

# UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

## GUIDELINES FOR COMPLETING CJA FORM 20/30

### PHILOSOPHY OF THE ACT:

The underlying philosophy of the Act is that attorneys as members of the bar of the Court owe a responsibility to represent persons financially unable to obtain adequate representation. The rates specified by the Act are the maximum rates allowable and counsel should not expect to receive compensation which equates to private counsel fees, nor expect excess compensation unless the appeal is determined to be complex or the representation extended by the voucher approving judge.

### ATTORNEY REPRESENTATION:

An attorney's representation commences from the date of appointment until the termination of the appeal or relieved from court appointment by order of this Court.

If, after an adverse decision by the Court of Appeals, a review by the Supreme Court of the United States is to be sought, the appointed attorney **shall** if requested to do so after communication with the person for whom the attorney is appointed, prepare a Petition for Writ of Certiorari and other necessary and appropriate documents in connection therewith. However, if the attorney in his or her professional opinion determines that no issues are present which warrant the filing of a Petition for Writ of Certiorari in the United States Supreme Court, counsel shall promptly file with the Court of Appeals a motion stating that opinion with particularity and requesting leave to withdraw. See Austin v. United States, 513 U.S. 5, 115 S. Ct. 380 (1994). See also 3rd Cir. LAR Misc. 109.2(b). Counsel shall promptly file such motion keeping in mind the deadlines for filing Petitions for Writ of Certiorari so as not to impede the litigant's ability to file in a timely manner a Petition for Writ of Certiorari pro se.

As noted in FRAP 35, in banc hearing or rehearing of appeals is not favored. Counsel has a duty to the Court commensurate with that owed his or her client to read with attention and observe with restraint the Required Statement for Rehearing in Banc set forth in 3rd Cir. LAR 35.1. Counsel is reminded that in every case the duty of counsel is fully discharged without filing a suggestion for rehearing in banc unless the case meets the rigorous requirements of FRAP 35 and 3rd Cir. LAR 35.1. If the person for whom the attorney is appointed requests a petition for rehearing, but the attorney is of the position that the case does not meet the rigorous requirements of FRAP 35 AND 3rd Cir. LAR 35.1., counsel should file a petition for leave to withdraw, with notice to the appellant that he or she may file a

pro se petition for rehearing. See, United States v. Coney, 120 F. 3d 26 (3d Cir. 1997).

**TIME LIMIT FOR FILING VOUCHER:**

Counsel must advise the Clerk's Office in writing at the time that the voucher is filed:

- (a) A Petition for Writ of Certiorari will not be filed as the person for whom the attorney is appointed does not wish to file a Petition with the United States Supreme Court. (Please note Paragraph 2 - Attorney Representation, supra;
- (b) The party for whom the attorney is appointed has requested that a Petition for Writ of Certiorari be filed but that the attorney in his or her professional opinion has determined that no issues are present which warrant the filing of a Petition for Writ of Certiorari in the United States Supreme Court and that counsel has filed with the Court of Appeals a motion stating that opinion with particularity and requesting leave to withdraw. See Austin v. United States. 513 U.S. 5, 115 S. Ct. 380 (1994). See also 3rd Cir. LAR Misc. 109.2(b); or
- (c) A Petition for Writ of Certiorari has been filed with the Supreme Court of the United States and the date that such Petition was filed.

When no Petition for Certiorari is filed, the voucher **must** be filed with the Clerk within 45 days after the final decision of the Court of Appeals. No voucher will be accepted after these time periods without permission to file out-of-time. See 3rd Cir. LAR Misc. 108.3.

When a Petition for Writ of Certiorari is filed, the voucher together with supporting documents **must** be filed with the Clerk of this Court **within 45 days** after the petition is filed with the Clerk of the Supreme Court of the United States.

As previously stated, counsel must advise the Clerk's Office in writing the date the Petition for Certiorari has been filed with the Clerk of the Supreme Court of the United States.

## **RECORD KEEPING:**

Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the final voucher for an appointment.

## **VOUCHER PREPARATION:**

Vouchers and accompanying detailed supporting information **must be typed**. Illegible vouchers and/or supporting information will be returned. Mathematical errors delay voucher processing. Vouchers lacking either completion of the certification of attorney/payee section or the signature will be returned and vouchers lacking copies of receipted invoices for claims over \$50.00 will not be processed until counsel complies with these instructions.

## **PUBLIC DISCLOSURE OF VOUCHER INFORMATION:**

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Congress amended the Criminal Justice Act (18 U.S.C. Sec. 3006A(d)(4)(P.L. 105-119) to require public disclosure of certain voucher information. The law requires disclosure (access) to CJA 20 and 30 forms, not supporting information and attachments, unless the Court has determined certain interests which warrant limitation are implicated. It is imperative that counsel read the new rules applicable to cases commenced on or after January 25, 1998.

Please note Section C of the rules, which governs vouchers on appeal. The Clerk's Office now maintains all financial information in a separate file. Under the new procedures a copy of the voucher must be made available to the public. The Clerk's Office will file vouchers in the case file (file wrapper) which is accessible by the public (supporting documents will continue to be maintained in separate files which are not available to the public). If you desire to limit access to the voucher for any of the reasons stated in the "New Rules", see attached, you must file a motion in advance of or together with your voucher in this case. [Submit an original and 3 copies, and state in the motion which interests in Part B.1 will be compromised. This matter will be handled ex parte in the first instance.] For practical purposes, if you file a motion to have only certain portions of the voucher available for public access, and the Court grants your motion, the Clerk's Office will prepare a substitute CJA form 20/30 which summarizes the information which will be accessible to the public. A certified copy will be filed in the file wrapper which is open to public inspection, and a copy will be sent to you. If no such motion is filed, a copy of the original approved voucher will be placed in the file wrapper.

## **INTERIM PAYMENTS OF REPRODUCTION EXPENSES:**

**Counsel seeking any interim payment including reimbursement for brief and appendix reproduction costs prior to the termination of representation must first seek court approval by motion.** The motion must contain an itemized estimate of the reproduction costs broken down into estimated costs for actual reproduction (copying), collating, covers, binding and delivery, if any. The motion must also contain the reason why counsel cannot wait until the termination of the appeal to claim such costs. No interim payment vouchers will be processed for payment without court approval.

## **REIMBURSEMENT FOR ATTORNEY TIME:**

Court-appointed counsel may claim compensation for appellate work including any work performed in connection with the preparation and filing of a Petition for Writ of Certiorari as well as any expenses relating thereto. However, counsel should not expect to receive excess compensation *if* the case has not been determined to be extended (if more time is reasonably required for total processing than the average case, including pre-trial and post-trial hearings) 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 attorney than would normally be required in an average case). Determination as to whether a case is extended or complex is made by the voucher approving judge who authored the decision in the appeal.

Time expended by law clerks or paralegals may not be claimed as compensation but would more properly be claimed as an expense. The rate per hour cannot exceed one-half of the rate per hour claimed by counsel for out of court work.

"In Court" Rate per hour - \$70.00 (for work performed prior to April 1, 2001).

"Out of Court" Rate per hour - \$50.00 (for work performed prior to April 1, 2001).

"In Court" Rate per hour - \$75.00 (for work performed on or after April 1, 2001).

"Out of Court" Rate per hour - \$55.00 (for work performed on or after April 1, 2001).

"In Court/Out of Court" Rate per hour - \$90.00 (for work performed on or after May 1, 2002).

Statutory limitation for direct criminal appeals is \$3,700.00 (effective November 13, 2000).

Statutory limitation for appeals under Title 28, U.S.C. Sec. 2241, 2254 and 2255 is \$3,700.00 (effective November 13, 2000).

For counsel appointed in death penalty appeals, the hourly rate for both "In Court" and "Out of Court" time is limited to \$125.00 (effective January 1, 1997). The Statutory Limitation does not apply for death penalty appeals.

#### Detailed Supporting Information

\_\_\_\_\_ This is a chronological breakdown of hours expended for "Out of Court" work. Each of the categories for which a claim is made must be broken down by date, description of work performed and hours spent on each date.

#### **EXCESS COMPENSATION:**

In any case in which the total compensation claimed in **excess of the statutory case compensation maximum**, counsel shall submit with the voucher a statement justifying counsel's claim and that excess compensation is necessary to provide fair compensation as the case involved extended or complex representation.

#### **REIMBURSEMENT FOR EXPENSES:**

Any individual expense item claim which is over \$50.00, **must** be accompanied by a copy of the invoice for same with a notation of payment and check number noted thereon. "In house" xeroxing is the only exception. See "Briefs" under expenses.

Following are the various categories of expenses for which you will be reimbursed. **ALL CATEGORIES MUST BE CLEARLY AND SEPARATELY ITEMIZED. DO NOT COMBINE CATEGORIES.**

#### Travel (Attorney Travel)

Travel expenses and other expenses reasonably incurred and necessary for adequate representation on appeal including travel expenses to and from court for presentation of oral argument may be claimed by court-appointed counsel. Travel must be accomplished by the most economical means possible. Bridge, roads and tunnel tolls may be claimed as well as parking fees.

Air Travel - Court-appointed counsel are encouraged to obtain more favorable Government contract travel rates. This applies only to airfare for travel to and from oral arguments before this Court and court-approved visits to incarcerated clients, if travel requires air transportation.

Contact this office at (267-299-4908) for further details and instructions.

Travel by Privately-Owned Automobile - Effective January 1, 2004, the mileage rate is 37.5 cents per mile.

### Travel (To Visit Incarcerated Clients)

Travel to visit incarcerated clients may be claimed only if prior court approval has been secured. Prior approval is sought by filing a motion which must contain an estimate of the most economical method of travel. The motion must state the purpose, destination, estimated expense(s) of and justification for such additional travel, explaining why it is reasonable and necessary to meet with his or her incarcerated client.

### Meals and Lodgings

Reasonable compensation for hotel or motel lodging accommodation and meals will be allowed on actual expense basis, but as of October 1, 2003 should not exceed \$173.00 per day (for both lodging and meals) with certification required by attaching a copy of the hotel bill to the voucher.

### Briefs and Appendices

The cost of reproducing (except by typeset or offset method) appellate briefs and reply briefs, if any, as well as the appendix may be claimed as an expense. Reproduction by outside establishments must be supported by an *itemized* bill copy. If photocopying is done "*in house*," then court-appointed counsel must certify the itemization.

Itemization of photocopying costs claimed must be broken down into the following categories: a) number of documents copied; b) number of pages per copy; c) cost per page (limited to 10 cents per page - See LAR 39.3(c)(2)); d) cost, if any, for covers (limited to \$2.00); e) cost, if any, for binding (limited to \$4.00 per copy); and *reasonable* delivery charges, if any. **Delivery charges to and from an outside establishment will not be reimbursed to counsel.**

### Number of Copies

An original and nine copies of brief and reply brief, if any, must be filed with the Clerk of Court. An additional five (5) copies may be claimed as an expense (two for service on opposing counsel, one for service on the client, one file copy and one extra copy if needed).

Unless otherwise ordered, four (4) copies of the appendix must be filed if counsel represents the appellant. An additional four (4) copies of the appendix may be claimed as an expense (one for service on opposing counsel, one for service on the client, one file copy and one extra copy if needed). Note the following sections relating to the appendix.

### Appendix (Contents and Shared Costs)

Only those documents necessary for the determination of the issues presented on appeal shall be included in the appendix. Reproduction of the entire transcript is unnecessary and shall be avoided. However, there may be instances when the sufficiency of the evidence to convict is challenged and requires reproduction of most or the entire transcript. See FRAP 30(b). Court-appointed counsel in multiple consolidated appeals are encouraged to prepare and file one joint appendix covering those appeals. Thus the costs for the joint appendix must be shared by counsel. If not shared, only the attorney responsible for filing the joint appendix may claim appendix costs.

### Telephone

Telephone toll calls may be reimbursed where it is determined that the calls were reasonable and necessary for proper handling of the case. Requests for reimbursement of such expenses should be submitted in the form of an itemized list indicating the date of each call, the charge for the call and the purpose of the call.

### Computer Assisted Legal Research (CALR)

The cost of use of computer assisted legal research equipment by court-appointed counsel may be claimed as an expense provided that the total amount of this item expense does not exceed the total amount approved if counsel had manually performed the research. Whenever counsel wishes to claim this expense item, a separate document containing the following must be attached to the voucher:

- (1) A brief statement indicating the issue or issues that were the subject matter of the research.
- (2) An estimate of the number of hours of attorney time that would have been needed to perform manual research.
- (3) A copy of the bill and receipt for use of the equipment 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).

## Postage and Other Delivery Charges

Postage is considered a reimbursable expense. Express delivery charges will be allowed on rare occasions. Reimbursement of express delivery is limited to situations where there is a demonstrable, emergency need because counsel will be asked to support an inclusion of such expenses in certain cases. Dilatory conduct of counsel is not a justifiable reason for reimbursing such special services. Also, if an amount for any one category exceeds \$50.00, documentation in the form of receipted invoices **must** be provided. Court-appointed counsel will not be reimbursed for delivery charges of brief and appendix drafts to outside establishments.

## **EXPENSES NOT COVERED:**

### Printing

Printing of briefs (either by Standard Typographic Printing or Offset Printing) cannot be claimed and **will not be reimbursed**. Only photocopying expenses (limited to 10 cents per page) will be reimbursed.

### General Office Overhead

General Office Overhead may not be claimed as an expense. This would include but, is not limited to personnel costs, rent, telephone service and secretarial help (whether regularly or specially employed, performing normal, overtime, or supplemental work, even if counsel has no regularly employed secretary).

### Fees

Filing fees are not required because the client is a pauper and counsel should not advance and pay these fees. Any fees so advanced and paid will not be reimbursed under the Act. Admission fees for either this Court or the Supreme Court of the United States will not be reimbursed. Petition for Writ of Certiorari should be accompanied by a Petition for Leave to Proceed in Forma Pauperis.

### Transcripts

Payment for transcripts under the Criminal Justice act is the responsibility of the government; therefore, as with filing fees, counsel should not pay for this expense. Court Reporters should seek payment for transcript production on CJA Form 24.

**Questions concerning completion of the CJA Form 20 which are not answered in these Instructions should be addressed to the Clerk's Office CJA Voucher Processing Deputy at Telephone No. (267-299-4908).**

REV. 1/14/04