

U.S. DISTRICT COURT, DISTRICT OF ALASKA
CJA COMPENSATION POLICY – FREQUENTLY ASKED QUESTIONS

The following list of FAQs is intended as a guide to the application and interpretation of the *CJA Compensation Policy Manual* for the District of Alaska. It has been prepared by the Court Rules Attorney and, although believed to be accurate, it is not a statement by the court nor is it binding on the judges of the court. Except where otherwise expressly noted, all references are to sections of the *CJA Compensation Policy Manual*. References to the *CJA Guidelines* are to the *Guide to Judiciary Policy & Procedures*, Vol. VII, *Appointment of Counsel in Criminal Cases*, Section A *Guidelines for the Administration of the Criminal Justice Act and Related Statutes*.

QUESTION 1. When must the request for compensation be filed?

ANSWER: Not later than 45 days after the final disposition of the case or the appointment of the attorney has been terminated, whichever is the earlier. [See § 4.2]

QUESTION 2. Must I always wait until the end of the case to get paid?

ANSWER: No. If the case is extended or complex you may request interim payments for services rendered. [See § 4.3; *CJA Guidelines*, ¶ 2.30.A.] Reimbursement for out-of-pocket expenses may be requested at any time expenses exceed \$500. [See § 7.12; *CJA Guidelines*, ¶ 2.28.C.]

QUESTION 3. I have withdrawn as appointed counsel and new counsel has been substituted. May I immediately apply for compensation?

ANSWER: No. You must wait until the end of the case and submit your CJA 20 voucher at the same time as new counsel. [See *CJA Guidelines*, ¶ 2.25] NOTE: A single statutory maximum applies unless the case is extended or complex; therefore, the court must make an equitable apportionment between appointed counsel.

QUESTION 4. If I use the services of another attorney, paralegal, or law clerk within my law firm, at what rate may reimbursement be claimed?

ANSWER: The *lesser of* the CJA rate or the actual compensation paid to the associate attorney, paralegal or law clerk, including payroll burdens and benefits. [See §§ 3.8(e); 7.4(a).] Reimbursement or compensation for the use of an associate attorney is made on a CJA 20 while for the use of paralegals and law clerks is made on a CJA 21. [See §§ 3.8(e); 7.4(b).] [NOTE: To determine the hourly compensation rate for salaried individuals working a standard 40-hour workweek, divide the annualized salary by 2,080. If the individual's workweek is less than 40 hours, the amount of the divisor must be adjusted accordingly. Example. A person having a 40-hour workweek paid \$3,500 month has an annualized salary of \$42,000 and an hourly rate of \$20.19. A person receiving the same salary having a 35-hour workweek has an hourly rate of \$23.08 (\$42,000/1,820)].

QUESTION 5. Are the amounts paid to associate attorneys, paralegals, or law clerks included within the statutory maximum allowable compensation?

ANSWER: Amounts claimed for an associate attorney are included in determining statutory maximum fees. [See *CJA Guidelines*, ¶ 2.11A] Amounts paid to paralegals and law clerks are considered expenses not included in determining the statutory maximum.

QUESTION 6. Must I obtain prior court approval before using the services of another attorney, paralegal, or law clerk within my law firm?

ANSWER. The use of an associate attorney for research, investigation, and court appearances on routine, non-dispositive matters, *e.g.*, status conferences, does not require prior court approval. [See § 3.8(b)] Prior court approval of the services of paralegals/law clerks is only required if the total expenses exceed the statutory maximum for expenses. [See § 3.8(c)]

QUESTION 7. If I wish to use the services of another attorney who is not a member of my firm, must I obtain prior court approval?

ANSWER. Yes, prior court approval is *always required in all cases* for the use of outside counsel. [See § 7.3(a); *CJA Guidelines*, ¶ 2.11.A.]

QUESTION 8. What is the rate of compensation for an outside attorney?

ANSWER: The *lesser of* the billing rate of the attorney or the CJA rate. [See § 7.3(c); *CJA Guidelines*, ¶ 2.11.A.] [NOTE: The rate should be established at the time the court approves use of the outside attorney.]

QUESTION 9. If I pay an outside attorney for services, how am I reimbursed?

ANSWER. Whether the outside attorney seeks compensation directly or the appointed attorney seeks reimbursement, a separate CJA 21 is used. [See § 7.3(b)]

QUESTION 10. Will the amount paid an outside attorney count against the statutory maximum fees?

ANSWER: Yes, unless the court finds in a difficult case that appointment of an additional attorney is necessary in the interests of justice. [See *CJA Guidelines*, ¶ 2.11]

QUESTION 11. I met and conferred with my client in the courthouse for 15 minutes before the scheduled detention hearing, may I include that time in the time for the hearing?

ANSWER. No. The maximum in-court time for a hearing is from five minutes before the calendered start time until five minutes after adjournment as reflected on the court minutes. The time spent conferring with the client is separately accounted for as out-of-court time. [See § 3.4(b)]

QUESTION 12. I spent 10 minutes in a conference bringing my associate up to date before the associate was to make an appearance at a scheduled status conference. May either of us claim compensation for that time?

ANSWER. No. Time spent in in-house conferences must be absorbed by the appointed counsel. [See § 3.1(b)]

QUESTION 13. I and a co-counsel or counsel for a co-defendant engage in a strategy conference. May we be compensated for that time?

ANSWER. Yes, as long as the time is reasonably necessary. [See § 3.1(b)]

QUESTION 14. I am called back to the court for the return of a jury verdict and spend half-an hour waiting for the jury to come in. Am I entitled to compensation for that time?

ANSWER. Yes, under those circumstances it would more likely than not be deemed reasonable. [See § 3.4(b)]

QUESTION 15. I spent two hours in my office after normal working hours waiting for the jury to complete deliberations. May I be compensated for that time?

ANSWER: No. It would not be reasonable and you could have been engaged in other activities. [See §§ 3.1(c); 3.4(b)]

QUESTION 16. While waiting for my incarcerated client to be brought out, I worked on “polishing” a brief in another matter. May I be compensated for the entire waiting time?

ANSWER. No; “double dipping” is not permitted. [See § 3.1(c)]

QUESTION 17. May I be reimbursed for the time spent in traveling from my office to the court or to the detention facility confer with a client who is incarcerated?

ANSWER: Yes, you may be compensated for the actual time spent subject to a presumptive maximum. [See § 9.1(f)]

QUESTION 18. What are presumptive maximums and how do they work?

ANSWER. An appointed attorney is entitled to compensation for the actual time expended or expenses incurred, provided the time or expenses, as the case may be, is reasonable. Presumptive maximums are just that, the amount in time or money, within which it is presumed the time expended or expense incurred was reasonable. Times or expenses in excess of the presumptive maximum are not automatically disallowed; in those cases where the time or expense claimed exceeds the presumptive maximum it is necessary to include an explanation justifying why the amount claimed is reasonable. *CAVEAT:* Presumptive maximums are just that — maximums; they are not automatic amounts allowed—only *actual* time or expenses are allowed. For example, although the maximum presumptive time for travel between the attorney’s office and the court may be four-tenths of an hour (24 minutes), if the office is a ten-minute walk from the courthouse the actual time is two-tenths of an hour and is the maximum allowable.

QUESTION 19. I traveled from my office in Palmer to interview my client who was incarcerated in Anchorage and also to attend a hearing in the Anchorage Superior Court for another client. May I charge my entire travel time to the CJA client?

ANSWER. You must *pro rate* or allocate the travel time between your office and the Anchorage detention facility and the matter upon which you appeared in the Superior Court. [See § 9.1(g); *CJA Guidelines*, ¶ 2.26.]

QUESTION 20. I represent a defendant charged with multiple counts in a single indictment, do I submit a separate voucher for each count?

ANSWER. No. In that case you submit a single voucher and a single statutory maximum is applied even if the counts are severed for trial. [See § 3.7(b); *CJA Guidelines*, ¶ 2.24.]

QUESTION 21. I represent a defendant charged in multiple indictments, do I submit a single voucher?

ANSWER. No. In that case you submit a voucher for each indictment (other than a superceding indictment) and a separate statutory maximum is applied for each indictment, even if the indictments are consolidated for trial. [See § 3.7(b); *CJA Guidelines*, ¶ 2.24.]

QUESTION 22. I have two separate CJA assignments involving a common issue. How do I account for my time expended in researching and preparing the necessary pleadings in that situation?

ANSWER. The time may not be charged entirely to either case; it must be allocated appropriately between the two cases. [See § 3.7(c); *cf.* § 3.7(a); *CJA Guidelines*, ¶ 2.24]

QUESTION 23. I have several “standard form” motions that I use on a repetitive basis. May I charge for the use of these standardized forms?

ANSWER: The basic rule that you may charge only for actual time expended applies. You may charge only for the time actually expended in adapting the prior work product to the current case. [See § 3.5]

QUESTION 24. Must I file a motion to have my CJA requests sealed?

ANSWER: No. All CJA documents, other than the CJA 23, from the time they are submitted to (or generated by) the CJA Administrator are automatically sealed and a separate sealing order is unnecessary. [See § 2.3; *CJA Guidelines*, ¶ 3.03.] [NOTE: To ensure that the document is processed as a sealed document, make sure that the caption of the document contains the word “CJA” in it.]

QUESTION 25. Where do I file my CJA related documents, *e.g.*, vouchers, travel authorization requests, funding request, or requests for preapproval.

ANSWER. Under normal circumstances, all CJA documents should be submitted through the CJA Administrator. The CJA Administrator can review documents for completeness and compliance before they are submitted to the court for necessary judicial action; this can expedite the process. In addition, the CJA Administrator has overall responsibility for monitoring CJA documentation flow and as liaison between CJA attorneys and the court. However, in unusual situations, *e.g.*, a travel request or request for authorization to employ an expert must be decided in a short time, the document may be filed directly with the Clerk of the Court. In those instances where the appointed attorney files the document directly with the Clerk of the Court, a copy should be immediately transmitted by the attorney to the CJA Administrator. [See § 3.9.]

QUESTION 26. I misplaced a required receipt and am unable to obtain a duplicate. What can I do in that situation?

ANSWER. Attach an explanation for the lost receipt, *i.e.*, the circumstances surrounding its loss, and any secondary evidence, including your own statement, that verifies the validity of the expense. The court, in its discretion, may allow the reimbursement of the expense notwithstanding the absence of a required receipt.

QUESTION 27. I submitted my CJA 20 to the CJA Administrator and received a deficiency notice. What must I do or what are my options?

ANSWER. The deficiency notice indicates that your voucher does not comply with some provision of the *Compensation Policy Manual* or *CJA Guidelines*.

Your first “option” is to correct the deficiency and return the voucher to the CJA Administrator to complete approval process.

Your second “option” is to request the CJA Administrator reduce the voucher to the extent necessary. For example, a required justification for an amount claimed in excess of the presumptive maximum is omitted. You may determine that the amount involved is such that it is not economic to prepare and submit justification for the excess. In that case you can request a voluntary reduction to the amount to the presumptive maximum and the CJA Administrator will do so on the voucher before submitting it to the court with a note to the court that the reduction was made at the request of the submitting attorney. If resubmitted without correcting the deficiency the CJA Administrator must forward the voucher to the court informing the court of the uncorrected deficiency. [*See* § 6.2(b)]

QUESTION 28. I believe that the court incorrectly reduced my voucher. Do I have any recourse?

ANSWER. If the reduction exceeds \$500, you may request review by the CJA Advisory Committee (composed of five members of the CJA Panel). The Advisory Committee reviews the voucher, the court’s decision, makes such other investigation appropriate, and submits its recommendation to the court. [*See* § 6.4]

QUESTION 29. How long after I submit my voucher to the CJA Administrator may I expect to receive payment?

ANSWER: In most cases 45 days for cases under the statutory maximums and 60 days for cases exceeding the statutory maximum. However, this time may be longer if the voucher is incomplete or explanations/justifications inadequate. Incomplete vouchers or vouchers that do not comply with the *Policy Manual* or the *CJA Guidelines* are returned by the CJA Administrator, which delays processing. Even where the voucher passes scrutiny by the CJA Administrator does not mean that there are no problems. The CJA Administrator is required to return a voucher that omits a required justification statement, the CJA Administrator can not rule on the adequacy of the justification, that is a judicial function. Consequently, approval of a voucher can be delayed while the reviewing judge obtains further backup or justification for the time or expense item.

The key to receiving payment quickly lies with the submitting attorney in preparing and submitting the voucher.

QUESTION 30. For how long is my voucher subject to audit.

ANSWER: Three years after approval and you must keep the backup records/documentation for that period. [*CJA Guidelines*, ¶ 2.32.]