UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CJA Case Management and Budgeting Policy
Adopted by the Court

Effective February 14, 2011

The Court has adopted the Ninth Circuit CJA Case Management and Budgeting Policy. Copies of the General Order adopting the policy and the policy in its entirety are attached.

Key Policy Items –

►Case budgeting where attorney hours may exceed 300 or $30,000 in fees and costs

►Maximum hourly rates established for paralegals, investigators, support staff and some categories of experts

Examples:

Paralegal	Up to $45
Document Technician	$15-25
Investigator	Up to $75
Expert Rates (non-testifying)	$150-275
Interpreters/Translators	$25-75*

Please note the following changes from current practice –

►Expert services, including translation and interpreting, to be billed for the actual time spent rather than blocks of time, e.g., half-day or full-day

►In-house copying is reimbursable at a rate not to exceed ten cents per page

***examples** of approximate rates in the district: $55/hr for federally certified Spanish; $32/hr for Spanish non-federally certified; rates for languages such as Punjabi $65/hr

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In the matter of	)	General Order No. _____
	)	
CRIMINAL JUSTICE ACT NON-CAPITAL REPRESENTATIONS	)	ADOPTION OF CRIMINAL JUSTICE ACT CASE MANAGEMENT AND BUDGETING POLICY
_____	)	

IT IS HEREBY ORDERED that effective February 14, 2011, the attached Criminal Justice Act Case Management and Budgeting Policy for Non-Capital Representations is adopted in the United States District Court for the Eastern District of Washington. Cases to be budgeted include cases in which the attorney hours may exceed 300, or $30,000 in fees and costs.

The "Reimbursement Rates" set forth in Appendix 1 of this Policy shall apply in all CJA cases regardless of whether the case is budgeted.

ADOPTED by the Court on January 10, 2011. The Case Management and Budgeting Policy becomes effective February 14, 2011.

_____
FOR THE COURT
LONNY R. SUKO
CHIEF UNITED STATES DISTRICT JUDGE

Criminal Justice Act
Case Management and Budgeting Policy[1]

NON-CAPITAL REPRESENTATIONS

The Ninth Circuit Judicial Council has approved the following case management and budgeting policies applicable to non-capital representations for counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A. These policies apply to all CJA criminal and post-conviction appointments that do not involve capital criminal or capital habeas representations. The policies also apply to those appointments that initially involved capital criminal representations that were later dismissed or not certified. The policies implement the statutory authorization for fair compensation of legal services reasonably necessary for such indigent legal representation.

The policies should be read in conjunction with the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume 7, Guide to Judiciary Policies and Procedures ("CJA Guidelines") which apply to all CJA representations. To the extent these policies conflict with the CJA Guidelines, the policies prevail.

Nothing in these policies is intended to restrict the authority of the court to approve variations as needed in a particular case.

1. Case Budgeting. According to the U.S. Judicial Conference's resolution and under the CJA Guidelines § 230.26.10, courts are encouraged to budget any representation of a defendant anticipated to exceed 300 attorney hours or $30,000 in fees and costs paid by CJA funds for appointed counsel and services other than counsel. Courts are further encouraged to enlist the assistance of the Ninth Circuit's case budgeting attorney (**see Appendix 3**). The development of a case budget in larger non-capital representations helps ensure that defense counsel receive the resources necessary to effectively represent the accused. A case budget and supporting documentation provides the reviewing court with sufficient

[1] Adopted by the Judicial Council of the Ninth Circuit, October 20, 2010

information to assess the reasonableness, monitor fairness and more effectively oversee the expenditure of CJA funds.

Once it is determined that the cost of representation for a defendant will likely exceed 300 hours or the $30,000 threshold, the court may request the development of a complete or staged budget for the defendant's representation. It may be difficult for counsel to anticipate case costs, particularly in the early stages. The court may grant counsel a finite amount of "seed money" to allow the defense to become familiar with the case, develop strategy, gather a team, and develop and file budgets for attorneys and service providers during the first days after arraignment. The seed money is part of the overall budget and not money in addition to the budget; therefore, the seed money should be included in the Stage 1 budget. As the case progresses, budgeting should become more precise. The court may order variations in a case budget to meet the needs of a particular case.

Courts should require that budgets be submitted using the circuit's Excel budgeting system. The circuit is developing an internet-based budgeting and case billing system to replace the current Excel system and this internet-based system should be used when it becomes available. Using these systems will provide uniformity of submissions which will benefit the judges and court staff along with expediting CJA attorney and service providers' payments (**see Appendix 3**).

Counsel, investigators, experts or service providers may not exceed the budget authorized by the court. Expending additional hours or incurring additional costs without prior court approval may result in the denial of payment. If it is anticipated that the compensation will exceed the budgeted amount by either $5,000 or 10 percent, whichever is less, advance approval should be obtained from the court.

2. Establish and Adhere to Approved Rates. The current maximum hourly rates for Criminal Justice Act attorneys are established by Congress, adopted by the Judicial Conference of the United States and may be found at 18 U.S.C. § 3006A(d)(1) as amended and incorporated in the CJA Guidelines at §230.16(a). The current maximum hourly rates for paralegals, investigators, support staff and some categories of experts are listed in **Appendix 1** of this policy. Rates for members of the defense team may not exceed the maximum rates established by this policy unless authorized in advance by the court and the Chief Judge of the Ninth Circuit or the Chief Judge's delegate (hereinafter, Chief Judge).

In the interest of justice, the court and the Chief Judge may find that the timely procurement of necessary services could not await prior authorization of rates that exceed the maximum rates established in this policy. In these circumstances, nunc pro tunc approval may be granted.

The statutory CJA attorney hourly rate is intended to include compensation for general overhead costs. CJA Guidelines § 230.66.20(a). Therefore, except in extraordinary circumstances (CJA Guidelines § 320.70.30) additional fees for work performed by counsel or other personnel, rent, telephone service and secretarial expenses associated with CJA representation are not reimbursable. CJA Guidelines § 230.66.10(b).

In most cases, only one CJA-compensated attorney is authorized for each client representation. CJA Guidelines § 230.53.10(a). Appointed counsel are encouraged to use lower-billing associates, contract lawyers, paralegals or other means to minimize costs where lead attorney expertise may not be required, such as for legal research and file review. However, use of associates, contract lawyers and paralegals generally must be pre-approved. Requests must specify the tasks, projected number of hours, the hourly rate and the total anticipated expenditure.

Once funding for investigative, expert or other specialized services has been approved, counsel is responsible for communicating with the service provider to ensure compliance with specific terms of the court order and to ensure that charges do not exceed the amount authorized. Counsel should be required to provide an engagement letter to the service provider specifying the terms and limits of the engagement. The letter shall include a warning that fees and costs may not exceed the contracted amount absent court approval for the additional amount.

Payments to service providers should only be authorized at the appropriate rate for the type of task performed. For example, a paralegal or investigator could gather and organize records to be provided to the expert rather than paying the expert to perform that function. The expert may perform the function, but charge the appropriate lower rate.

Any experts testifying at a court proceeding shall be paid for the actual number of hours they are in attendance at court, plus their travel time and expenses. Absent court and circuit approval, experts may not exceed the maximum rates set forth in Appendix 1.

3. Geographic Proximity. To minimize travel, counsel should select local investigators and experts when possible. Courts should try to appoint CJA panel attorneys who are located reasonably near to where the case will be heard to avoid unnecessary travel time.

4. Document Review. It is difficult to accurately project costs and time for the review of voluminous documents and data prior to the completion of the investigation or discovery process. Courts and attorneys should confer with the National Litigation Support Administrator in the Office of Defender Services (**see Appendix 3**). Courts should use discovery status conferences in conjunction with *ex parte* review of the CJA budget to make adjustments as circumstances require. Counsel should present a preliminary budget detailing an efficient and cost-effective method to review documents and data, such as electronic evidence review platforms, and the use of paralegals and document technicians. If the court appoints consultants or attorneys skilled in electronic discovery to assist appointed counsel in developing the budget and discovery plan, the costs of these appointments should also be included in the budget.

5. Division of Labor. Counsel should not spend unnecessary time on conferences and memos among multiple attorneys, and between counsel and staff, such as investigators and paralegals. Such meetings and communications may be necessary and will be compensable if the frequency and time billed are reasonable given the needs of a multi-defendant case.

6. Specificity in Supporting Timesheets. Each time entry shall reflect discrete individual tasks. Information shall be provided in detail sufficient to permit meaningful review, without violating the canons of ethics or disclosing client confidences. Counsel shall provide the court sufficient information with enough specificity to permit reviewers to determine the necessity of the work performed and to demonstrate that the amounts sought in the voucher are fair compensation for the services rendered.

7. Record Keeping. Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, contract lawyers and support staff, as well as expense records. Such records may be subject to audit and must be retained for at least three years after approval of the final voucher for any appointment. CJA Guidelines § 230.76.

Appendix 1

Reimbursement Rates (per hour)

Counsel are expected to negotiate reasonable hourly rates with service providers depending upon market rates in each district.[2] In no event may the rates exceed those set forth below without court approval. In the interest of justice, the Chief Judge may find that the timely procurement of necessary services could not await prior authorization of rates that exceed the maximum rates established in this policy. In these circumstances, nunc pro tunc approval may be granted.

Paralegal[3]	Up to $45
Document Technician[4]	$15–25
Investigator[5]	Up to $75
Mitigation Specialist (non-testifying)[6]	Up to $100
Expert Rates (non-testifying)	
Psychiatrists, Neurologists and medically licensed experts	$150–275

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[2]The range of rates for each service provider reflects the market rates among the fifteen districts in the Ninth Circuit.

[3]Tasks which will be reimbursed at the paralegal rate include transcript summarization, subjective coding of documents, internet and legal research, client contact, drafting and analysis, review and collection of medical, criminal history, sentencing mitigation or other records.

[4]Tasks which will be reimbursed at the document technician rate include filing, indexing and transmittal of documents.

[5]The policy contemplates higher hourly rates for investigators who possess foreign language expertise.

[6]See footnote 3 above. Mitigation specialists performing document technician tasks will be reimbursed at the document technician rate.

Forensic Experts	$200
Psychologists (with Ph.D.)	$200
Accountants	$150–350
Interpreters/Translators[7]	$25–75

[7] Counsel should attempt to negotiate rates for translation and interpreting which provide for billing for the actual time spent rather than flat rates or billing for blocks of time. If payment is sought for services billed at any rate other than for actual time spent, counsel must provide an explanation and the billing rate is subject to approval by the court.

Appendix 2

Expense Policies

- The use of couriers, messengers and other premium delivery services is discouraged unless there is a genuine necessity for this service or unless the cost of the premium service does not exceed United States Postal Service express mail rates. Explanations and receipts for all such services are required.

- In-house copying is reimbursable at a rate not to exceed ten cents per page. If using a copy service, counsel are expected to negotiate the lowest rate possible. Counsel should utilize the special rates made available to the U.S. Courts by contract (**see Appendix 3**).

- General office overhead expenses are not reimbursable, including, but not limited to flat-fee computerized research plans, land and cellular telephone maintenance fees, books and publications, office supplies and equipment and all costs related to educational seminars.

- All fees for experts and services should be billed for actual hours spent, rather than standardized charges or fixed unit billing for specific tasks. Hourly rates for service providers are intended to include overhead, administrative, or special project management charges. Exceptions may be approved by the court where market conditions warrant.

Appendix 3

- Ninth Circuit Case Budgeting Attorney – Ms. Nancy Rutledge, 415-355-8982, nrutledge@ce9.uscourts.gov

- Assistance with Excel spreadsheets or the Ninth Circuit's Internet-based CJA billing system – Ms. Sandy Andrews, 415-355-8984, sandrews@ce9.uscourts.gov

- Government copying rates (currently at Kinko's) contact: Ms. Diane L. Abeyta, dabeyta@gpo.gov

- National Litigation Support Administrator in the Office of Defender Services, 415-436-7700