

VII. Instructions for the CJA Form 21 and 31 and the Use of Investigative, Expert and other Service Providers.

- A. All requests for investigative, expert or other service providers shall be made by a motion to the presiding judge.
- B. Prior authorization must be obtained for any investigative, expert or other service provider fees, excluding expenses, which will exceed \$800.
1. Failure to obtain prior authorization may result in disallowance of any claim for investigative, expert or other service provider compensation exceeding \$800.
 2. Exceeding the prior authorization without making a further application may result in disallowance of that portion of the claim exceeding the prior authorization.
 3. Claims for investigative, paralegal, or expert compensation exceeding \$800 without prior authorization will only be approved if the presiding judge finds, in the interest of justice, that timely procurement of necessary services could not await prior authorization. (See §310.20.10 of the *Guide to Judiciary Policy*)
 4. Application for the ratification of expenses incurred without prior Court approval are not viewed favorably and every effort should be made to **avoid these *nunc pro tunc* applications.**
 5. When seeking prior approval, indicate the necessity for the service, the hourly rate charged by the provider and the hours of service anticipated to be required. Please note that any amount approved, even if expressed as a number of hours times an hourly rate, will be deemed to cover compensation and expenses. Vouchers which exceed their prior authorization because of expenses will not be favorably viewed. If expenses will bring a voucher above its prior authorization, a further application should promptly be made to the Court.
 6. If you obtain prior approval for expert, investigative or other services and it later becomes apparent that the cost will exceed the initial approved amount, additional compensation must be requested and approval obtained from the presiding judge before any further service is provided. It is the clear intent of these policies to end the practice whereby providers routinely exceed their prior approval and thereafter counsel request *nunc pro tunc* approval from the Court. Such applications will not be routinely granted.

- C. Investigative, expert or other services compensation, exclusive of reasonable expenses, may not exceed the statutory maximum unless such additional payment in excess of the statutory maximum is certified by the presiding judge as necessary to provide fair compensation for services of an unusual character or duration.
(A chart setting forth the statutory maximums may be found in Appendix “C”)
- D. Procedure for Obtaining Approval for and Compensation of Investigative, Expert and Other Service Providers.
1. A request for prior approval of investigative, expert or other service provider services, including paralegals, is prepared by appointed counsel and submitted to the presiding judge.
 2. A request must contain:
 - a. The expert’s name, address, telephone number and taxpayer identification number or social security number;
 - b. The investigator, expert or other service provider’s hourly rate (see Presumptive Rates Schedule in Appendix “E”);
 - c. The estimated number of hours to complete the work;
 - d. Justification for the use of the expert, investigator or other service provider;
 - e. A properly prepared CJA Form 21 or 31 for the judge’s approval; and
 - f. An affidavit of counsel.
 3. If the approved request for compensation exceeds the statutory maximum, it will be forwarded to the Chief Judge of the Court of Appeals for approval
 4. After approval, a copy of the approved order and the CJA Form 21 or 31 will be mailed to appointed counsel.
 5. Appointed counsel should forward the CJA Form 21 (non-capital) or 31 (capital) to the expert, investigator or service provider with instructions not to exceed the amount approved without additional approval of the

6. Once the expert, investigator or service provider's services have been completed, the CJA Form 21/31 should be completed and forwarded to appointed counsel for certification along with an itemized bill.
 7. Experts must attach to each voucher a billing sheet which breaks down the work by:
 - a. Date(s) the work was performed
 - b. Brief description of what was done
 - c. Time spent (in tenths of hours) for each task
 8. After reviewing the itemized bill and voucher for accuracy, appointed counsel should certify the voucher in Box 19 of CJA Form 21 or 31. The voucher and itemized bill should then be mailed to the office of the CJA Clerk for processing and payment.
 9. If the expert compensation amount exceeds the statutory maximum, the voucher will be forwarded to the presiding judge along with a recommendation to approve or reduce the voucher claim. If the voucher is certified by the presiding judge for compensation in excess of the statutory maximum, the voucher will be referred to the Chief Judge of the Court of Appeals for approval.
- E. Circuit-wide Presumptive Rates and Other Information for Investigators, Experts and Other Service Providers.
- a. The presumptive hourly rate for a Psychiatrist or Psychologist and other similar providers (see Appendix "E") is a goal to be sought after.
 - b. If a provider seeks a higher rate of compensation than provided in Appendix "E", CJA counsel are encouraged to attempt to negotiate a lower CJA rate.
2. Investigators
- a. The investigators' presumptive hourly rate can be found in Appendix "E". These rates apply in all cases including mega-cases and death eligible cases and are Circuit-wide.
 - b. When retaining the services of an investigator or other service provider, counsel should consider the distance from the location of the provider to the location where the services will be rendered.

Excessive or unnecessary billing for travel time and mileage expenses will not be compensated when a similar provider more geographically appropriate could have been substituted. The goal of this provision is to minimize payments for unnecessary travel where a more geographically appropriate provider could have been retained.

- c. Counsel, for good cause shown to the presiding judge, who seek to retain the services of an investigator whose base of operations is outside the geographic area of where the services will be rendered, may do so, if:
 - i. Counsel negotiates a lower rate for travel time (i.e., \$35-\$45 per hour); or
 - ii. Counsel negotiates a finite number of hours above which the investigator will not be paid while on travel. This has the effect of capping the investigator's travel time so the presiding judicial officer knows that this investigator's travel expenses will not exceed the amount set, without a further application being made.
 - iii. Counsel are asked to be fiscally responsible in their choice of outside providers being mindful of the travel time and mileage costs.
- d. Subpoenas may be served by an investigator if and only if the service of the subpoena is incident to an interview of the witness and the investigator is near the location of the witness. (See §2.28 E of the *Guide to Judiciary Policies and Procedures* for further clarification)
- e. In multiple defendant cases, it may be possible to split investigative costs among the defendants. Obviously, counsel must be cognizant of conflict issues.
- f. Investigators will not be compensated for "assisting counsel at trial" unless prior authorization is received from the presiding judge.
- g. Two investigators from one firm may not bill for attending meetings with appointed counsel.
- h. Consider submitting requests for all service providers at the same time. It is preferred, when possible, that multiple service provider

requests for the same case be submitted all at the same time to conserve judicial time.

3. Pathologist hourly rate can be found in Appendix “E”.
4. Paralegal Services:
 - a. The compensation rate for a paralegal can be found in Appendix “E”.
 - b. If the paralegal is a salaried employee of the firm, the payment is not limited to the actual hourly rate paid the paralegal employee.
 - c. Where a paralegal is a full time employee of the panel member’s firm, counsel may seek reasonable compensation which exceeds the presumptive rate and recognizes the added costs associated with maintaining said full time paralegal employee. For guidance with establishing this rate, the Case-Budgeting Attorney should be contacted prior to an application being made to the presiding judicial officer.
 - d. Paralegal services are billed on a CJA Form 21 or 31.
 - e. Paralegal use cannot be billed as an expense of counsel.
 - f. The maximum presumptive rate is a rate which not all paralegals will be sufficiently qualified to receive.
 - g. Counsel should be prepared to explain to the presiding judge what educational background, experience or language skills qualify the paralegal to receive compensation at the maximum rate.
 - h. The limits on service providers are applicable to paralegals. See §§ 310.20.10 and 310.20.20 of Volume VII of the *Guide to Judiciary Policy*, which states in part that compensation in excess of \$800 requires prior approval and compensation exceeding the case maximums requires Circuit approval.
 - i. Paralegals, like associates, are not substitutes for assigned CJA attorneys. (i) Paralegals may not bill for attending court proceedings (other than trial) without prior Court authorization. (ii) Paralegals cannot bill for meetings or client conferences. (iii) It is expected that the assigned CJA attorney will meet with the client and a paralegal may not substitute in this role.

5. Mitigation Specialists

- a. The Circuit-wide presumptive rate for mitigation specialists can be found in Appendix “E”. As in all circumstances where presumptive rates apply and counsel cannot secure an appropriate mitigation specialist at the presumptive rate, application may be made to the presiding judge for another rate upon a showing of necessity and good cause.
- b. Mitigation specialist services are billed on CJA Forms 21 or 31. The use of a mitigation specialist cannot be billed as an expense of counsel.
- c. Counsel are not required to seek prior approval to retain a mitigation specialist where:
 - i. The mitigation specialist is paid the presumptive rate or less.
 - ii. Case-budgeting for the case is in effect.
 - iii. The mitigation specialist is within the case budget.
- d. If the case is not subject to case-budgeting, prior approval will be required for mitigation services exceeding \$800.
- e. Counsel should remind his/her mitigation specialist of the requirement to seek further authorization where the specialist anticipates exceeding the previously authorized amount.
- f. Counsel should be mindful that mitigation specialist fees, like all expert fees, are subject to negotiation. Counsel are asked to use their best efforts to attain the best price for the services to be rendered by the mitigation specialist and to seek out the most geographically appropriate person based on the area where the mitigation investigation will occur. The presumptive rate is a cap, but not the only rate.

6. Interpreters Generally

- a. It has been the practice in this Circuit to pay interpreters working on CJA matters the contract rate negotiated between the Court and the interpreters who work in the Courthouse. These rates are generally divided into half day and full day fees with different amounts set for certified and non-certified interpreters. These rates are listed on the website of the individual courts and can be

found in Appendix “F” of this manual.

- b. Travel time is included in the calculation of whether an interpreter has worked a half or full day.
 - i. Counsel should consider the travel starting place of the interpreter they select.
 - ii. When lengthy travel must occur, counsel are asked to consider seeing more than one client in the location to divide the travel costs among several CJA cases.
- c. Counsel should be aware there are certified and non-certified interpreters who accept CJA work. A list of certified and non-certified interpreters along with a sufficient address to judge travel time can be obtained from the district court’s interpreter’s office.
 - i. Certified interpreters are paid at a higher rate than the non-certified language proficient individuals. If counsel anticipates using an interpreter to review a Presentence Report or a plea agreement, a certified interpreter should be retained where possible.
 - ii. If the purpose of a meeting is to render a status report or a general session necessary to facilitate good client relations, counsel should consider using a non-certified language proficient person.
- d. Interpreters working on CJA cases in the Second Circuit will be compensated on an hourly basis for the translation of transcriptions of tapes.
 - i. Translation/transcriptions of taped conversations in a foreign language performed for CJA counsel, will be compensated at the same rate as that paid by the United States Attorney’s Office for similar services which is \$60 per hour.
 - ii. Where counsel believes the required translation makes the \$60 per hour rate inappropriate, then, counsel may apply to the presiding judge for another rate and provide the court with a detailed written explanation as to the basis for the requested rate.
- e. Approval for any expert’s hourly rate exceeding the court’s

presumptive rate must be obtained from the presiding judge.

- f. Appointed counsel should attempt to obtain the lowest possible hourly rate. For assistance with obtaining investigators, paralegals, psychologists and psychiatrists as well as other service providers, willing to work for or under the presumptive rates, please contact the Circuit's CJA Case-Budgeting Attorney.

7. In-Court Interpreting

- a. Counsel should attempt, where possible, to utilize the Court's interpreter for pre and post-court client conferences.
- b. By arriving early for a court appearance and requesting that the interpreter arrive early, the court's interpreter may be used for short discussions prior to the case being called.
- c. Short visits with the client in court may eliminate the necessity of a trip to the detention facility and a full day's billing to CJA by the interpreter.
- d. If the hearing from which you requested an interpreter is canceled or rescheduled, you should notify the Interpreter's Office immediately so the interpreter's services can be canceled.

8. Out-of-Court Interpreting

- a. The selection of an interpreter for an out-of-court conference should be handled in the same manner as the selection of any other expert. There is no statutory requirement that a certified interpreter be used.
- b. Fee rates to be paid to interpreters and effective dates can be found in Appendix "F".
- c. The District Court CJA clerks have reported an increasing number of last minute (within 24 hours of the scheduled appointment time) cancellations of interpreters by attorneys. Under these circumstances, if the interpreter cannot book another session and had no other billable work during the scheduled sessions, they must be paid accordingly, even though services were not provided. Counsel should use their best efforts to avoid last minute cancellations.
- d. Interpreters seeking payment for last minute cancellations must

submit a letter from counsel acknowledging the belated cancellations and a letter from the interpreter representing that the interpreter did not fill the time slot with another client and had no other income producing work to perform during this same time period.

- e. Although there are no presumptive rates for interpreters, there may be instances where adherence to the full day half day system would cause a service provider to be unjustly enriched. For example, to charge CJA a full half day rate where a brief conference call was interpreted by a service provider from his/her home would appear inappropriate. In such instances it is permissible to negotiate an hourly rate. The current hourly rate for language skilled and certified interpreters as well as the previous hourly rates can be found in Appendix "F".
- f. All out-of-court interpreting requires the permission of the court if the interpreter's fee will exceed \$500.
- g. All interpreters are paid with a CJA Form 21 voucher in non-capital cases and a CJA Form 31 in a capital case. The vouchers must be completely filled out, including the top portion of the voucher containing the case and defendant information.
- h. Counsel should review an interpreter's voucher for completeness and accuracy prior to submitting it for payment. Be certain that Box 13 provides sufficient information to identify the nature of the services rendered.

F. Information and Considerations Regarding Investigators, Experts and Other Service Providers:

- 1. Where the amount of time needed to complete the project is unclear, counsel should consider seeking the presiding judges's approval for the statutory maximum limit.
- 2. Once the initial work is completed, counsel and the provider should have a basis to estimate the number of hours needed to complete the service. An accurate request for additional approval in excess of the statutory maximum can then be forwarded to the Chief Judge of the Court of Appeals.