

SPECIFICITY IN CJA VOUCHERS

GUIDELINES FOR APPOINTED COUNSEL

In November 1997, the Court of Appeals approved, after public notice and an opportunity for comment, a change to the *Court's Plan to Implement the Criminal Justice Act of 1964* ("CJA"), to require that time claimed by counsel for legal research "be identified by reasonable reference to each issue, whether included or not in the briefs," and that time claimed for drafting and editing "be identified by reference to each pleading or section of the brief prepared." The amendment was approved, pursuant to 18 U.S.C. § 3006A, by the Circuit Judicial Council in March 1998.

The amendment as approved by the Court and the Judicial Council calls for the Clerk of the Court of Appeals to promulgate, with the approval of the Chief Judge, "guidelines to assist counsel in meeting this specificity requirement." Those guidelines follow.

In General

CJA regulations adopted by the United States Judicial Conference require counsel to keep contemporaneous records of time spent on a case (subject to audit by the Administrative Office of the United States Courts), and to report that time in units of one tenth of an hour. The new specificity requirement is not intended to impose additional burdens on appointed counsel beyond those required by the existing regulations. Rather, the new requirement is intended to help counsel focus on those aspects of compensation claims that the Court has sometimes found troublesome in the past.

Those cases in which the Court has encountered difficulties in evaluating the reasonableness of counsel's claims have fallen most often into one of two categories — cases in which counsel claim for research and writing for work that does not ultimately appear in the briefs or other submissions; and cases in which counsel file multiple submissions, or long briefs raising numerous issues, but provide little or no information to the Court regarding how much time was spent on each pleading or discrete section of a longer submission. Although it is always in counsel's interest to provide as detailed a compensation claim as possible, the Court is less concerned with specificity in those cases which do not fall into either of the above categories. If counsel's efforts are accurately reflected in the written submissions, and if those submissions are brief enough that counsel is confident that a section-by-section breakdown would not assist the Court's evaluation of the claim, then counsel can be fairly certain that the specificity requirement will not be strictly enforced to delay or reduce payment.

Next, the Court has determined, at least for the present, not to enforce the specificity requirement strictly in cases in which the compensation claim does not exceed the statutory limit (currently \$2,500). The Court has not found that this class of cases presents the sort of

evaluation problems that served as the catalyst for the new requirement.

Finally, the CJA Plan amendment, as adopted by the Court and approved by the Judicial Council, provides that the Court will take into consideration the lack of notice of the specificity requirement for work done before September 30, 1997. Counsel may be assured that similar consideration will be provided for work done prior to the date of publication of the final version of the amendment, and of the promulgation of this guidance.

Legal Research

Some members of the Court's CJA panel, offering comments on the proposed amendment, asserted that it would be unrealistic and overburdensome to require counsel to specify time spent on each issue researched in preparing a given appeal. According to these commenters, research is not undertaken in discrete segments, but that often research on one issue will lead an attorney to another, and perhaps back to the first. If counsel keep in mind the concerns that underlie the specificity requirement, and that the court expects no more than good faith, reasonable efforts to provide the requested information, compliance should not be overburdensome. If a research session includes work on more than one issue, and the time spent on each is not readily severable, counsel may identify the session by a single reference incorporating all such issues. On the other hand, if a research session is taken up exclusively, or even predominately, by work on one issue, counsel should identify that issue on the time sheets.

Drafting and Editing

Similar comments were received in response to the proposed requirement that drafting and editing time be claimed with specific reference to the pleading or section of the brief being prepared. Some commenters asserted that counsel often go back and forth between, e.g., an argument section and the statement of facts, making it difficult or impossible to provide the requested specificity. Again, by focusing on the purpose of the specificity requirement, counsel should be able to comply. In smaller cases, there will often be no need to specify how much time was spent on each section of the brief, as the entire claim for drafting and editing will be quite modest. In larger cases, counsel should be able to provide a reasonably specific breakdown of time spent on each section of the brief, even if that breakdown must be qualified by a notation that work on another section was done simultaneously.