

# CJA Payments to Counsel and Experts

## Tips and Reminders



# Topics

- **Interim Vouchers**
- **Over-the-Limit Letters**
- **Expert Services Authorizations (AUTHs)**
- **Budgets**
- **Website Resources**
- **Question Time**



# Interim Vouchers



# Interim vouchers

Guide to Judiciary Policy, Volume 7 Defender Services, Section 230.73.10 (a)  
Interim Payments to Counsel:

- (a) Courts and presiding judges or their delegate should allow interim payments of compensation and of expenses to attorneys . . . at regular intervals in representations exceeding 90 days in duration or \$4,000 in accrued compensation and expense claims.

Section 310.60.10 uses the same language as to expert service providers.

The Guide language was updated as of December 30, 2024.

Dear Attorney Bismarck,

On 8/23/2024 7:19:17 AM,

CJA - ndx\_prod sent this CJA Panel communication:

CJA Panel Members, Over the last few years, the Court has noticed an increase in the number of interim payments requested, some on a monthly or quarterly basis. Most recently, the 8th Circuit Court of Appeals has returned interim voucher requests to counsel with the direction to submit a voucher for final payment at the conclusion of the representation. Interim payments may be approved where necessary and appropriate in a specific case, typically based on hardship to counsel in light of the volume of the work involved and the anticipated duration of a representation. See Guide to Judiciary Policy, Vol. 7, Ch.2, § 230.7. Interim payments are not intended to be routine in all CJA cases. If you request an interim payment, please ensure that you attach a letter explaining why an interim payment is necessary, either due to hardship in light of the volume of work involved or the anticipated duration of the representation. Thank you for your continued service to the indigent defendants in the District. The Court is greatly appreciative of your efforts and commitment. If you have questions, please direct them to the Clerk's Office. Sincerely, Peter D. Welte, Chief District Judge

Regards,  
North Dakota District Court

~~August 23, 2024 Email From Chief Judge Welte to CJA Panel~~

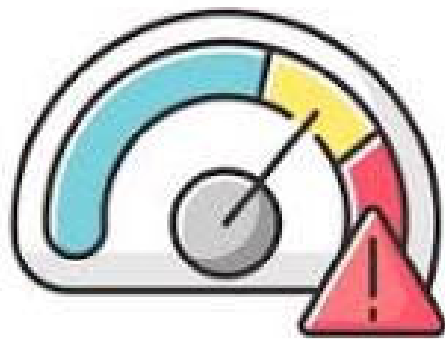
No longer valid after Guide update.

# Tips for Interim Voucher Letters



- **Interim Vouchers no longer need support letters, as of December 30, 2024.**
- ~~Interim vouchers are not intended to be routine in all CJA cases.~~
- ~~All requests for interim payment **must** include an interim voucher letter.~~
- ~~If interim payment is requested, the interim voucher letter should focus on the hardship to counsel in light of:
  - ~~the volume of the work involved and/or~~
  - ~~the anticipated duration of a representation.~~~~
- ~~Interim vouchers for amounts under the case maximum are approved locally.
  - ~~If there have been prior CJA attorneys appointed, the **cumulative total** of all payments to counsel must be under the case maximum for approval at the local level.~~~~
- ~~Interim vouchers for an amount over the case maximum are first approved locally and then submitted to the Chief Judge of the circuit for review and approval.
  - ~~For letters supporting interim vouchers over the case maximum, the more **specific information you provide**, the more information our Judges can use when drafting their letters to the circuit to advocate for payment of your voucher.~~~~

# Over-the-Limit Letters



# Over-the-Limit Letters



“In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel will submit with the voucher a detailed memorandum supporting and justifying counsel’s claim that:

- the representation given was in an **extended or complex case**, and
- the excess payment is **necessary to provide fair compensation.**”

Guide to Judiciary Policy, Vol. 7A, Ch. 2, Sec. 230.30(b).



# Extended or Complex Case Definitions

Extended or Complex Case definitions:

If the legal or factual issues in a case are unusual, thus requiring the expenditure of more time, skill, and effort by the lawyer than would normally be required in an average case, the case is “**complex.**” Guide to Judiciary Policy, Vol. 7A, Ch. 2, Sec. 230.23.40(b)(1)

If more time is reasonably required for total processing than the average case, including pre-trial and post-trial hearings, the case is “**extended.**” Guide to Judiciary Policy, Vol. 7A, Ch. 2, Sec. 230.23.40(b)(2).



# Fair Compensation determination

“After establishing that a case is extended or complex, **the approving judicial officer should determine if excess payment is necessary to provide fair compensation.** The following criteria, among others, may be useful in this regard:

- Responsibilities involved measured by the **magnitude and importance** of the case;
- **Manner** in which duties were performed;
- Knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel;
- **Nature of counsel’s practice and injury thereto;**
- Any **extraordinary pressure of time** or other factors under which services were rendered; and
- **Any other circumstances relevant and material** to a determination of a fair and reasonable fee.

Guide to Judiciary Policy, Vol. 7A, Ch. 2, Sec. 230.23.40(c)



## Suggested factors to include in over-the-limit letters

### Location of Defendant

**Remote detention of client.** Due to the rural nature of ND and the lack of any federal corrections facilities in the state, an attorney may incur substantial travel time to adequately represent their client.

- The defendant was primarily housed in [location], which is [number] of hours away from the attorney's office. [Indicate the numbers of trips needed].

**Accepting case from different division.** An attorney may incur more extensive travel time if an attorney agrees to accept a case that is in a different division in the district than where the attorney is located.

- Attorney's travel time to attend a court hearing is [number] hours, round trip.

### **Jail policies that limit availability for face-to-face contact with a detained client.**

Some jails are unable to facilitate meeting via reliable electronic means. Also, the contracted jail in which a client is detained may limit the times in which the attorney may meet with a client, requiring more trips and travel time.

## Suggested factors to include in over-the-limit letters (Cont'd)

### Defendant-Related Issues

**More face-to-face time with detained client.** Sometimes electronic communications are not as effective when trying to establish and maintain client rapport, particularly with difficult or challenging clients. More face-to-face time may also be required when trying to build rapport after a defendant has been represented previously by court-appointed counsel and is distrustful.

**Client requiring interpreter.** A defendant requiring an interpreter may result in additional time being spent reviewing discovery, case strategy, etc.

**Plea Negotiations.** More time meeting with client may be required if there are extensive plea negotiations or if multiple proffer interviews are conducted.

**Defendant's health.** Physical or mental health challenges of the defendant that require additional time or work.

**Pretrial release.** Time spent seeking release options, including treatment placement. Handling release violations and furloughs.

## Suggested factors to include in over-the-limit letters (Cont'd)

### Discovery

**Reviewing voluminous discovery.** Counsel may provide a description of the number of pages, hours of video and audio, or other concrete examples of the amount of discovery that was reviewed.

**Reviewing voluminous discovery with client.** To timely obtain discovery, defense counsel may stipulate to entry of a protective order which prohibits attorneys from providing copies of discovery directly to clients. Thus, requiring the attorney to meet personally with their client while the client reviews the discovery.

**Reviewing substantial discovery for trial preparation.** Disclosure of substantial additional discovery (*Jencks* materials, grand jury testimony, etc.) on the eve of trial may occur, requiring counsel to share these disclosures with their client in person.

## Suggested factors to include in over-the-limit letters (Cont'd)

### Other

**Nature of multi-defendant cases.** Often includes extensive discovery. Trial may be continued several times due to co-defendants' requests for continuances. Overall, the length of time from charges to resolution tends to be longer in these cases.

**Plea agreement reached on eve of trial.** Trial preparation time may have begun even if the trial did not ultimately take place.

**Substitute counsel.** If an attorney replaced a prior CJA attorney, explain the amount expended by prior counsel and the need to duplicate some of the work to provide adequate representation. This situation also may also involve a difficult or challenging client.

**Complicated sentencing considerations.** Potential career offender status or a higher criminal history than anticipated may require additional research time.

**Impact on Practice.** Have you turned down other work due to the time needed for the CJA Appointment? Are you a solo practitioner?

## Suggested factors to include in over-the-limit letters (Cont'd)

Attorneys also may wish to include any cost-savings measures taken. For example, using an investigator or a paralegal instead of billing attorney time; meeting with multiple clients housed in the same location on a single trip; utilizing a coordinating discovery attorney; and resolving the case by plea agreement instead of trial.

**The more information you provide, the more information our Judges have to use when drafting their letters to the circuit to advocate for approval of your voucher.**

## Suggested Detail of Task Descriptions

Modified from a presentation made by Circuit Budgeting Attorney, Mark Thomason

Detailed Task Descriptions			
<b>Do This</b>			
Date	Service	Time	Description
2/5/2024	Travel Time	7.0	Drove to Bismarck from Grand Forks (Round trip travel and travel in Bismarck to meet with two potential witnesses: (3.5 hours each way)).
2/5/2024	Interview & Conferences	3.0	Interviewed two witnesses in Bismarck
2/8/2024	Obtain/Review Records	4.0	Reviewed 200 pages of wiretap transcripts (Bates Nos. 220-420)
2/17/2024	Legal Research	5.2	Researched whether the search of client's car without warrant was unlawful; began drafting motion to suppress (Doc. No. 112)
<b>Not This</b>			
Date	Service	Time	Description
2/5/2024	Travel Time	7.0	Travel for Interviews
2/5/2024	Interviews & Conferences	3.0	Interviews
2/8/2024	Obtain/Review Records	4.0	Reviewed Discovery
2/17/2024	Legal Research	5.2	Legal Research and writing



# Expert Service Authorizations AUTHs





# Expert Services Authorization

- With **prior** authorization, compensation for investigative, expert, and other services is limited to \$3,000. Guide to Judiciary Policy, Vol. 7A, Ch. 3, Sec. 310.20.10(a).
- The court may, in the interest of justice, and upon finding that timely procurement of necessary services **could not await prior notification**, approve payment for such services up to the threshold for obtaining services without prior authorization, currently \$1,000. Guide to Judiciary Policy, Vol. 7A, Ch. 3, Secs. 310.20.10 and 310.20.30(a).
- “Payment in excess of the case compensation limit for services authorized prior to the performance thereof may be made when certified by the court . . . and approved by the chief judge of the circuit . . . as being necessary to provide fair compensation for services of an **unusual character or duration.**” Guide to Judiciary Policy, Vol. 7A, Ch. 3, Sec. 310.20.20

# Current limits for expert services

Without prior approval, subject to subsequent reasonableness review:

\$1,000

With local prior approval, subject to subsequent reasonableness review:

\$3,000

Requires prior circuit approval, subject to subsequent reasonableness review :

over \$3,000

The limits are cumulative for all expert services in a case.

# eVoucher Expert Authorizations (AUTHs)

An AUTH **must** be created **before** the services are provided.

Create an AUTH in eVoucher

- Include the estimated amount
- In the description box, provide a general description of the services the expert will provide.
- Select the service type
- Supporting Documents: it is best to provide a supporting document that details the work to be performed.
  - For example:
    - List the number of hours expected and provide the hourly rate
    - Detail any expenses, especially travel expenses
    - If the expert charges a flat fee, detail what services will be provided

## eVoucher Expert Authorizations (AUTHs) (cont'd)

- Do not include a billing statement, unless you are claiming that timely procurement of necessary services could not await prior notification.
- For letters supporting authorizations over the case maximum, **the more information you provide, the more information our Judges have to use when drafting their letters to the circuit to advocate for approval of your authorization.**
- Recently AUTHs have been rejected for:
  - being untimely (i.e., after the work is completed);
  - failing to include a sufficient description of the services needed; and
  - requesting amounts barely over the \$3,000 limit.

# Budgets



# Budgets



“Courts are encouraged to use case-budgeting techniques in representations that appear likely to become or have become extraordinary in terms of potential cost (ordinarily, a representation in which attorney hours are expected to exceed 300 hours or total expenditures are expected to exceed 300 times the prevailing CJA panel attorney non-capital hourly rate, rounded up to the nearest thousand, for appointed counsel and services other than counsel for an individual CJA defendant).”

Guide to Judiciary Policy, Vol 7A, Ch. 2, Sec. 230.26.10

Currently the amount is **\$51,600** (\$172 per hour x 300 hours)

# NEW 8<sup>th</sup> Circuit Guidance on Budgeting

- ▶ Budgets should be developed with the assistance of the **circuit case-budgeting attorney**.
  - ▶ [Mark\\_Thomason@ca8.uscourts.gov](mailto:Mark_Thomason@ca8.uscourts.gov)
  - ▶ (314) 917-3932
- ▶ Budgets should be formulated for each defendant individually; no joint budgets should be submitted.
- ▶ Attorney should contact the case-budgeting attorney about preparing a case budget once their claimed fees have reach the **statutory maximum or they have completed 80 hours of work on a case**.
- ▶ **Earlier case budgeting is discouraged** because counsel and the case-budgeting attorney will not have sufficient information about the case and the likely scope of representation to prepare an informed budget.
- ▶ **Approval of a budget does not guarantee payment of the budgeted amount.** Vouchers are subject to audit and review to assess whether payment of a requested amount in excess of the statutory maximum is necessary to provide fair compensation to counsel or to provide fair compensation for services of an unusual character or duration.



# RESOURCES



# Website Resources: [www.ndd.uscourts.gov](http://www.ndd.uscourts.gov)

## eVoucher

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- **Login here >> CJA eVoucher << Login here**
- >> **Web browser configuration for Windows <<**
- **Create a Login.gov Account**
  - Step 1: Creating a Login.gov Account
  - Step 2: Adding an Authentication Method
  - Step 3: Identity Verification
  - Step 4: Linking SLP with your Login.gov Account
- Importing Service Entries
- Attorney User Manual
- Service Provider Payee Registration Form

# Website Resources: [www.ndd.uscourts.gov](http://www.ndd.uscourts.gov)

## CJA Information

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- Attorney Application for CJA Panel
- Attorney Renewal Application for CJA Panel
- Blanket Travel Authorization for CJA within 100 Miles
- Panel Attorney Orientation Training
- CJA Panel Mentorship Program
- CJA Plan
- Furlough Requests
- Information Packet
- Memo, Locating Pretrial Detainees
- Practitioner Resources
- Quick Reference Guide
- US Courts Online Reference Tool

# Website Resources: [www.ndd.uscourts.gov](http://www.ndd.uscourts.gov)

## Budget Requests

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- Explanatory Memorandum
- CJA 28A: Attorney Services - Detailed
- CJA 28B: Attorney Services - Summary
- CJA 28C: Investigative Services - Detailed
- CJA 28D: Investigative Services - Summary
- CJA 28E: Expert Services - Detailed
- CJA 28F: Expert Services - Summary
- CJA 28G: Other Services - Detailed
- CJA 28H: Other Services - Summary
- eVoucher: Budget Authorization Job Aid



# Question Time



# Contact Information

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