



# United States District Court EASTERN DISTRICT *of* TENNESSEE

## CJA Billing Guidelines

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### Introduction

Where persons accused of committing a federal crime establish that they are financially unable to retain private counsel, and where the offense or offenses qualify for Court appointed counsel, the Court may appoint counsel to be paid from public funds pursuant to the Criminal Justice Act (18 U.S.C. § 3006A) (CJA) and the Criminal Justice Act Plan for the Eastern District of Tennessee. To facilitate this process, these billing guidelines have been adopted by the Court.

Every attorney who is paid out of the public funds designated for the payment of legal services rendered under the CJA has the responsibility to exercise prudence and restraint when preparing a voucher for payment. Appointed attorneys have an obligation to limit expenses to the greatest extent possible while still providing full, effective, and fair representation of the client. In addition to these billing guidelines, it is the obligation of each CJA attorney to comply with *The Judiciary Guidelines for Administering the CJA and Related Statutes* (“CJA Guidelines”), applicable local rules, court orders, and notices. Failure to exercise billing judgment, recurring violations of these guidelines, and unreasonable claims may result in reduction or denial of claims and removal from the CJA panel.

CJA vouchers submitted by appointed attorneys for payment are reviewed to determine whether the services rendered and expenses incurred are in accordance with the policies, requirements, practices and procedures of the judiciary. Vouchers are processed, reviewed, and audited by the Clerk’s Office—first by a processor and then by the staff attorney—before the vouchers are forwarded to the judge for review. Voucher review by the staff attorney and judge includes an assessment of whether or not the fees and expenses are reasonable for the activity or task involved.

The following billing guidelines are intended to provide CJA panel members with suggestions for increasing efficiency and maximizing the productive use of time and to help facilitate a quick review process by the Clerk’s Office and Court. Many of the suggestions and tips will be familiar to panel attorneys, but others may be new. Failure to comply with these guidelines may result in a delay in processing of the voucher, a rejection of the voucher back to the attorney for more information, or in some cases, nonpayment of a time or expense claim. Accordingly, it is in the attorney’s best interest to become familiar with these guidelines and to abide by these guidelines when preparing vouchers.

## I. Record Keeping

- (a) Keep accurate, contemporaneous time records.
- (b) Generally, discrete tasks should be entered separately, in chronological order, with a brief correlating description. However, **tasks must be aggregated into a single block of time** pursuant to the following guidelines:

- (1) Multiple tasks performed in one day requiring less than .1 hour each to complete **must** be quantified together at no more than the total actual time expended on all tasks, or quantified with another task on the same day.

Example: If an attorney reviews four separate documents, and takes two minutes to review each document, the attorney should aggregate the time spent reviewing the documents into a single entry and claim .2 as time spent reviewing the documents.

- (2) If the multiple tasks performed fall into multiple categories, the aggregated time entry may be entered into any applicable category.

Example: If the only two tasks performed on the same day include 20 minutes spent drafting a motion, and a telephone call for 2 minutes, the attorney should bill .4 hours for drafting motion and telephone call under the service type "Legal Research and Brief Writing."

- (3) Counsel should aggregate time spent during the day reading substantive documents attached to a Notice of Electronic Filing (NEF) to ensure that double billing of time does not occur.

Example: If counsel has spent a total of 13 minutes reading four different substantive documents attached to NEFs, the total time billed for that day should be .3 for reviewing all three documents- **NOT** three separate entries for each document.

- (4) Time spent reviewing NEFs (the notice, not the substantive documents attached) should be aggregated weekly, monthly, or for the entire period of representation (depending on the number of NEFs generated per case) to fairly represent the time spent reviewing these notices.

Example: If counsel has spent a total of twenty minutes throughout the entire case reviewing notices (not substantive documents attached to notices), counsel should submit **one** time entry of .4 for time spent reviewing notices throughout case. Time may be billed more frequently in cases with more frequent notices.

- (c) Time is billed in tenths of an hour. For your convenience, the following time conversion table is provided:

<b>Minutes</b>	<b>Bill As</b>
0-6	.1
7-12	.2
13-18	.3
19-24	.4
25-30	.5
31-36	.6
37-42	.7
43-48	.8
49-52	.9
53-60	1.0

- (d) Entries **must** be sufficiently detailed and provide adequate justification for the work performed. **Entries must demonstrate to the reviewer that the task was necessary for the representation and that the time spent was reasonable for the nature and complexity of the task.**
- (e) Attorneys may only claim time for work that is originally prepared for the case in which the voucher is submitted.
- (f) If an attorney claims compensation for an amount that exceeds the maximum statutory rate, the attorney must waive payment for the excess or file a CJA Form 26. *See CJA Guidelines § 230.30.*
- (1) To waive payment for the excess, the attorney must include a note on the voucher in the public/attorney note field including the attorney's name and the date.
- (2) For an excess fee claim, a completed CJA Form 26 must be saved as a PDF document and attached under the document tab to the CJA 20 voucher.
- (g) Any compensation exceeding the statutory maximums, exclusive of reimbursement for reasonable expenses, must be approved by the Sixth Circuit Court of Appeals after approval by this Court.
- (h) Attorneys must maintain contemporaneous time and attendance records, as well as expense records, for three years after approval of the final voucher. *See CJA Guidelines § 230.76.*
- (i) Vouchers should be submitted no later than 45 days after the final disposition of the case. *See CJA Guidelines § 230.13.* If a voucher has not been submitted within 45 days, the Court will send a notice through CM/ECF. The attorney will have an additional period of seven days to submit the voucher after notice is sent. The failure of the Court to send notice to counsel will not excuse a late submission.

- (1) If an attorney submits a late-filed voucher, the attorney **must** provide justification for submitting the voucher late in the attorney-notes field on the voucher. Alternatively, the attorney may include a memorandum or other supporting documentation explaining the reason for the late filing as attachments under the document tab to the voucher. **The Court may reject any voucher that lacks good cause for its late submission.**
- (j) When an attorney is substituted by another panel attorney, the substituted attorney should prepare a voucher for the work performed through the date of substitution.<sup>1</sup> The substituted attorney must ***retain the voucher in the eVoucher active document box*** until the conclusion of the case and/or the Court requests submission of the voucher. Any substitute attorney vouchers submitted before the case is concluded will be rejected and returned to the attorney with instructions to retain the voucher until conclusion of the case.
- (k) In substituted attorney cases, the combined total of vouchers for all attorneys will likely exceed the overall case cap. Therefore, each attorney is required to prepare a CJA 26 form, saved in PDF format, and attach the CJA26 form under the document tab to the CJA 20 voucher.
- (l) When an attorney represents a defendant in multiple cases, the attorney **MUST** submit individual vouchers for each separate appointment, even if the cases are related.
- (m) Appointed counsel may claim time for services furnished by a partner or associate within the maximum compensation allowed by the CJA.
- (1) The voucher must separately identify the provider of each service by including the provider's name in the description field.
- (2) Duplicative work may not be billed, unless adequate justification is given for both appointed counsel and a partner or associate billing for working on the same task.

## **II. Actual and Reasonable Time and Expenses**

- (a) Only reasonable work actually performed, and reasonable expenses actually accrued, may be claimed.
- (b) Billing judgment should be exercised as to the reasonableness of all compensation claimed.
- (c) Time spent on overlapping services in multiple related cases (*e.g.*, research, court appearances, waiting time) must be allocated appropriately among the cases and the total amount claimed may not exceed the actual time expended. The attorney should note in the description the other cases and how the time was allocated between them.

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<sup>1</sup> If the substituted attorney is a retained attorney or a federal defender, the original panel attorney may submit his or her voucher and does not have to retain the voucher until the conclusion of the case or await the Court's request for submission.

(d) The following time and expenses are not reimbursable and should not be claimed:

- (1) General office overhead is not compensable. The statutory hourly rate is intended to include compensation for these general office expenses. *See CJA Guidelines* § 230.66.10.

General office overhead includes:

- (i) General office expenses that would normally be reflected in the fee charged to a client such as rent, telephone services, and secretarial services.
- (ii) General account set-up and maintenance in eVoucher, conducting routine billing, and other eVoucher related tasks. However, the Court may approve reimbursement of e-voucher related tasks when the tasks involve one of the following:
  - (A) Extraordinary office expenses pursuant to *CJA Guidelines* § 320.70.30.
  - (B) Work that is actually representational (*e.g.*, requires professional acumen, judgment, analysis, case strategy, development or planning) such as working on case budgeting.

- (2) Expenses for items of a personal nature for the client. *See CJA Guidelines* § 230.66.20.

- (3) The cost of printing briefs, although the cost of photocopying is reimbursable. *See CJA Guidelines* § 230.66.40.

- (4) Fact witness fees, witness travel costs, and expenses for service of subpoenas. These expenses are paid by the Department of Justice pursuant to Fed. R. Crim. P. 17, and 28 U.S.C. § 1825. Contact the United States Marshal for payment procedures. *See CJA Guidelines* § 230.66.50. For more information on fact witness vouchers, visit [http://www.tned.uscourts.gov/docs/cja\\_fact\\_witness.pdf](http://www.tned.uscourts.gov/docs/cja_fact_witness.pdf).

- (5) Taxes paid on attorney compensation, whether based on income, sales, or gross receipts. *See CJA Guidelines* § 230.66.60.

(e) For preparation of “boiler-plate” notices and motions that do not require legal research, only time *newly* expended in creating the document may be claimed. Examples of such “boiler-plate” notices and motions include motions to seal, motions to continue, notices of change of plea hearing, or any other routine filing that involves modifying only the date, case caption, and/or case number or the use of a template

- (f) Claims for conferences with family representatives must briefly state the subject of the communication.
- (g) Absent extraordinary circumstances, billable hours in a day should not exceed ten hours, unless in trial.
- (h) Justification should be provided for any time or expense claimed that exceeds what would normally be presumed adequate for the task or expense.
- (i) If services are provided by an attorney or service provider for more than one CJA representation, the time spent in common, including travel time, must be represented on the voucher by:
  - (1) Prorating the service time among the representations on separate vouchers; or
  - (2) Billing the entire service time on a voucher pertaining to one of the representations.

When an attorney or 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.**

The attorney should explain the method of billing in the description or attorney notes field and, when applicable, cross-reference the other CJA representations.

### **III. Description of Tasks**

- (a) Descriptions of services must be sufficiently detailed to understand the service and to evaluate the reasonableness of the time claim without violating the canons of ethics or disclosing attorney work product.
- (b) Claims for **document review** must state specifically the nature of the material reviewed and the number of pages. Attorneys are expected to review discovery and other documents at a rate of fifty pages or more per hour. If discovery review takes significantly longer, a brief justification should be provided. Time claimed for reviewing documents should be aggregated pursuant to Section I(b).
- (c) Counsel should not bill for items ordinarily considered a clerical function. For example, counsel should not bill for downloading, opening, renaming, saving, printing, and/or forwarding a Notice of Electronic Filing (NEF) or for preparation of vouchers or eVoucher account maintenance.
- (d) Claims for **reviewing NEFs** and associated documents must include the document/pleading number and a brief description of the item reviewed. An attorney cannot claim time for reviewing the attorney's own NEFs. Time claimed for reviewing NEFs and associated documents should be aggregated pursuant to Section I(b).

- (e) Claims for **legal research** must briefly state the issue researched. Counsel will be reimbursed for reasonable and necessary research time, although each CJA attorney is expected to have basic knowledge of the Federal Criminal Code, Rules of Criminal Procedure, Local Rules and Sentencing Guidelines.

#### **IV. In-Court and Out-of-Court Time**

- (a) In-court time is to be calculated from the time the hearing actually began until the time the hearing actually ended and will be compared to the minute entry entered on the docket.
- (b) Time spent meeting with the defendant, witness, or Assistant U. S. Attorney before or after a hearing must be claimed as out-of-court time.
- (c) Reasonable time spent waiting for a hearing to begin will be compensated where it is unforeseen or unavoidable, but such time should be reported separately as out-of-court time.

Example: If you spent .3 waiting for a hearing to begin and .5 during the actual hearing, one entry should be for .3 with the service type “investigative or other services” and the other entry should be for .5 for the hearing with an appropriate in-court service type.

- (d) Time spent in common, either in-court or out-of-court, on more than one CJA representation must be prorated appropriately among the representations. Time spent in common includes work performed simultaneously or within the same unit of time for more than one representation.

#### **V. Expenses Generally**

- (a) Provide a brief description justifying all expenses, including postage and copying expenses. A claim for photocopying must clearly indicate the date, the number of pages copied, and the actual cost per page.

Example: When claiming reimbursement for postage for mailing a letter to your client, state “postage for letter mailed to client,” or when claiming reimbursement for copies, state “copies of motion (10 pages) for client.”

- (b) Unless otherwise specified, copying charges will be presumed to be in-house.
- (c) The presumptive maximum charge for internal faxing and copying is \$0.10 per page.
- (d) If an external source is used for copying or faxing, state the source and provide a brief justification. If a receipt is available, attach the receipt under the document tab.

- (e) Proof of payment is required for all travel expenses and all itemized expenses in excess of \$50.00. Proof of payment includes a receipt, a copy of the front and back of a cancelled check, or a credit card statement. An invoice is not considered proof of payment.
- (f) PACER fees are not compensable because PACER fees are not charged to attorneys providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A. Please see [http://www.tned.uscourts.gov/docs/cja\\_pacer.pdf](http://www.tned.uscourts.gov/docs/cja_pacer.pdf) for more information.
- (g) The cost of computer-assisted legal research services such as Lexis or Westlaw may be reimbursed as an out-of-pocket expense provided that the amount claimed is reasonable. Whenever charges for computer-assisted legal research are incurred, counsel must 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 case).
- (h) The cost of digital storage devices may be claimed as an expense pursuant to the following guidelines:
  - (1) Counsel may claim the cost of digital storage devices if the digital storage device will not be used again and is to be kept as part of the client file.
  - (2) Counsel must certify that the digital storage device will not be used again and that the device will remain with the client file. This certification must be set out in either the expense description or attorney notes box on the confirmation page.
  - (3) All expense claims for digital storage devices will be reviewed for compliance with the *CJA Guidelines* as well as these billing guidelines. That is, counsel must provide adequate justification for the expense in the description, the cost must be reasonable, and proof of payment is required for digital storage devices exceeding \$50 in cost.

## **VI. Travel Expenses**

- (a) Only actual travel time and miles traveled may be claimed. The Court relies on internet mapping sites to determine appropriate time and mileage. Variables such as excessive congestion/construction must be documented to be considered. Travel time will be measured as driving time only. If you walk to the courthouse, you must state this in your voucher entry.
- (b) Travel time and mileage are based on the attorney's office address as registered with the Court's CM/ECF system. If the attorney is traveling to/from any other address, the complete alternative address must be noted in the voucher entries.
- (c) Travel is computed from the attorney's office, not home, unless home is the office. However, if travel is of a shorter distance from the home, time may be computed from the home as long as the attorney provides notation of such in the time and expense entry.

- (d) If an attorney does not intend to claim mileage, it should be noted both in the travel service line entry and also stated in the “public/attorney note” field on the confirmation page.
- (e) Travel by privately owned automobile will be reimbursed at the mileage rate currently prescribed for federal judiciary employees who use a private automobile to conduct official business. The rates are set by the General Services Administration (GSA) and are intended to cover gas as well as wear and tear expenses. The CJA eVoucher program computes the appropriate mileage rate based on the date of travel. The current and past CJA mileage rates are listed at [www.tned.uscourts.gov/cja.php](http://www.tned.uscourts.gov/cja.php).
- (f) When travel time is to be split between multiple clients, time and expenses must be prorated between the multiple clients. The attorney should indicate in the time and expense entries how the claims are being prorated and include the case number/defendant name.
- (g) Receipts must accompany all claims for non-mileage related travel expenses over \$50, including parking, tolls, taxi, airfare, lodging and meals.
- (h) The attorney must obtain advanced authorization for travel outside of the district, or must demonstrate that the travel was necessary and that prior authorization could not be obtained. **Advanced authorization is not required for travel outside of the district to meet with a client housed in a facility outside of the Eastern District of Tennessee.**
  - a. NOTE: Travel Authorization Requests should be entered as far in advance of travel as possible to allow time for the request to be processed by the judge.
- (i) When traveling under CJA authorization, attorneys are subject to the same limitations and regulations as a judiciary employee. Actual expenses while on CJA travel will be reimbursed only up to the allowable GSA per diem rate. For information on per diem rates please visit the GSA website at [www.gsa.gov](http://www.gsa.gov).
- (j) Counsel should consult the *EDTN Travel Guidelines for CJA Attorneys and Experts* for more detailed information and instruction regarding travel claims and expenses. [http://www.tned.uscourts.gov/docs/cja\\_travel\\_guidelines.pdf](http://www.tned.uscourts.gov/docs/cja_travel_guidelines.pdf).

## VII. Expert and Non-Expert Services

- (a) Attorneys may request authorization to obtain investigative, expert and other services necessary for adequate representation. All authorization requests must be submitted through the CJA eVoucher database.
- (b) Services may include, but are not necessarily limited to: investigators; psychiatrists; psychologists; reporters; interpreters; computer systems and automation litigation support personnel and experts; paralegals and legal assistants, including law students; neurologists; and laboratory experts in areas of ballistics, fingerprinting and handwriting.

- (c) The total cost of services obtained without prior authorization may not exceed the current compensation limitations on services amount listed in [CJA Guidelines § 310.20.30](#). Costs of services exceeding the presumptive hourly rates for experts outlined in the Helpful Hints and Tips will not be approved without prior authorization from the Court. Additionally, costs paid to “sentencing guideline experts” will not be approved.
- (d) For services exceeding the limitation amount, but less than the current waivable case compensation maximum amount listed in [CJA Guidelines § 310.20.10\(A\)](#), prior authorization must be obtained from the presiding judge, unless counsel meets the exigency requirements of *CJA Guidelines* § 3006A(e)(2)(B).
- (e) For services exceeding the waivable case compensation maximum, prior approval must be obtained from the presiding judge and the Chief Justice of the Sixth Circuit Court of Appeals (or designee). For such requests, the attorney will complete an additional funds request for the additional amount being requested and attach the previously approved AUTH and an Appendix 3A under the documents tab to the new AUTH.
- (f) Reimbursement for expert or other services is made through completion of a CJA 21 form.
- (g) Attorneys should submit the CJA-21 for expert services as soon as the work is complete, with the caveat that if an attorney is submitting a CJA-21 for the help of a paralegal during the case, the attorney must submit the CJA-21 at the same time the attorney submits his or her CJA-20.
- (h) An attorney must receive prior approval from the Court to be reimbursed for time spent by a service provider attending court hearings or depositions.

## VIII. Budgeting

- (a) Attorneys must contact the Sixth Circuit case-budgeting attorney in representations in which attorney hours are expected to exceed 300 hours or total expenditures are expected to exceed \$40,000.
- (b) All capital cases must be budgeted.
- (c) Attorneys should contact the Sixth Circuit case-budgeting attorney for a consultation when the case involves extended or complex representation such that the maximum case compensation will be exceeded or the attorney intends to request interim voucher approval.
- (d) An attorney should contact the Sixth Circuit case-budgeting attorney as soon as the attorney is aware that budgeting will be required or may become necessary.
- (e) After consulting with the Sixth Circuit case-budgeting attorney, 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 are submitted *ex parte* and filed under seal.

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