Attachment 1

Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), Volume 7, *Guide to Judiciary Policies and Procedures*

ADJUSTMENT OF THE PANEL ATTORNEY HOURLY RATES AND CASE COMPENSATION MAXIMUM AMOUNTS

[New language in ***bold italics***]

Chapter II. APPOINTMENT AND PAYMENT OF COUNSEL

2.22 Limitations.

A. **Hourly Rates.**

(1) **In General.** Except in federal capital prosecutions and in death penalty federal habeas corpus proceedings, compensation paid to appointed counsel may not exceed $90 per hour for time expended in court or out of court or before a United States magistrate judge, effective for work performed on or after May 1, 2002, but prior to January 1, 2006 (Pub. L. No. 107-77, 115 Stat. 748 (2001)) [1]. For work performed on or after January 1, 2006, but prior to May 20, 2007, the hourly compensation paid may not exceed $92 (Pub. L. No. 109-115, 119 Stat. 2396 (2005)) [2]. For work performed on or after May 20, 2007, but prior to January 1, 2008, the hourly compensation may not exceed $94 [3]. ~~The hourly rate f~~For work performed on or after January 1, 2008, ***but prior to March 11, 2009, the hourly compensation rate*** may not exceed $100 (Pub. L. No. 110-161, 121 Stat. 1844 (2007) [4]. ***The hourly rate for work performed on or after March 11, 2009, may not exceed $110 (Pub. L. No. 111-8 (2009).*** (See paragraph 6.02A regarding compensation of counsel in federal capital cases and death penalty federal habeas corpus proceedings.)

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B. **Case Compensation Maximums.**

(1) **General.**

(i) **Applicability and Exclusions.** The Judicial Administration and Technical Amendments Act of 2008, Pub. L. No. 110-406, amended subsection (d)(2) of the CJA ~~to increase the case compensation maximum amounts for CJA-compensable work completed on or after October 13, 2008~~ to ***provide for the case maximums to increase "simultaneously" with aggregate changes in the maximum attorney hourly compensation rate. Based on the increase in the non-capital rate for work performed on or after March 11, 2009,*** ~~T~~the new case maximum amounts, ***which*** are

indicated in paragraph 2.22B(2) below, ***apply to a representation where the attorney performed services on or after that date.*** . . .

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(2) Specific Proceedings.

(i) **Felonies** [except federal capital prosecutions].

~~$7,800~~ ***8,600*** for trial court level.
~~$5,600~~ ***6,100*** for appeal.

(ii) **Misdemeanors** [including petty offenses (class B or C misdemeanors or infractions) as set forth in subsection (a)(2)(A) of the Act].

~~$2,200~~ ***2,400*** for trial court level.
~~$5,600~~ ***6,100*** for appeal.

(iii) **Proceedings under section 4106A of title 18, United States Code** [in connection with paroled prisoners transferred to the United States].

~~$1,700~~ ***1,800*** for representation before the United States Parole Commission.
~~$5,600~~ ***6,100*** for appeal.

(iv) **Proceedings under sections 4107 or 4108 of title 18, United States Code** [for counsel and guardians ad litem providing services in connection with prisoner transfer proceedings. See *Regulations for the Appointment of Counsel Pursuant to a Prisoner Transfer Treaty*, which appears at Section B of this Volume, regarding appointment of counsel or guardians ad litem under 18 U.S.C. § 4109].

~~$2,200~~ ***2,400*** for each verification proceeding.

(v) **Pre-Trial Diversion.**

~~$7,800~~ ***8,600*** if offense alleged by the U.S. Attorney is a felony.
~~$2,200~~ ***2,400*** if offense alleged by the U.S. Attorney is a misdemeanor.

(vi) **Proceedings under section 983 of title 18, United States Code** [for services provided by counsel appointed under 18 U.S.C. §

983(b)(1) in connection with certain judicial civil forfeiture proceedings].

~~$7,800~~ ***8,600*** for trial court level.
~~$5,600~~ ***6,100*** for appeal.

(vii) **Non-capital Post-Conviction Proceedings under sections 2241, 2254 or 2255 of title 18, United States Code.**

~~$7,800~~ ***8,600*** for trial court level.
~~$5,600~~ ***6,100*** for appeal.

(viii) **Proceedings to Protect Federal Jurors Employment under section 1875 of title 28, United States Code.**

~~$7,800~~ ***8,600*** for trial court level.
~~$5,600~~ ***6,100*** for appeal.

(ix) **Other Representations required or authorized by the CJA.**

~~$1,700~~ ***1,800*** for trial court level.
~~$1,700~~ ***1,800*** for each level of appeal.

This category includes but is not limited to the following representations:

(a) **Probation Violation;**

(b) **Supervised Release Hearing** [for persons charged with a violation of supervised release or facing modification, reduction or enlargement of a condition or extension or revocation of a term of supervised release];

(c) **Parole Proceedings under chapter 311 of title 18, U.S.C.;**

(d) **Material Witness in Custody;**

(e) **Mental Condition Hearings Pursuant to chapter 313 of title 18, U.S.C.** [with the exception of hearings pursuant to sections 4241 and 4244 of title 18, U.S.C., which are considered part of the case in chief with no separate compensation maximums applying. (A chart detailing the treatment for the purpose of compensation of representation at each hearing pursuant to chapter 313 is included as Appendix H.)];

(f) **Civil or Criminal Contempt** [~~W~~where the person faces loss of liberty];

(g) **Witness** [before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, where there is a reason to believe either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty];

(h) **International Extradition** [under chapter 209 of title 8, U.S.C.].

CHAPTER VI. REPRESENTATION IN FEDERAL DEATH PENALTY CASES AND IN FEDERAL CAPITAL HABEAS CORPUS PROCEEDINGS

6.02 Compensation of Appointed Counsel in Capital Cases.

A. **Inapplicability of CJA Hourly Rates and Compensation Maximums.**

(1) **Hourly Rates.**

(a) **In General.** Pursuant to 21 U.S.C. § 848(q)(10)(A) (as recodified in 18 U.S.C. § 3599(g)(1)), **with respect to federal death penalty cases and federal capital habeas corpus proceedings commenced, and appellate proceedings in which an appeal was perfected, on or after April 24, 1996**, the presiding judicial officer shall set the hourly compensation rate for appointed counsel in an amount not to exceed $160 per hour [1] for in-court and out-of-court time for work performed on or after March 1, 2005 and ~~before~~ ***prior to*** January 1, 2006; $163 per hour [2] for work performed on or after January 1, 2006 and prior to May 20, 2007; $166 per hour [3] for work performed on or after May 20, 2007 and prior to January 1, 2008; ~~and~~ $170 per hour [4] for work performed on or after January 1, 2008 ***and prior to*** March 11, 2009***; and $175 per hour for work performed on or after March 11, 2009,*** (unless raised by the Judicial Conference in accordance with section 3599(g)(1)).

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B. **Attorney Compensation Recommendation.**

(1) In the interest of justice and judicial and fiscal economy, and in furtherance of

relevant statutory provisions regarding qualifications of counsel in capital cases (see paragraph 6.01C), presiding judicial officers are urged to compensate counsel at a rate and in an amount sufficient to cover appointed counsel's general office overhead and to ensure adequate compensation for representation provided.

With respect to federal death penalty cases and federal capital habeas corpus proceedings commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996, the rate of compensation shall not exceed ~~$170~~ *175* per hour for in-court and out-of-court time for work performed on or after ~~January 1, 2008~~ March 11, 2009, (unless revised by the Judicial Conference in accordance with 18 U.S.C. § 3599(g)(1)). (See paragraph 6.02A(1)(a).)

Attachment 2

Instructions to Determine the Applicable Case Compensation Maximums for Panel Attorneys Under the Criminal Justice Act

With the increase in the Criminal Justice Act (CJA) panel attorney hourly rate, effective March 11, 2009, the case compensation maximums for panel attorneys "simultaneously" increase under subparagraph (d)(2) of the CJA, 18 U.S.C. § 3006A. Courts must determine whether compensation claims submitted on a CJA Form 20 (Appointment and Authority to Pay Court Appointed Counsel) are governed by the new maximums or by the former maximums.

The key rules are:

The new maximums apply to appointed counsel for a representation if that person furnished any CJA compensable work on or after March 11, 2009.

The former case compensation maximums apply to appointed counsel for a representation if that person's work was completed before March 11, 2009.

The person responsible for reviewing, processing, or approving claims should look at Item 19 ("Certification of Attorney/Payee for the Period of Service") of the CJA Form 20 to determine whether the panel attorney furnished any CJA-compensable work on or after March 11, 2009. If so, the new case compensation maximums apply to the attorney's voucher on the representation: felony and non-capital habeas corpus $8,600, misdemeanor $2,400, appeal $6,100, 18 U.S.C. § 4106A parole proceeding $1,800/appeal $6,100, and other representations (including crack cocaine retroactive amendment representations: representation types CK and AA) $1,800. If, on the other hand, all services were performed before March 11, 2009, the former case compensation maximums apply: felony $7,800, misdemeanor $2,200, appeal $5,600, 18 U.S.C. § 4106A parole proceeding $1,700/appeal $5,600, and other representations $1,700. ***(PLEASE NOTE: If the voucher is entered into the CJA payment system after March 11, 2009, the warning message indicating that circuit approval is required will not activate at the former case maximum levels, even when they apply. The warning messages are only being generated based on the new case compensation maximums.)***