

United States Court of Appeals - Tenth Circuit

CRIMINAL JUSTICE ACT

CLAIMS FOR HOURLY COMPENSATION AND EXPENSE REIMBURSEMENT

DEATH PENALTY MATTERS

21 USC §848(q)

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ADVICE TO COUNSEL

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**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 21 U.S.C. §848(q). Hourly compensation in both direct capital appeals and post conviction capital cases may be set up to \$125 per hour. See §848(q)(10)(A). Counsel must file a written request to receive the statutory maximum.

Upon receipt of an appeal involving imposition of a death sentence, the court will issue an ex parte case management order setting a date and time to discuss issues related to appointment and payment of counsel. In that order, the court will direct counsel to prepare a proposed litigation budget for submission to the court. The proposed budget must be submitted at least 7 days prior to the conference. At the time the proposed budget is filed, counsel may also submit any requests for interim payment and motions to set rates of pay. Following the conference, the Chief Judge or her designee will review, modify where necessary, and approve, the proposed budget.

**When to File**

Counsel may file a motion requesting interim payments. That motion may be filed in conjunction with counsel's proposed litigation budget. ***Counsel should note, however, that the court will retain 25% of all approved interim payments subject to reapplication at the conclusion of the appeal. The panel rendering the decision will consider release of retained amounts.***

**What to File with Form CJA 30**

1. Copies of the docketing statement, briefs, petitions for rehearing and/or certiorari (if any), and motion for release (if lodged in court of appeals).
2. Contemporaneous time records reported in tenths of an hour, showing date and nature of service delivered. (Note: records must be retained by counsel for three years after

approval of the voucher).

3. Expense documentation to support claims for reimbursement, such as bills, receipts, or invoices; credit card slips are not sufficient.

### **Claims for Hourly Compensation - General Rules**

- Compensation may be claimed for services provided by a partner or associate in appointed counsel's law firm, but extra tasks or other work inefficiencies resulting from such division of labor (e.g., attorney conferencing) is not compensable.
- Necessary and reasonable travel time is compensable. Time spent in travel by car over long distances ordinarily traversed by air is not reasonable, unless required by special circumstances. If a trip requires overnight lodging, compensable travel time to the destination from the claimant's office terminates upon arrival and check-in at the place of accommodation plus travel time returning directly to the claimant's office or home.
- Claims for work done incidental to representation in district court (even if on remand) may not be included on an appellate voucher.
- Time spent preparing the voucher is not compensable.

### **Reimbursement of Travel Expenses - General Rules**

- Surface transportation, lodging, meals, mileage, parking, tolls, and similar expenses must be itemized and reported in Blocks 16 & 16A on Form CJA 30 and supported by detailed receipts.
- Reimbursement is limited to reasonable, actual expenditures. To determine whether expenses are reasonable, counsel should be guided by limitations on travel expenses applicable to federal judiciary employees, contained on the attached *Criminal Justice Act Payment Rates*. Rate updates are available from the Clerk's office upon request.
- Air travel should be arranged through National Travel Service and government rates obtained for both transportation and lodging. Copies of the travel authorization issued by this court, NTS itinerary, and passenger receipt should be attached to the voucher.
- Automobile mileage is reimbursable at the rate prescribed for federal judiciary employees conducting official business. Claims should be supported by a statement showing the date, distance, origin and destination of travel.
- Hotel telephone charges are reimbursable *if* incidental to representational duties.

- Personal items (alcoholic beverages, in-room movies, etc.) are not reimbursable.

### **Reimbursement of Other Expenses - General Rules**

- Claims for non-travel expenses must be itemized and reported in Blocks 16 & 16B.
- In-house copying is limited to actual costs, and no more than \$.10 per page. If a higher rate is sought, counsel must submit a memorandum showing why the rate is justified. Claims for commercial copying services must be supported by an invoice.
- Itemized statements must be submitted to support claims for:
  1. Long-distance telephone calls (date, cost, and recipient of each call).
  2. Postage, facsimiles, and other reimbursable services (date, nature of service, and cost). If cost exceeds \$50, detailed receipts are required. **Added expense for overnight delivery or courier services is not ordinarily reimbursable.**
- Claims for the actual cost of legal research by a qualified law student, law clerk, or paralegal must be supported with a brief statement of the need for and subject matter of the research; an estimate of the cost of attorney time that would have been required to do the research; and the actual hourly cost of employing such personnel.
- Claims for the actual cost of computer assisted legal research must be supported with a brief statement of the subject matter of the research; an estimate of the number of hours of attorney time that would have been required to do the research manually; and a copy of the bill for the service or an explanation of the precise basis for the charge.
- General office overhead, such as administrative/clerical services, is not reimbursable.
- Filing fees are not reimbursable.
- The cost of court-authorized transcripts should be claimed by the court reporter or reporting service on CJA Form 24; if counsel has elected to pay for these, counsel should likewise seek reimbursement on CJA Form 24, not CJA Form 30.

**Filling out Block 13B of the CJA 30 form is mandatory. Counsel is required to provide his/her social security number. Further, if affiliated with a law firm, counsel must also provide the law firm's taxpayer identification number, name and address. This information is used to determine whether the Administrative Office will generate an IRS Form 1099 and to determine who should receive that form. Additionally, counsel is reminded to complete Block 18. Enter the dates covered by the voucher and whether the payment is final or interim (if the voucher is for an interim payment, enter the number of the payment).**

Item 13B enables CJA counsel to enter their social security number and their law firms's

taxpayer identification number, on the following basis:

(1) If the appointed attorney does not have a preexisting agreement with a law firm or corporation, including a professional corporation, an information return will be filed with the IRS in the attorney's name. The attorney must enter his or her social security number in this situation.

(2) If the appointed attorney has a preexisting agreement with his or her law firm or corporation, including a professional corporation, (resulting in income being reportable by the law firm) an information return will be filed with the IRS in the law firm's name. Thus, the attorney must enter his or her social security number, **and** the law firm's employer tax identification number, and name and mailing address of the law firm.

**NOTE TO COUNSEL:**

This letter addresses only subjects of repeated error or frequent inquiry and is not inclusive. Questions regarding the completion of vouchers are welcome.

Source: Volume VII, Guide to Judiciary Policies and Procedures, Chapter VI, §§6.01-6.03

**CRIMINAL JUSTICE ACT PAYMENT RATES**

<u>Professional Services Delivered</u>	<u>Hourly Rates</u>
In-court	\$65 (or as set per 21 U.S.C. §848(q)(10)(A))
Out-of-court	\$45 (see above)
Counsel practicing in <b>Las Cruces, New Mexico</b> , may claim \$75/hour for in-court and out of court services.	

<u>Expenses Incurred</u>				
In-house copying	\$ .10 per page or actual cost			
Mileage (privately owned vehicle)	<u>1996</u>	<u>1997</u> after 6/7/96	<u>1998</u> after 9/1/98	<u>1999</u> after 4/1999
	\$.31 /mile	\$.31 /mile	\$.32.5 /mile	\$.31 /mile
Subsistence (lodging and meals)	Actual cost subject to the local per diem rates, as listed below:			

<u>Location</u>	<u>1996</u> after 4/1/96	<u>1996</u> after 8/5/96	<u>1997</u>	<u>1998</u>
Colorado Denver	\$126	\$126	\$126	\$126
Kansas Kansas City	\$ 97	\$110	\$120	\$130
Topeka	\$ 79	\$ 79	\$ 80	\$ 80
Wichita	\$ 97	\$ 97	\$ 97	\$ 96
New Mexico Albuquerque	\$104	\$104	\$104	\$104
New Mexico	<i>continued on next page</i>			

New Mexico Santa Fe	4/1-4/30/96 5/1-10/31/96 11/1-12/31/96	1/1-4/30/97 5/1-10/31/97 11/1-12/31/97	1/1-4/30/98 5/1-10/31/98	11/1/98 <i>present</i>
<i>(specifics to Santa Fe area)</i>	\$124 \$150 \$124	\$133 \$153 \$133	\$125 \$164	\$125
	<u>1996</u> after 4/1/96	<u>1996</u> after 8/5/96	<u>1997</u>	<u>1998</u>
Oklahoma Okla. City	\$ 86	\$ 86	\$ 96	\$ 95
Tulsa	\$ 85	\$ 85	\$ 85	\$ 84
Utah Provo	\$ 89	\$ 89	\$ 97	\$ 94
Salt Lake City	\$109	\$109	\$113	\$121
Wyoming Casper	\$74	\$74	\$80	\$ 80
Cheyenne	\$74	\$74	\$80	\$ 80