

*Office of the Clerk*  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

*Lawrence K. Baerman*  
Clerk

March 13, 2009

TO: NYND CJA Panel Attorneys  
RE: Increase to Case Compensation Maximum Amounts

Dear CJA Panel Attorney:

Please be advised that as of March 11, 2009, there has been an increase to the CJA Hourly Rates and also the Case Compensation Maximums.

Congress recently passed, and the President signed into law on March 11, 2009, the Omnibus Appropriations Act, 2009 (Pub. L. No. 111-8), the spending measure which includes fiscal year 2009 funding for the Judiciary. As detailed in the attached documentation, the Congress authorized and provided funds to increase the capital and non-capital hourly rates for Criminal Justice Act (CJA) private "panel" attorneys; and the change in the non-capital hourly rate results in an adjustment to the attorney case compensation maximum amounts.

The new hourly compensation rates apply to work performed on or after March 11, 2009. Where the appointment of counsel occurred before this effective date, the new compensation rates apply to that portion of services provided on or after March 11, 2009.

The CJA Panel Attorney page of the courts web-site has been updated to include this updated information, as well as other helpful information for CJA Panel Attorneys.

Very truly yours,

  
Clerk of Court

## **CJA HOURLY RATES**

Work done prior to January 1, 2000	-	\$65/hr for In Court \$45/hr for Out of Court
Work done as of January 1, 2000	-	\$70/hr for In Court \$50/hr for Out of Court
Work done as of April 1, 2001	-	\$75/hr for In Court \$55/hr for Out of Court
Work done as of May 1, 2002	-	\$90/hr for In Court \$90/hr for Out of Court
Work done as of January 1, 2006	-	\$92/hr for In Court \$92/hr for Out of Court
Work done as of May 20, 2007	-	\$94/hr for In Court \$94/hr for Out of Court
Work done as of January 1, 2008	-	\$100/hr for In Court \$100/hr for Out of Court
Work done as of March 11, 2009	-	\$110/hr for In Court \$110/hr for Out of Court

## **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 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, 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.

### (2) Specific Proceedings

- (i) **Felonies (except federal capital prosecutions)**

\$8,600 for trial court level

\$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].**

\$2,400 for trial court level

\$6,100 for appeal

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

\$1,800 for representation before the United States Parole Commission

\$6,100 for appeal

- (iv) **Proceedings under § 4107 and 4108 of title 18, United States Code [for counsel and guardians ad litem providing services in connection with prisoner transfer proceedings.]**

\$2,400 for each verification proceeding

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

\$8,600 if offense alleged by the U.S. Attorney is a felony.

\$2,400 if offense alleged by the U.S. Attorney is a misdemeanor.

- (vi) Proceedings under § 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]:
  - \$8,600 for trial court level
  - \$6,100 for appeal
- (vii) Non-capital Post-Conviction Proceedings under §§ 2241, 2254, or 2255 of title 18, United States Code:
  - \$8,600 for trial court level
  - \$6,100 for appeal
- (viii) Proceedings to Protect Federal Jurors Employment under § 1875 of title 28, United States Code:
  - \$8,600 for trial court level
  - \$6,100 for appeal
- (ix) Other Representations required or authorized by the CJA:
  - \$1,800 for trial court level
  - \$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 § 4241 and 4244 of title 18, U.S.C., which are considered part of the case in chief with no separate compensation maximums applying.
- (f) Civil or Criminal Contempt - 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 18, 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 for in-court and out of court time for work performed on or after March 1, 2005 and prior to January 1, 2006; \$163 per hour for work performed on or after January 1, 2006 and prior to May 20, 2007; \$166 per hour for work performed on or after May 20, 2007 and prior to January 1, 2008; \$170 per hour 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)).

## **WAIVING CASE COMPENSATION MAXIMUMS.**

Payments in excess of CJA Compensation maximums may be made to provide fair compensation in cases involving extended or complex representation when so certified by the court or United States magistrate judge and approved by the chief judge of the circuit (or by an active circuit judge to whom excess compensation approval authority has been delegated.)

In determining if an excess payment is warranted, the court or United States magistrate judge and the chief judge of the circuit (or an active circuit judge to whom excess compensation approval authority has been delegated) should make a threshold determination as to whether the case is either extended or 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 “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.”

After establishing that a case is extended or complex, the approving judicial officer should determine if excess payment is necessary to provide fair compensation. The following criteria, among others, may be useful in this regard: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed, knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel’s practice and injury thereto; any extraordinary pressure of time or other factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

## **EXPANSION OF THE DELEGATION AUTHORITY OF THE CHIEF JUDGE OF THE COURT OF APPEALS TO APPROVE EXCESS COMPENSATION AMOUNTS**

CJA Guidelines 2.22B(1)(I), 2.22B(3), 3.02A, and 6.03B

All references in the above-referenced CJA Guidelines to the chief judge of the court of appeals having authority to delegate to an “active circuit judge” the approval of vouchers in excess of the statutory maximum compensation have been revised to read an “active *or senior* circuit judge.”

## **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.

Recognizing that investigative, expert, and other services may be required before counsel has an opportunity to prepare a case budget or the court to approve it, courts should act upon requests for services where prompt authorization is necessary for adequate representation. Courts, in examining the case budget, may reconsider amounts authorized for services prior to the budget's approval; however, courts shall not rescind prior authorization where work has already been performed.

## **SUPPORTING MEMORANDUM.**

### **(1) Claim for Less than the Case Compensation Maximum.**

In any case in which the total compensation claimed is less than the statutory case compensation maximum, counsel may be required to submit a memorandum supporting and justifying the compensation claimed, whenever called for by local rules, standing order, or by the presiding judicial officer.

### **(2) Claim for More than the Case Compensation Maximum.**

In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel shall refer to the **CJA26A GUIDANCE TO ATTORNEYS IN DRAFTING THE MEMORANDUM REQUIRED FOR A COMPENSATION CLAIM IN EXCESS OF THE CASE COMPENSATION MAXIMUM: DISTRICT COURT** in filling out and submitting a **CJA26 SUPPLEMENTAL INFORMATION STATEMENT FOR A COMPENSATION CLAIM IN EXCESS OF THE STATUTORY CASE COMPENSATION MAXIMUM: DISTRICT COURT**