

**CRIMINAL JUSTICE ACT (CJA)
CLAIMS FOR HOURLY COMPENSATION AND EXPENSE REIMBURSEMENT**

**ADVICE TO CJA COUNSEL REGARDING DEATH
PENALTY AND CAPITAL HABEAS MATTERS
18 U.S.C. § 3599, 18 U.S.C. § 3005**

TABLE OF CONTENTS

I.	General Statutory Provisions and Procedures.....	3
II.	When to File Interim and Final Vouchers.....	4
III.	How to File a CJA 30 Voucher	4
IV.	Claims for Hourly Compensation - General Rules	4
	A. Multiple Appointed Attorneys.....	4
	B. Hourly and Mileage Rates.....	4
	C. In-Court Time.....	4
	D. Partners and Associates (Within Firm).....	4
	E. Compensation of Counsel (Outside Firm).....	5
	F. Withdrawal of Counsel.....	5
	G. Time Spent on District Court Matters or Matters Unrelated to Appeal.....	5
	H. Travel Time.....	5
	I. Petition for Writ of Certiorari.....	5
	J. Voucher Preparation.....	5
V.	Expenses Generally.....	6
VI.	Travel Expenses - General Rules	6
	A. Itemization/Proration.....	6
	B. Supporting Documentation for General Travel Expenses.....	6
	C. Supporting Documentation for Lodging.....	6
	D. Supporting Documentation for Meals.....	6
	E. Travel Reservations.....	6
	F. Travel by Private Automobile.....	7
	G. Hotel Telephone and Internet.....	7
	H. Non-Reimbursable Travel Expenses.....	7
VII.	Reimbursement of Other Expenses - General Rules.....	7
	A. Itemization.....	7

B. Supporting Documentation for Other Expenses.	7
C. Copying and Binding.....	7
D. Long-Distance Telephone Calls.	8
E. Facsimile Transmissions.	8
F. Postage/Expedited Mail/Courier.	8
G. Legal Research Services by Law Student, Law Clerk, or Paralegal.....	8
H. Computer Assisted Legal Research (CALR), e.g., Westlaw/Lexis.	8
I. Interpreter/Translating Services.....	8
J. General Office Overhead.....	9
K. Other Expenses of a Personal Nature for Individual Represented.....	9
L. Expenses Related to District Court Matters or Matters Unrelated to Appeal.....	9
M. Filing Fees, Court Admission Fees and PACER Charges.....	9
N. Transcript Fees.....	9
VIII. General Information.....	9
A. Public Disclosure.....	9
B. Counsel’s Responsibility to Keep Contact and Billing Information Up to Date.....	10
C. Additional Resources.	10
D. Contacts.....	10
XII. Retain CJA Billing Records for Three Years.....	10
XIII. Note to Counsel.	10

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I. General Statutory Provisions and Procedures

As a general matter, counsel appointed under the Criminal Justice Act may be compensated for time “reasonably expended” and expenses “reasonably incurred.” 18 U.S.C. § 3006A(d)(1). In capital cases, the statutory authority for appointment derives from 18 U.S.C. § 3599. Current hourly compensation rates for work in both direct capital appeals and post-conviction capital cases may found CJA section of the court’s website (<https://www.ca10.uscourts.gov/cja/criminal-justice-act-cja>).

Upon the docketing of an appeal involving imposition of a death sentence, the Court will issue a case management order that (1) sets a deadline for the filing of any requests for a certificate of appealability (“COA”); (2) schedules a case management conference where the Court will address COA issues, establish a briefing schedule, and set word limits for the briefs. The case management order will also set a deadline (after the case management conference) for CJA counsel to submit, ex parte and under seal, a proposed litigation budget for both time and expenses. When preparing the proposed litigation budget, CJA counsel should (1) carefully review the capital case budgeting information found in [the Guidelines for Administering the CJA](#) (“Guidelines”), and (2) use the case budgeting form found on the [Case Budgeting and Requests for Services](#) page of the Court’s website.

CJA counsel in capital habeas appeals must submit their proposed budget and supporting memorandum to the Tenth Circuit’s CJA Case Budgeting Attorney, Rebecca Skordas, no later than 14 days before the deadline for submitting the budget to the Court via ECF. CJA counsel shall submit their proposed budget and supporting memorandum to Ms. Skordas via email to Rebecca_Skordas@ca10.uscourts.gov. Upon review of the proposed budget and supporting memorandum, Ms. Skordas will contact CJA counsel to discuss any recommended modifications to the budget prior to its formal submission to the Court. CJA counsel may decide whether to incorporate such modifications into the proposed budget, and the authority to approve the proposed budget lies solely with the Court. CJA counsel remain obligated to formally electronically file the proposed budget and supporting memorandum with the Court by the deadline set forth in the previous paragraph.

Regardless of any budget that may be approved pre-briefing, the final decision on the reasonableness and necessity of the time and expenses associated with the appeal will be determined by the panel of judges that will be assigned to hear the appeal on the merits.

Counsel is encouraged to visit the [CJA page](#) on the Court’s website for other general information, and to review the Court’s CJA Plan found as Addendum I to the Local

Rules.

II. When to File Interim and Final Vouchers

Counsel may request interim payments at logical intervals in the appeal (e.g., after filing the opening brief and/or the reply brief and after oral argument). After any petition for writ of certiorari is filed, counsel should submit a final CJA 30 voucher along with a written explanation describing how the total time spent on this appeal meets the “reasonably necessary” test. The panel rendering the decision will consider the final voucher.

III. How to File a CJA 30 Voucher

Effective July 20, 2015 all appellate CJA vouchers must be prepared and submitted electronically via the Tenth Circuit’s CJA eVoucher application, which can be accessed at:

https://evsdweb.ev.uscourts.gov/CJA_c10_prod/CJAeVoucher/

Effective July 20, 2015, the Tenth Circuit will no longer require CJA counsel to submit hard copies of CJA vouchers, the time and expense worksheets or the CJA 5 Attorney Data Form that were previously required to be submitted. Instead, all CJA vouchers and supporting documentation must be submitted, and counsel’s contact and billing information maintained, electronically via eVoucher.

Important information about eVoucher, including training and reference materials for CJA counsel, can be found at: <http://www.ca10.uscourts.gov/cja/evoucher>.

IV. Claims for Hourly Compensation - General Rules

Descriptions of time spent must be tracked in tenths of hours and must be sufficiently descriptive to allow the court to apply the “reasonably necessary” standard. Time not properly documented may be disallowed.

- A. **Multiple Appointed Attorneys.** Each appointed attorney must submit separate electronic vouchers. The Court prefers that interim and final requests for payment be filed by both attorneys simultaneously.
- B. **Hourly and Mileage Rates.** The eVoucher application will automatically use the applicable hourly and mileage rates based on the date of the service/expense entered by counsel during the electronic voucher preparation process.
- C. **In-Court Time.** In-court time is limited to one hour or the actual time of argument. Time spent waiting for oral argument should be claimed as *out-of-court* “other” time.
- D. **Partners and Associates (Within Firm).** With prior court authorization and provided that the employment of such additional counsel (at a reduced hourly rate) diminishes the total cost of representation or is required to meet time limits, compensation may be claimed for services provided by a partner or associate in the appointed counsel’s law firm. *Guidelines*, § 620.10.10(c). The tasks to be completed by such personnel should be described in the proposed

litigation budget. However, extra tasks or other work inefficiencies resulting from such division of labor (e.g., attorney conferencing) are not compensable. Electronic vouchers must separately identify the provider of *each* service with counsel's initials in the line item description.

- E. Compensation of Counsel (Outside Firm).** With prior authorization by the court, appointed counsel may claim compensation for services furnished by counsel who works outside of the appointed counsel's law firm. Extra tasks or other work inefficiencies resulting from such division of labor (e.g., attorney conferencing) are not compensable. The amount must be within the maximum compensation allowed by the Act. Electronic vouchers must separately identify the provider of *each* service with counsel's initials in the line item description.
- F. Withdrawal of Counsel.** A CJA attorney appointed to represent a defendant in the lower court may, with the Court's express approval, either withdraw or continue the representation on appeal. For further information about continuing a district court CJA appointment on appeal, please review the [July 8, 2015 changes to the Court's CJA Plan](#). CJA trial counsel who wish to withdraw may file a motion to withdraw in accordance with 10th Cir. R. 46.4. Prior to filing such a motion, CJA counsel must, at a minimum, file an entry of appearance and a docketing statement. Failure to comply with the requirements of with 10th Cir. R. 46.4 this rule will result in denial of the motion.
- G. Time Spent on District Court Matters or Matters Unrelated to Appeal.** Time spent on district court matters, or other matters unrelated to appellate representation, even if incidental to arrest, incarceration, or on remand, is not compensable on an appellate voucher. Compensation for preparation and submission of preliminary appellate pleadings (e.g., notice of appeal, designation of record, transcript order form) may be claimed on the appellate voucher, but not if compensated on the district court voucher.
- H. Travel Time.** Only reasonable and necessary travel time is compensable. Ordinarily, professional time spent traveling to the court to file a pleading is not compensable. If travel involves time spent on more than one case, then travel time must be prorated by the number of cases to which the travel relates. Time spent driving long distances that are ordinarily traversed by air is not reasonable, unless required by special circumstances. Absent an emergency or other unusual circumstance, compensation for driving time when flying would be quicker is limited to the time that would have been spent had counsel traveled by air. If a trip requires overnight lodging, compensable travel time includes time traveling from the counsel's office or home to the place of accommodation, as well as travel time returning directly to the counsel's office or home.
- I. Petition for Writ of Certiorari.** Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari, or responding to a petition for writ of certiorari filed by the government, are considered applicable to the case before the United States Court of Appeals, and should be included on the voucher for services performed in this court.
- J. Voucher Preparation.** Time spent preparing the voucher is not compensable.

V. Expenses Generally

Reimbursement is limited to reasonable actual expenditures. To determine whether travel expenses are reasonable, counsel should be guided by current limitations on travel expenses applicable to federal judiciary employees found at the GSA website, <http://www.gsa.gov>.

Expenses incurred must be properly documented in the expenses tab of the electronic voucher submitted via eVoucher. With certain exceptions (*see*, meals, lodging, CALR, commercial copying), counsel must provide documentation (such as itemized bills, receipts, or invoices) to support claims for reimbursement *only* for single-event expenses that exceed \$50.00. Credit card slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable.

See Sections VI and VII below for further instructions and information. Expenses not properly documented may be disallowed.

VI. Travel Expenses - General Rules

- A. **Itemization/Proration.** Claims for travel expenses must be itemized by date and charge and reported on the travel expense portion of the electronic voucher. If travel involves time spent on more than one case, then expenses must be prorated by the number of cases to which the travel relates.
- B. **Supporting Documentation for General Travel Expenses.** Itemized receipts must always be submitted to support reimbursement of meals and lodging. Counsel need only provide itemized receipts to support other single-event travel expenses that exceed \$50.00 (e.g., cab fare from DIA to downtown Denver). Credit card slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable. Expenses not properly documented may be disallowed.
- C. **Supporting Documentation for Lodging.** Receipts for lodging must be sufficiently itemized to establish that reimbursement is not being sought for safe deposit boxes, hotel safes, in-room movies, or other expenses that are not reimbursable under the Criminal Justice Act. For this reason, itemized hotel bills must be submitted. Credit card slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable. Expenses not properly documented may be disallowed.
- D. **Supporting Documentation for Meals.** Receipts for meals must be sufficiently itemized to establish that reimbursement is not being sought for alcoholic beverages, charges for persons other than appointed counsel or other expenses that are not reimbursable under the Criminal Justice Act. Hotel restaurant, in-room beverages and room-service meals must also be supported by an itemized receipt. Credit card slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable. Expenses not properly documented may be disallowed.
- E. **Travel Reservations.** Air travel, lodging and rental car arrangements should be made at government rates through National Travel Service (NTS). Contact NTS at 1-800-445-0668 to request airline tickets. Counsel must provide a credit card

number to make reservations. However, airfare will be paid directly by the government. Lodging and rental car charges must be paid directly by counsel, and reimbursed on a voucher request. All reservations needed (airline, hotel, rental car) should be made at the same time. There is a charge for itinerary changes and all itinerary changes *must* be made through NTS. Reimbursement for travel not made through NTS is limited to the government rates.

- F. Travel by Private Automobile.** Mileage is reimbursable at the rate prescribed for federal judiciary employees conducting official business. Claims must be supported by a statement showing the date, distance, origin and destination of travel. Absent an emergency or other unusual circumstance, if travel is by automobile, reimbursement of mileage expense will not exceed the airfare charge had NTS made counsel's travel arrangements. Counsel should contact NTS *before* driving to determine then-current government airfare rates.
- G. Hotel Telephone and Internet.** Hotel telephone charges will be reimbursed up to \$5.00 per day. Hotel internet charges will be reimbursed up to \$10.00 per day. If any additional charges are sought, counsel must submit a brief statement of how such charge is incidental to representational duties.
- H. Non-Reimbursable Travel Expenses.** Personal items (e.g., alcoholic beverages, in-room movies) are not reimbursable. Charges that exceed then-current government rates are not reimbursable.

VII. Reimbursement of Other Expenses - General Rules

- A. Itemization.** Claims for other expenses incurred must be itemized by date and charge and reported in eVoucher using the "Expenses" tab of the electronic voucher.
- B. Supporting Documentation for Other Expenses.** With certain exceptions (*see* commercial copying and computer-assisted legal research), counsel need only provide itemized receipts or copy logs to support single-event other expense charges exceeding \$50.00 (e.g., in-house copying of final opening brief and all attachments). Credit card slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable. Expenses not properly documented may be disallowed.
- C. Copying and Binding.** Reimbursement for in-house copying is limited to actual per-page cost not to exceed 20¢ per page. If a higher rate is sought, counsel must submit a statement justifying such rate. If counsel incurs single-event in-house copying expenses exceeding \$50.00 (e.g., in-house copying of final opening brief and all attachments), then logs or other information should be provided identifying what was copied, how many copies were made and the rate. Expenses not properly documented may be disallowed.

All claims for commercial copying and binding services must be supported by an itemized invoice. Credit card slips and credit card statements lack sufficient detail to permit approval of expenses as reasonable and reimbursable. Expenses not properly documented may be disallowed.

Commercial copying charges to prepare 40 copies of a petition for certiorari in

booklet format will not be reimbursed because this requirement may be waived upon proper filing of a motion to proceed *in forma pauperis*, see S. Ct. Rules 12, 33.2 and 39.

- D. Long-Distance Telephone Calls.** Itemized statements must be submitted to support claims for long-distance telephone calls that total more than \$50.00. The supporting documentation must contain the date, cost, and recipient of each call.
- E. Facsimile Transmissions.** In-house facsimile logs must be submitted in support of claims for reimbursement of fax charges that total more than \$50.00. Claims for facsimiles transmitted at a commercial establishment must be supported by an itemized receipt. Costs in excess of \$1.00 per page will not be reimbursed.
- F. Postage/Expedited Mail/Courier.** Single-event postage, expedited mail, and courier expenses exceeding \$50.00 (e.g., FedEx charge for delivery of opening brief and copies) must be supported by itemized receipts. The receipt must include the date, nature of service, and cost. Absent extraordinary circumstances, expedited mail (e.g., FedEx, Priority Mail) and courier charges will be reimbursed only for delivery of principal briefs, a petition for rehearing en banc, or a petition for writ of certiorari.
- G. Legal Research Services by Law Student, Law Clerk, or Paralegal.** Tasks to be completed by such personnel should be described in the proposed litigation budget or, if later discovered to be necessary to an adequate defense, by separate sealed, ex parte motion for prior authorization. The Court's order approving such expenses, if separate from the order approving the proposed litigation budget, must be emailed to eVoucher@ca10.uscourts.gov and attached to the electronic voucher's "Documents" tab.
- Time incurred by these individuals is claimed as an "other expense" on counsel's electronic voucher. Claims for the actual cost of legal research by a qualified law student, law clerk, legal assistant, or paralegal must be itemized. Descriptions of time spent by such personnel must be tracked in tenths of hours and must be sufficiently descriptive to allow the court to apply the "reasonably necessary" standard. Time not properly documented may be disallowed. If the amount claimed is in excess of the approved budget, counsel should include a brief statement of justification.
- H. Computer Assisted Legal Research (CALR), e.g., Westlaw/Lexis.** Whenever appointed counsel incurs charges for computer-assisted legal research, a .pdf copy of each vendor bill itemized by date must be included with counsel's payment request. If the amount claimed is in excess of the approved budget, counsel should include a brief statement of justification. Reimbursement for CALR is sought on counsel's own CJA 30 voucher request as an "other expense."
- I. Interpreter/Translating Services.** Tasks to be completed by such personnel must be described in the proposed litigation budget or, if later discovered to be necessary to an adequate defense, by separate sealed, ex parte motion for prior authorization. The Court's order approving such expenses, if separate from the order approving the proposed litigation budget, must be emailed to eVoucher@ca10.uscourts.gov and attached to the electronic voucher's "Documents" tab.

Approved time incurred by these individuals may be claimed as an "other

expense” on counsel’s electronic CJA 20 voucher, or by separate electronic submission, via eVoucher, of a properly completed CJA 21 form. Claims for the actual cost of interpreting or translating services must be itemized. Descriptions of time spent by such personnel must be tracked in tenths of hours and must be sufficiently descriptive to allow the court to apply the “reasonably necessary” standard. Time not properly documented may be disallowed. If the amount claimed is in excess of the approved budget, counsel should include a brief statement of justification.

- J. General Office Overhead.** General office overhead is not reimbursable. This includes, but is not limited to, supplies; overtime; rent; telephone services; mailers/envelopes; secretarial services; and other administrative/clerical services. Nor is professional time spent on secretarial or clerical tasks compensable as part of counsel’s fee.
- K. Other Expenses of a Personal Nature for Individual Represented.** The cost of items of a personal nature purchased for or on behalf of the person represented is not reimbursable.
- L. Expenses Related to District Court Matters or Matters Unrelated to Appeal.** Expenses related to district court matters, or otherwise unrelated to appellate representation, even if incidental to arrest, incarceration, or remand, are not reimbursable on an appellate voucher. Reimbursement for expenses related to preparation and submission of preliminary appellate pleadings (e.g., notice of appeal, designation of record, transcript order form) may be claimed on the appellate voucher, but not if reimbursed on the district court voucher.
- M. Filing Fees, Court Admission Fees and PACER Charges.** Filing fees and court admission fees are not reimbursable. This includes filing fees related to a petition for certiorari because such fees may be waived upon proper filing of a motion to proceed *in forma pauperis*. See S. Ct. Rules 12, 33.2 and 39. PACER charges are not reimbursable because, upon proper application, CJA counsel is entitled to a free PACER account for use in CJA cases only.
- N. Transcript Fees.** The cost of court-authorized transcripts should be claimed by the court reporter or reporting service on a properly completed CJA 24 form. If counsel elects to pay for transcripts, counsel should likewise seek reimbursement using a CJA 24 form, not on a CJA 30 form. CJA Counsel should seek guidance from the Clerk’s Office regarding the submission of a CJA 24 Authorization and/or Voucher for transcripts.

VIII. General Information

- A. Public Disclosure.** CJA 30 vouchers filed by counsel may be subject to public disclosure unless disclosure should be limited based upon: (1) protection of any person’s Fifth Amendment right against self-incrimination; (2) protection of the defendant’s Sixth Amendment right to effective assistance of counsel; (3) the defendant’s attorney-client privilege; (4) the work-product privilege of defendant’s counsel; (5) the safety of any person; or (6) any other interest that justice may require. **If counsel wishes to request redaction or non-disclosure of any portion of the voucher based upon one of these interests, counsel should seek such relief by motion (filed via CM/ECF) at the time the CJA 30**

voucher is submitted via eVoucher. Absent such a motion, the face of the voucher will be made available to the public upon request.

B. Counsel's Responsibility to Keep Contact and Billing Information Up to Date. Counsel must keep their contact and billing information up to date in eVoucher. **IF YOU MOVE, CHANGE FIRMS, OR OTHERWISE CHANGE THE ASSIGNMENT OF TAX CONSEQUENCES FOR CJA PAYMENTS, YOU ARE RESPONSIBLE FOR UPDATING YOUR PROFILE AND BILLING INFORMATION IN eVOUCHER.**

C. Additional Resources. Counsel is encouraged to review the court's website to obtain current forms, rates, and general CJA information. The [CJA portion of the U.S. Courts' website](#) and the [CJA Panel Information on the Defender Services website](#) may also provide substantial assistance. You should also carefully review the [Criminal Justice Act Guidelines](#), and the Tenth Circuit's Criminal Justice Act Plan, found as Addendum I to the Local Rules.

D. Contacts. For technical support with the eVoucher system and substantive questions regarding the content of a voucher, required documentation, and related issues, contact the CJA Administrator at CJA_Vouchers@ca10.uscourts.gov or 303.335.2968.

XII. Retain CJA Billing Records for Three Years. CJA billing records must be retained by counsel for three years after approval of the voucher.

XIII. Note to Counsel. This letter addresses only subjects of repeated error or frequent inquiry and is not inclusive.