

# **FACT WITNESS COMPENSATION GUIDELINES**

## **United States District Court Eastern District of Washington**

The following are guidelines to be followed in order to obtain attendance fees, travel and accommodations reimbursement for fact witnesses:

### **1. Responsibilities:**

- A. It is the responsibility of each attorney to e-file a motion and proposed order in CM/ECF for issuance of subpoenas at government expense and service by the U.S. Marshals Service.
- B. Counsel must provide the U.S. Marshals Service with a copy of the court order when witness fees and accommodations are requested, regardless of whether or not the witness resides within the district.
- C. The court order shall be in compliance with Rule 17(b) of the Federal Rules of Criminal Procedure and must name the witnesses who are subpoenaed.

### **2. Procedures:**

- A. As soon as the attorney determines that a particular witness' testimony is necessary, the attorney must obtain a copy of the appropriate court order, attach it to the witness' subpoena and forward it to the U.S. Marshals Service for service of said subpoena.
- B. If the witness is unable to provide for their own transportation, the attorney must notify the U.S. Marshals Service and supply them with a copy of the court order and the subpoena. The U.S. Marshals Service will make the necessary travel arrangements.
- C. If a witness cannot afford his or her expenses, the attorney can get a list of authorized hotels from the Clerk's Office. The witness should receive the government rate. It is imperative that these reservations be made well in advance. Upon making the reservation, please advise that the U.S. Marshals Service should be billed directly.
- D. Please visit the court's website [www.waed.uscourts.gov](http://www.waed.uscourts.gov) for current rates regarding mileage, lodging and meals.

3. **Completing the Fact Witness Voucher, Form DOJ-3 (Attachment A):**

- A. When the presence of the fact witness is no longer required, the Attorney must complete a Fact Witness Voucher, Form DOJ-3 (Contact the Clerk's Office for the form).
- B. The voucher must be filled out by the Trial Office, coordinating all information with the fact witness, but the CJA attorney must not sign the form. **The amount (dollar) column shall be left blank and will be calculated by the U.S. Marshals Service.**
- C. The attorney (with the assistance of the witness) must fill out Parts I, II (Section A), and III. The Courtroom Deputy must sign and date Part II, Section B. (Attendance Attestation and prior to signing must have a copy of Form USM-376A on file with the USMS). Part IV is signed by the witness. Part V is signed by a Federal government employee of the requesting office validating the accuracy and completeness of the expenses claimed.
- D. Upon completion of the Fact Witness Voucher (DOJ-3), the attorney should take the court order, subpoena, voucher, and all reimbursable receipts to the U.S. District Court Clerk's Office. The witness should be advised that the U.S. Marshal will send them a check for their fees and expenses. Only in extraordinary circumstances, will the U.S. Marshals Service make payment immediately upon presentation of the voucher.

4. **Extraordinary Circumstances:**

- A. Occasionally witnesses will have special needs that must be addressed in order for them to appear. Examples of such special needs include, but are not limited to, the following: Ambulance transportation, Attendants, Travel expenses for the parent/guardian of a child witness.
- B. When a special circumstance is identified, it is the attorney's responsibility to request authorization, coordinated and pre-arranged with the Special Authorization Unit, Department of Justice, Washington, D.C., Justice Management Division/Finance Staff, 600 E. Street, NW, Room 4090, Washington, DC 20530 (202) 616-6260.

## **FACT WITNESS TRAVEL GUIDELINES**

1. **Witness Attendance Fees:**

Fact witnesses are allowed a \$40.00 attendance fee for each day's attendance and for the time necessary to travel. (28 U.S.C. 1821 & 1825)

2. **Authorization of Travel and Allowances:**

Fact witnesses are entitled to reimbursement for necessary transportation by the least expensive method available and reimbursement for meals and lodging when they are required to remain away from their residences overnight. They are expected to exercise the same care in incurring expenses that a prudent person would exercise in traveling on personal business and expending personal funds. Excess costs, circuitous routes, delays, or luxury accommodations and services unnecessary or unjustified are not acceptable under this standard. Witnesses will be responsible for excess costs and additional expenses incurred for personal preference or convenience.

3. **Allowable Transportation:**

Travel shall be by the method of transportation which will result in the greatest advantage to the Government. (28 CFR 21.5)

A. Intermediate travel (50 to 350 miles from court): Travel requiring one day will be reimbursed the MOST ECONOMICAL WAY. Consult the court's website [www.waed.uscourts.gov](http://www.waed.uscourts.gov) for current mileage rates. The Rand McNally Standard Highway Mileage Guide is designated for use in determining mileage. The witness should keep a record of their odometer readings if traveling by motorcycle or automobile. If two or more witnesses travel in the same privately owned vehicle, only one reimbursement for mileage will be paid. If a government vehicle is used, there is no reimbursement for mileage.

B. Long distance travel (over 350 miles from court): Travel requiring longer than one day will be reimbursed the MOST ECONOMICAL WAY. A reasonable minimum daily travel distance by a privately owned vehicle is 350 miles.

1. Common Carrier: Train, bus or airfare will be reimbursed at the Government rate. Reimbursement WILL NOT be made for First

Class accommodations, "Frequent Flyer" tickets, or charter service. DO NOT purchase non-refundable tickets. If the appearance date changes or is canceled, the witness WILL NOT be reimbursed for non-refundable tickets. RECEIPTS MUST BE SUBMITTED.

2. To and from carrier terminals: Expenditures for the use of taxicab and airport limousine fares are reimbursed. However, when courtesy transportation is provided by hotels/motels, the witness should be made aware of his/her requirement to use them. RECEIPTS ARE REQUIRED FOR ALL SINGLE ITEMS COSTING OVER \$75.00.

C. Parking Receipts: Parking receipts are required by law in order to reimburse witnesses for ANY parking. Attach receipts to the originals of Form DOJ-3.

D. RENTAL CARS ARE NOT REIMBURSABLE

4. **Subsistence:**

Fact Witnesses are entitled to reimbursement for meals and lodging when they are required to remain away from their residences overnight. (The long distance travel mileage prevails). The dollar amounts for per diem allowances for witnesses are in accordance with those for Government employee travel. Consult the court's website [www.waed.uscourts.gov](http://www.waed.uscourts.gov) for current lodging allowances.

- A. Lodging Reimbursements: If it is necessary for a witness to remain away from home overnight, they will be reimbursed for the ACTUAL COST of lodging. However, the reimbursement shall not exceed the lodging allowable rates. ALL REIMBURSEMENT FOR LODGING MUST BE SUPPORTED BY HOTEL/MOTEL RECEIPTS. (Copies of lost or destroyed receipts from the lodging establishments are required).
- B. Shared Lodging: If the lodging receipt shows a charge for double occupancy, such fact shall be shown on the voucher. One-half of the double occupancy charge shall be allowable for each witness. If the person sharing the room is not another witness, the witness shall be allowed the single room rate.
- C. Lodging with Friends or Relatives: When a witness obtains lodging from friends or relatives with or without charge, no part of the per diem allowance will be allowed for lodging. Neither costs based on room rates

for comparable commercial lodging in the area nor flat "token" amounts will be considered as reasonable.

- D. Meals and Incidental Expenses Allowance: The maximum per diem rates include a fixed allowance for meals and incidental expenses. Fact Witnesses shall be entitled to one-half the daily meals and expense allowance for the day of departure and day of return. Full days at the place of attendance shall be at the full meals and incidental expenses allowance rate. Consult the court's website [www.waed.uscourts.gov](http://www.waed.uscourts.gov) for current per diem rates. A reasonable minimum daily travel distance by a privately owned vehicle is 350 miles. If a witness leaves his/her residence earlier than necessary he/she will be paid only for the necessary time.

5. **Pretrial Conferences:**

Attorneys may authorize payments not to exceed three days (five days if a weekend is included) for Pretrial Conferences with witnesses in the period between the scheduling of a trial, hearing or grand jury proceeding and a witness' appearance. In addition, pretrial days caused by scheduling changes in trial, hearing or grand jury proceeding dates require a written explanation by the attorneys. The explanation should be attached to the witness voucher. Travel (other than by local witnesses) separate from trial attendance and/or additional pretrial days not caused by changes in scheduling require the written approval of the SPECIAL AUTHORIZATIONS UNIT. Requests must be submitted on Request and Authorization for Fees and Expenses of EXPERT Witnesses, Form OBD-47 (currently being revised 11/2017).

6. **Payment of Fact Witness Vouchers:**

Whenever a witness is advised that his or her attendance is no longer required, the witness should contact the CJA Attorney of Record. The attorney should then complete a Fact Witness Voucher, Form DOJ-3, obtain the witness's signature, sign the form and submit it to the Clerk's Office for approval. The U.S. Marshals Service will process the voucher and payment will be mailed to the witness. ONLY under unusual circumstances will the U.S. Marshals Service pay the witness immediately if the witness requires the funds to return home.