, Part C, ¶ 2.28 of the Guide to Judiciary Policies and Procedures.

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filing fee is paid by an attorney who is subsequently appointed in the case he or she should petition the District Court for a refund of that fee.

4. Printing of Briefs The expense of commercially **printing** briefs, regardless of the printing method utilized, is not reimbursable; however, the cost of mimeographing, photocopying, or similar **copying** service is reimbursable.

5. Travel-related Expenses Alcoholic beverages are not reimbursable expenses. Car rental is not reimbursable (the court will reimburse expenses for public transit, airport shuttle services, and taxi). Counsel should consult with the clerk's office for special exceptions to this policy for traveling to visit the client.

Receipts

Specifically, receipts **are required** for the following expenses:

1. Long distance phone charges in excess of \$50.00. Calls must be itemized by date, person called, and amount. Applicable charges should be highlighted.
2. All photocopy charges incurred outside of appointed counsel's office. (Copies made "in-house" will be reimbursed in an amount up to and including 15¢ per page. An indication of the number of copies made and the cost per copy is required.)
3. All expenses related to travel for the purpose of presenting oral argument including hotel accommodations, meals, coach air fare and ground transportation. The hotel's detailed receipt, showing the cost of the room and the taxes charged is required. Travel by personal automobile is reimbursable at the following per mile rates:

<u>DATE TRAVEL OCCURRED</u>	<u>REIMBURSABLE AMOUNT</u>
January 1, 1995 - June 6, 1996	30.0¢/mile
June 7, 1996 - September 7, 1998	31.0¢/mile
September 8, 1998 - March 31, 1999	32.5¢/mile
April 1, 1999 - January 13, 2000	31.0¢/mile
January 14, 2000 - January 21, 2001	32.5¢/mile
January 22, 2001 - January 20, 2002	34.5¢/mile
On or after January 21, 2002	36.5¢/mile

[Reimbursement for use of a personal automobile will be limited to the cost of round-trip, coach air fare applicable to the same trip. Counsel will be reimbursed for actual subsistence for lodging and meals. Please use discretion in arranging hotel accommodations.]

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4. Expenses related to computer assisted legal research, (**LEXIS, WESTLAW**), must be accompanied by receipts that show the method of billing and the total time spent using the computerized system. A statement of the issues researched and an estimate of the amount of time necessary to do the research manually must also be included. Applicable charges should be highlighted.
5. Monies paid as salary to student law clerks, paralegals or legal assistants who assist appointed counsel in the preparation of the case. This type of expense will be reimbursed if receipts are provided and an indication of hourly rates or salary is provided. Expenses incurred by student law clerks while performing services for appointed counsel are not reimbursable.
6. Postage expenses for overnight delivery, express mail, or courier services require a detailed receipt.

Certification of Attorney/Payee: (Box 18)

Indicate the dates between which services were performed by appointed counsel and check either **Final** or **Interim** payment. Counsel should be especially careful in indicating the dates covered by the voucher so that dates on successive interim vouchers do not overlap. Also, please be sure to answer all applicable questions including the question beginning "Has the person represented...." Finally, sign and date the voucher.

Boxes 22 through 27a should be left blank as they are for the Court's use. Any questions you might have about the preparation of the voucher or its attachments should be directed to **Jenny Cline, Diane Hogenmiller, or Robin Weinberger** of the Clerk's office at (314) 244-2400.

TRAVEL

CJA-appointed attorneys are authorized to obtain government rates for hotels and airline travel in connection with their representation under the Act. The clerk's office will provide counsel requiring air transportation to attend oral argument with a travel authorization allowing them to use the services of National Travel Service to book the reservation and issue the airline ticket. The cost of the ticket will then be paid directly through the CJA payment system. Attorneys are advised to carry the travel authorization with them when they travel and they should submit both the authorization and the airline ticket or travel itinerary provided by National Travel Service with their completed CJA voucher at the completion of the appointment. Should counsel's travel plans change or require cancellation, counsel is requested to advise National Travel Service and the clerk's office promptly, so that any charges may be properly credited.

Many hotels will offer CJA-appointed attorneys government rates for their travel in connection with their representation under the Act. Counsel are encouraged to avail themselves of reduced-government rates whenever possible. Hotel charges may not be billed directly to the court's CJA account, but will be reimbursed at the conclusion of the case.

INTERIM PAYMENTS

Interim payments are granted on a limited basis and requests for an interim payment are not encouraged by the Court. (An interim payment is defined as a payment made to appointed counsel prior to the final resolution of one of the stages of the proceeding.) If an interim payment is required, the voucher must be prepared as stated above but must also include, as an attachment, a statement to the Court outlining the reasons for which an interim payment is necessary (i.e., financial hardship). If an interim payment is granted, counsel will be provided with a supplemental voucher to be completed and submitted at the close of the case. Dates covered by any successive interim voucher should not overlap with previously-submitted vouchers..

SUPPLEMENTAL PAYMENTS

Occasionally, additional work is done in a case for which appointed counsel has already been compensated. In this situation, it is the appointed counsel's responsibility to request a supplemental CJA voucher from the Clerk's office. Counsel should attach to the supplemental voucher a statement which outlines the reasons for which additional time was expended or expenses incurred as a result of the appointment.