

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

Lawrence K. Baerman
Clerk

June 10, 2009

~ Attention CJA Panel Attorneys in the Northern District of New York ~

The Board of Judges of the Northern District of New York has voted to approve the reimbursement of travel time of less than one hour to CJA Panel Attorneys.

The U.S. District Court and the NDNY CJA Panel Committee remind all CJA Panel Attorneys of the importance of meaningful, periodic contact with incarcerated clients. Panel Attorneys will be compensated for necessary and reasonable travel time incurred to provide such client contact, as in accordance with Volume VII, Chapter 2.26, of The Guide to Judiciary Policies and Procedures and the NDNY CJA Voucher Instructions.

Please consult the CJA page of the Northern District of New York web-site regularly at:
<http://www.nynd.uscourts.gov/cja.cfm>

Very truly yours,


Clerk of Court

2.26 Travel Time. Compensation shall be approved for time spent in necessary and reasonable travel. Ordinarily, allowable time for travel includes only those hours actually spent **in or awaiting transit**. Accordingly, if a trip necessarily and reasonably requires overnight lodging, compensable travel time to the destination from the claimant's office would terminate upon arrival and check-in at the hotel or other place of accommodation plus travel time returning directly to the claimant's office from said destination. Compensation for travel time shall be at a rate not to exceed the rate provided in subsection (d) of the Act for "time reasonably expended out of court."

If such travel is made for purposes in addition to representing the person whom the attorney has been appointed to represent under the Act, the court shall determine whether, in fairness to the appointed attorney, the travel time should be apportioned, and the appointed attorney compensated for that portion of the travel time reasonably attributable to the performance of the attorney's duties under the Act. In determining whether such travel time should be so apportioned, the court may consider the time reasonably expended in the performance of the attorney's duties under the Act, in relation to the time expended furthering other purposes of the trip, the significance to the representation of the duties performed, and the likelihood that the attorney would have made the trip to perform the duties under the Act in the absence of the other purposes for making the trip.

C. Travel Expenses. Travel by privately owned automobile should be claimed at the rate currently prescribed for federal judiciary employees who use a private automobile for conduct of official business, plus parking fees, ferry fares, and bridge, road, and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis.

Per diem in lieu of subsistence is not allowable, since the Act provides for reimbursement of expenses actually incurred. Therefore, counsel's expenses for meals and lodging incurred in the representation of the defendant would constitute reimbursable "out-of-pocket" expenses. In determining whether actual expenses incurred are "reasonable," counsel should be guided by the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations.

Government travel rates at substantial reductions from ordinary commercial rates may be available from common carriers for travel authorized by the court in connection with representation under the CJA. To obtain such rates, attorneys must contact the clerk of the court and obtain prior approval from the presiding judicial officer.

2.28 Non-reimbursable Items. Appointed counsel may not claim reimbursement for the following:

A. General Office Overhead. General office overhead includes general office expenses which would normally be reflected in the fee charged to the client. The statutory fee is intended to include compensation for these general office expenses. Therefore, except in extraordinary circumstances (see paragraph 3.16), personnel, rent, telephone service, and secretarial expenses associated with CJA representation, whether work is performed by counsel or other personnel, are not reimbursable.

B. Items and Services of 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, etc. Also, the cost of services of a personal nature and expenses incidental thereto which cannot be considered legal representation, such as assisting the defendant in the disposition of his or her personal property, arranging for the placement of minor children of the defendant, assisting the defendant in executing the conditions of probation, providing legal assistance in matters unrelated to the litigation of the case, although incidental to the defendant's arrest, etc.

C. 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.

D. Printing of Briefs. The expense of printing briefs, regardless of the printing method utilized, is not reimbursable; however, the cost of mimeographing, "xeroxing," or similar copying service is reimbursable.

E. Service of Process. Witness fees, travel costs, and expenses for service of subpoenas on fact witnesses, are not payable out of the CJA appropriation but are governed by Rule 17, Fed. R. Crim. P. and 28 U.S.C. §1825.

F. Taxes. Taxes paid on attorney compensation received pursuant to CJA, whether based on income, sales or gross receipts, are not reimbursable expenses.

2.27 Reimbursable Out-of-Pocket Expenses. Out-of-pocket expenses reasonably incurred may be claimed on the voucher, and must be itemized and reasonably documented. Expenses for investigations or other services under subsection (e) of the Act shall not be considered out-of-pocket expenses.

A. Reimbursement for Transcripts.

(1) Generally, court reporters or reporting services which furnish court authorized transcripts in CJA cases claim and receive compensation for their services on the CJA Form 24, "Authorization and Voucher for Payment of Transcript," (See paragraph 3.12 of these **Guidelines**). While this is the preferred method for payment of transcripts, if assigned counsel has elected to pay for the court authorized transcripts "out-of-pocket," the cost may be claimed as a reimbursable expense, as provided for in subsection (d)(1) of the Criminal Justice Act. However, unlike most reimbursable expenses, which should be claimed on the CJA Form 20, "Appointment of and Authority to Pay Court Appointed Counsel," reimbursement to the attorney who has paid for the transcript as an "out-of-pocket" expense should be claimed on a CJA Form 24. (See Appendix A).

(2) The cost of transcribing depositions in criminal cases is the responsibility of the Department of Justice pursuant to Rule 17b of Fed. R. Crim. P. (but when witness is an expert, then the Administrative Office will pay out of CJA funds)(53 Comp. Gen. 638 (1974)).

B. Computer-Assisted Legal Research. The cost of use, by appointed counsel, of computer-assisted legal research services, may be allowed as a reimbursable out-of-pocket expense, provided that the amount claimed is reasonable. Whenever appointed counsel incurs charges for computer-

assisted legal research, counsel should attach to the compensation voucher a copy of the bill and receipt for the use of the legal research services or an explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges, or by charges identifiable to the specific research). If the amount claimed is in excess of \$500 or if it includes costs for downloading or printing, counsel should include a brief statement of justification.

C. Travel Expenses. Travel by privately owned automobile should be claimed at the rate currently prescribed for federal judiciary employees who use a private automobile for conduct of official business, plus parking fees, ferry fares, and bridge, road, and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis.

Per diem in lieu of subsistence is not allowable, since the Act provides for reimbursement of expenses actually incurred. Therefore, counsel's expenses for meals and lodging incurred in the representation of the defendant would constitute reimbursable "out-of-pocket" expenses. In determining whether actual expenses incurred are "reasonable," counsel should be guided by the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations.

Government travel rates at substantial reductions from ordinary commercial rates may be available from common carriers for travel authorized by the court in connection with representation under the CJA. To obtain such rates, attorneys must contact the clerk of the court and obtain prior approval from the presiding judicial officer.

D. Interim Reimbursement for Expenses. Where it is considered necessary and appropriate in a specific case, the presiding judge or United States magistrate judge may, in consultation with the Administrative Office, arrange for interim reimbursement to counsel of extraordinary and substantial expenses incurred in providing representation in a case. Interim reimbursement should be authorized when counsel's reasonably-incurred, out-of-pocket expenses for duplication of discoverable materials made available by the prosecution exceed \$500.

E. Reimbursement for Expenses Incurred Defending Malpractice Allegations.

The CJA was amended by the Federal Courts Improvement Act of 2000, Pub. L. No. 106-518, to authorize courts to reimburse panel attorneys for expenses reasonably incurred in defending actions alleging malpractice in furnishing representational services under the CJA. The amendment covers expenses incurred on or after its effective date (November 13, 2000). No reimbursement shall be made if a judgment of malpractice is rendered against the attorney; in view of this prohibition, no reimbursement should be provided until the malpractice claim is resolved.

The total reimbursement shall not exceed the deductible amount of counsel's professional liability insurance policy or \$5,000, whichever is less. Expenses qualifying for reimbursement may include, but are not limited to, the costs of transcripts, witness fees and costs, and attorney fees. In determining reasonable attorney fees for this purpose, CJA rates are inapplicable. Reimbursement shall not include compensation for representing oneself in defending the action alleging malpractice, or, if represented by counsel, for time spent assisting that counsel in defending the action.

Reimbursement should be claimed under the expense categories on a CJA Form 20 (or, where the appointment was in a capital matter, CJA Form 30), and supporting documentation should be attached.

F. Other. This would include items such as telephone toll calls, telegrams,

copying (except printing -- see paragraph 2.28 D below) and photographs.

Guide to Judiciary Policy

Volume 7

Chapter 3

§ 320.30 Transcripts

§ 320.30.10 Authorization and Payment

- (a) For panel attorneys, the preferred method for payment of transcripts authorized by the court is for the court reporter or reporting service to claim compensation directly on a [Form CJA 24 \(Authorization and Voucher for Payment of Transcript\)](#). Alternatively, the panel attorney may pay for the court-authorized transcript and obtain reimbursement as an "out-of-pocket expense," using [Form CJA 24](#). **See:** [Guide, Vol 7A, § 230.63.20](#). Regardless of which method is used, the limitations set forth in [§ 310.20](#) and the \$7,500 limitation set forth in [Guide, Vol 7A, Ch 6](#) are inapplicable with regard to the cost of transcripts.

§ 320.70.40 Computer Hardware, Software, or Litigation Support Services

(a) Overview

- (1) Providing an adequate defense may require CJA panel attorneys to utilize computer hardware, software, or litigation support services not typically available in a law office. In such cases, following the standards in [§ 320.70.30](#), counsel may apply to the court for authorization of CJA funds for the acquisition of such property or services.
- (2) Before seeking court approval for any computer hardware or software with a cost exceeding the limitations in [§ 310.20.30\(a\)](#), or for the utilization of computer systems, litigation support products, services, personnel, or experts with an expected combined cost exceeding \$10,000, appointed counsel must consult the National Litigation Support Team in the Office of Defender Services of the Administrative Office of the United States Courts (510-637-3500) for guidance. Counsel must inform the court in writing of the Office of Defender Services' advice and recommendation regarding counsel's proposed expenditure. **See also:** [Appx 3D \(Sample Order Authorizing the Acquisition of Computer \[Hardware and/or Software\] under the CJA\)](#).

(b) Acquisition of Computer Hardware and/or Software

- (1) The request for acquisition of the computer hardware and/or software, or for the procurement of litigation support services should be submitted on a [Form CJA 21 \(Authorization and Voucher for Expert and Other Services\)](#), or, in a death penalty proceeding, [Form CJA 31 \(Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher for Expert and Other Services\)](#).

- (2) Property purchased with CJA funds is the property of the United States and remains so after the case is completed.
- (3) When property is purchased, counsel must provide the Office of Defender Services with a copy of the following documents to ensure the property is properly accounted for: a copy of the court's order approving the request; a copy of the completed [Form CJA 21](#) (or [Form CJA 31](#)); the purchase order from the vendor and any receiving documents, such as a copy of the packing slip or the company's invoice.
- (4) Because computer hardware or storage devices being used by counsel may contain confidential or privileged information, all case-related materials must be removed before the hardware is returned as described below. Unless otherwise required by the court or by law, counsel should retain copies, electronic or otherwise, of the case-related materials for the client's file.

Note: When large amounts of electronic information are placed on drives or storage devices purchased with CJA funds, counsel may apply to the court to retain the drive or an alternative drive as the most cost-effective and efficient method for preserving the data.

- (5) Upon the completion of the case, counsel must contact the National Litigation Support Team in the Office of Defender Services at (510) 637-3500 for instructions on returning any software, and directions for deleting case-related material from any hardware and returning it to the National Litigation Support Team for the permanent removal of case-related material. If appointed counsel has acquired software, then counsel should provide all accounting information for the software, including any serial numbers, activation codes, or other identifying information, and remove the software from his or her machines. If appointed counsel acquired computer hardware, it must be returned in good condition.