

**ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS**

WASHINGTON, D. C. 20544

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GUIDE TO JUDICIARY POLICY

TRANSMITTAL 07-005 VOLUME/PART 7A CHAPTER(S) 2, 3

TO: Judges, United States Courts of Appeals
Judges, United States District Courts
United States Magistrate Judges
Circuit Executives
Federal Public/Community Defenders
District Court Executives
Clerks, United States Courts of Appeals
Clerks, United States District Courts
Chief Probation Officers
Chief Pretrial Services Officers
Senior Staff Attorneys
Chief Preargument/Conference Attorneys
Circuit Librarians

FROM: Judge Thomas F. Hogan 

RE: DEFENDER SERVICES

This transmittal provides notice of changes to the *Guide to Judiciary Policy*, Vol. 7 (Defender Services), Pt. A (Guidelines for Administering the CJA and Related Statutes):

Chapter 2 – Appointment and Payment of Counsel

Chapter 3 – Authorization and Payment for Investigative, Expert, or Other Services

The Judicial Conference of the United States at its September 2011 session approved policy guidance on billing practices of appointed counsel (“panel attorneys”) and investigative, expert, and other service providers (“service providers”) and on the invoicing of interpreting services specifically under the CJA. The guidance is codified in §§ 230.50, 310.65, 320.15, and 320.90, as detailed in the redline comparison below.

These revisions were made in response to the findings of a 15-district audit of CJA panel attorneys and interpreters (see AO Director’s memorandum dated September 12, 2008, Audit of Criminal Justice Act Payments Made to Panel Attorneys and Interpreters), and reflect the input of an expert panel and advisory groups.

Guide Transmittal 07-005 - Defender Services

The revised guidelines address the following topics:

- (1) Billing procedures for time spent and expenses incurred in common with more than one CJA representation:
 - Panel attorneys must prorate time spent in common with another CJA representation;
 - Service providers have the option of prorating time spent in common with another CJA representation or billing it all to one representation; and
 - Both panel attorneys and service providers must bill expenses incurred in common to one of the representations.
- (2) Disclosure requirements for travel and other work that is done for both a CJA and a non-CJA purpose:
 - Panel attorneys and service providers must disclose to the court when travel or other work is for a purpose in addition to representing the CJA client so that the court can determine whether the time or expenses should be apportioned.
- (3) Information on interpreter rates of compensation;
- (4) Contemporaneous time records and record retention requirements for service providers:
 - Service providers must keep contemporaneous time records and retain these records for three years.

The instructions to the CJA payment claims forms (CJA Forms 20, 21, 30, and 31) for panel attorneys and services providers are being modified consistent with the new guidelines.

Questions regarding this transmittal may be directed to the AO Office of Defender Services, Legal and Policy Branch Duty Day Attorney, at 202-502-3030.

REDLINE COMPARISON REFLECTING CHANGES

§ 230 Compensation and Expenses of Appointed Counsel

[. . .]

§ 230.50 Proration of Claims

[. . .]

- (d) Whenever appointed counsel submit separate vouchers, as provided by this section, time spent in common on more than one indictment or case must be prorated among the indictments or cases on which the time was spent, and each indictment or case must be cross-referenced on the supporting materials to the vouchers. Time spent exclusively on any one indictment or case ~~may~~must properly be charged on the voucher for that indictment or case.
- (e) Time or expenses "spent in common" includes work performed simultaneously or within the same unit of time, or expenses incurred, for more than one representation (e.g., travel on behalf of more than one client). Double billing of time or expenses is prohibited (e.g., billing the same travel time or expenses to more than one representation).

REDLINE COMPARISON REFLECTING CHANGES

§ 230.50 [cont'd]

- (f) While time spent in common on more than one CJA representation must be prorated, the entire amount of travel or other expenses applicable to more than one CJA representation must be billed to one representation. The supporting materials to the voucher on which the expenses are billed must cross-reference the other CJA representations.
- (g) If the attorney is billing under the CJA for time or expenses, including travel, that were spent in common for a purpose other than a CJA representation, the attorney must report such information so that the court can determine whether, in fairness to counsel, the time or expenses should be apportioned and the attorney compensated for the time or expenses reasonably attributable to the CJA.
- (1) The attorney should explain the rationale for billing under the CJA, and the court may conduct a further inquiry.
- (2) In determining whether time or expenses spent in common for a purpose other than a CJA representation should be apportioned, the court should consider:
- the time or expenses reasonably expended in the performance of the attorney's duties under the CJA in relation to the time or expenses expended furthering other purposes;
 - the significance to the CJA representation of the duties performed or expenses incurred; and
 - the likelihood that the attorney would have performed the services or incurred the expenses under the CJA in the absence of the other purposes.
- (h) Proration of time among CJA representations must not result in an appointed counsel billing a larger amount than would have been billed if all the time was assigned to one representation.

§ 230.60 Attorney Compensation for Travel Time

[. . .]

- (d) ~~If such travel is made for purposes in addition to representing the person whom the attorney has been appointed to represent under the CJA, the court will 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 CJA. 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 CJA, 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 CJA in the absence of the other purposes for making the trip.~~

REDLINE COMPARISON REFLECTING CHANGES

§ 310 In General

[. . .]

§ 310.65 Proration of Claims

§ 310.65.10 In General

(a) If services were provided for more than one CJA representation, the time spent in common, including travel time, must be represented on the voucher forms by:

- prorating the service time among the representations on separate vouchers; or
- billing the entire service time on a voucher pertaining to one of the representations

The supporting materials to the vouchers must explain the method of billing and, when applicable, cross-reference the other CJA representations (see: § 310.65.20).

(b) When a service provider incurs travel or other expenses applicable to more than one CJA representation, the entire amount of the expenses must be billed on one voucher.

Time or expenses "spent in common" includes work performed simultaneously or within the same unit of time, or expenses incurred, for more than one representation (e.g., travel for more than one client). Double billing of time or expenses is prohibited (e.g., billing the same travel time or expenses applicable to more than one representation on more than one voucher).

(c) A "CJA representation" is one in which the attorney is:

- a federal public or community defender providing representation under the CJA or related statutes, or
- a CJA panel attorney or other attorney or entity authorized to obtain services for a particular representation under the CJA or related statutes.

Reference to a "voucher" in this section includes invoices submitted to a federal public or community defender organization for work performed for that entity.

For information regarding the overlap of billing time periods in the interpreter context specifically, see: § 320.15.30.

§ 310.65.20 Cross-Referencing Vouchers

(a) Whenever a service provider submits a voucher, as provided by this section, that includes time spent in common, if the time is prorated then each CJA representation must be cross-referenced on the supporting documentation to each voucher. If the time is billed to one representation, the other representations must be cross-referenced on the supporting documentation to that voucher. However, to ensure that an appointed attorney does not receive inappropriate information as to another attorney's use of the service provider, the CJA representations that are cross-referenced should not be identified by name and case number if the work was performed for an attorney other than the one who will be certifying the voucher, although the number of other representations should be listed.

REDLINE COMPARISON REFLECTING CHANGES

§ 310.65.20 [cont'd]

- (b) After the attorney certifies the service provider's voucher, the service provider, upon the request of the court's designated CJA voucher review personnel, must provide the name, case number, and any other identifying information for such representations.

§ 310.65.30 Prorating Time Limitation

Proration of time among CJA representations must not result in a service provider billing a larger amount than would have been billed if all the time was assigned to one voucher.

§ 310.65.40 Application of the Case Compensation Maximum

Where compensation is claimed on a voucher for time spent in common on more than one CJA representation, the compensation will be applied to the pre-authorized and case compensation maximum amounts for the representation on that voucher.

§ 310.65.50 Time Spent in Common with Non-CJA Representations

- (a) If the service provider is billing under the CJA for time or expenses, including travel, that were spent in common for a purpose other than a CJA representation, the service provider must report such information so that the court can determine whether, in fairness to the provider, the time or expenses should be apportioned and the provider compensated for the time or expenses reasonably attributable to the CJA.

Note: There is no apportionment between a contract court interpreter's work for a court unit and the CJA, see: § 320.15.30.

- (b) The service provider should explain the rationale for billing under the CJA, and the court may conduct a further inquiry.
- (c) In determining whether time or expenses spent in common for a purpose other than a CJA representation should be apportioned, the court should consider:
- the time or expenses reasonably expended in the performance of the service provider's duties under the CJA in relation to the time and expenses expended furthering other purposes;
 - the significance to the representation of the duties performed or expenses incurred; and
 - the likelihood that the service provider would have performed the services or incurred the expenses under the CJA in the absence of the other purposes.

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 320 Authorization of Investigative, Expert, and Other Services

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§ 320.15 Interpreters

§ 320.15.10 Terms of Compensation

- (a) Interpreting services provided under the CJA may be compensated:
- according to the terms and conditions set forth in the court interpreter services contract;
 - on an hourly rate basis; or
 - on another appropriate basis.
- (b) Interpreters should be compensated consistently throughout the district or, if applicable, in individual court locations.

§ 320.15.20 Reviewing the Rate of Compensation

- (a) In determining the reasonableness of rates paid to interpreters under the CJA, courts should utilize either:
- (1) the half- and full-day rates established by the Director for contract court interpreters performing in-court services; or
 - (2) an hourly rate. The half- and full-day rates (prorated hourly) or the hourly overtime rate should be used as a guidepost for the reasonableness of the hourly rate.
- (b) Justification should be submitted to the presiding judicial officer if compensation is sought for an interpreter by a method different from or in an amount in excess of presumptive or maximum rates adopted by a court.
- (c) Appointed counsel may negotiate rates with the interpreter consistent with the guidance contained in this section.

§ 320.15.30 Overlap of Billing Time Periods

- (a) Contract court interpreters must not bill or receive funds from any other federal court unit, federal public defender, community defender organization, or other attorneys or entities obtaining interpreting services under the CJA or related statutes for any services rendered during the same half- or full-day for which the contract court interpreter is being compensated pursuant to the court interpreter services contract. See: Guide, Vol 5, § 220.30.20. Thus, an interpreter retained by the court under the court contract for a one-half or full-day period may not bill the CJA for any work performed during that same half-day or full-day period even if the court no longer requires the interpreter's services.
- (b) An interpreter billing on a half- or full-day rate basis, hourly basis, or other unit of time under the CJA must not charge any other federal court unit, federal public defender, community defender, CJA panel attorney, or other person or entity otherwise authorized by the court to obtain the services of an interpreter under the CJA or related statutes for any services rendered within the same time period.

REDLINE COMPARISON REFLECTING CHANGES

§ 320.15.30 [cont'd]

- (c) When an interpreter is invoicing under the CJA on a half-day rate basis and works one half-day for a court unit and another half-day for a CJA representation, or is invoicing two separate half-days for different CJA representations, then the first half-day should be billed at the half-day rate and the second at the difference between the half-day and full-day rates, unless otherwise negotiated.
- (d) It is permissible to prorate compensation among more than one CJA representation (but expenses must be invoiced to one CJA representation) or to apportion compensation, including expenses, between a CJA representation and a non-CJA purpose (not including a federal court unit). **See:** § 310.65.

[. . .]

§ 320.90 Record Keeping

- (a) Investigative, expert, and other service providers must maintain contemporaneous time and attendance records for all work billed by them, as well as expense records.
- (b) Such records are subject to audit and must be retained for three years after approval of the appointed counsel's or the service provider's final voucher, whichever is later, for a representation.