United States Court of Appeals

District of Columbia Circuit
Washington, D.C. 20001-2866

Mark J. Langer
Clerk (202) 216-7300

Dear Counsel:

Enclosed is an order concerning your appointment as counsel pursuant to the Criminal Justice Act of 1964 (hereinafter, CJA, or the Act). The Court appreciates the fact you are shouldering this responsibility despite the modest sums made available by the Act. Please note that this order also establishes a schedule for the critical procedural steps of the appeal.

The following is general information which should be of assistance to you. Please keep in mind that the Office of the Federal Public Defender can be an excellent resource, and appointed counsel are always welcome to call that office for assistance. You may also wish to consult the Court's web site at **www.cadc.uscourts.gov** for information. The site allows on-line viewing and printing of court forms, the Circuit Rules and Handbook, the CJA plan and relevant notices, the oral argument calendar, court opinions, and other information concerning the Court.

FORM OF FILING:

Any submission you make to the Court should contain a notation beneath your name that you have been appointed, i.e.,

John Smith
Counsel for Appellant
(Appointed by this Court)

CONTACTING THE CLIENT:

You should initiate contact with your client as soon as possible to advise of your appointment and to assure him or her the appeal is proceeding. This is particularly important since your client may be sent outside the immediate area to serve his or her sentence. Your client should be periodically informed of the progress of the appeal. Additionally, you should interview your client in person (or by telephone if he or she is incarcerated outside the jurisdiction) and provide an opportunity to your client to express views on the issues to be raised on appeal. If your client is incarcerated

outside the immediate vicinity, and an in-person visit would require significant travel expenses, e.g., airfare, overnight lodging, etc., you must obtain prior authorization in order to ensure full reimbursement of travel time and expenses. Travel authorization should be sought by submitting a letter to the Chief Judge, which includes a justification for the travel requested and an estimate of the expenses to be incurred.

MOTION FOR RELEASE:

If an appellant is incarcerated, he or she should be advised of the right to apply for release pending appeal. If it is your judgment after investigation of the facts and the law that the filing of a motion for release pending appeal is appropriate, such motion must be addressed to the District Court in the first instance, provided such has not already been done. If the District Court's disposition of the motion is or was unfavorable, you may file a similar motion in this Court. It is not necessary to file an appeal from the order denying release.

Please note that a copy of the District Court's order and its statement of reasons for denying such a request must be provided with any motion to this Court requesting release pending appeal. See Fed. R. App. P. 9 and D.C. Cir. Rule 9. Failure to provide this Court a copy of the District Court's order and statement of reasons may delay processing of the motion.

TRANSCRIPTS:

It is important that you promptly review the District Court docket and consult with trial counsel and the District Court Clerk's Office (Room 1225, 202/354-3060) to determine whether all transcripts you consider necessary for the appeal, including pretrial proceedings, have been ordered by trial counsel. If they have not been ordered, you must file an application (CJA Form 24) in the District Court for their preparation. The Clerk of the District Court will provide you the application form. After approval of the CJA Form 24 by the District Court, you should contact the Court Reporter to obtain the estimated date of completion. If the reporter gives a completion date which exceeds thirty days from the date of the transcript order, his or her attention should be directed to Fed. R. App. P. 11(b). In cases involving multiple appellants, there are special procedures to follow. Please call the District Court Clerk's Office for details.

All action concerning verification or ordering of the transcripts should be completed within 15 days. You should provide this office with status reports at 15-day intervals until completion of the transcript. See scheduling order.

THE BRIEF AND RECORD:

Once you notify this office that transcripts have been completed, you will receive a briefing schedule. The case will be screened by the Legal Division, normally after

appellant's brief is filed. If oral argument is deemed appropriate, the Clerk's Office will notify you of the argument date and the composition of the merits panel.

In the event you conclude that the appeal presents no non-frivolous issues, you may file a motion to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967), and Suggs v. United States, 391 F.2d 971 (D.C. Cir. 1968). The memorandum accompanying the motion to withdraw must set forth the arguments your client wishes to assert, as well as issues you have considered, and the most effective arguments which can be made on behalf of your client. See D.C. Circuit Handbook of Practice and Internal Procedures 26 (2019). Both documents are to be served on your client, but only the motion to withdraw is to be served on government counsel.

You may reproduce the fifteen necessary copies of your brief and claim reimbursement on CJA Form 24, or the Clerk's Office will reproduce the brief for you. It is always your responsibility, however, to serve copies of the brief upon opposing counsel. An appropriate certificate of service must be submitted with the brief.

In addition to the brief, you must provide this office one suitably bound copy of all of the pages of the trial transcript you consider necessary and pertinent, accompanied by a cover sheet listing the pages included. You may also list any other documents, such as pleadings or exhibits, considered necessary. See D.C. Cir. Rule 24(a).

ORAL ARGUMENT:

An order allotting the amount of time for oral argument will be mailed to you approximately two weeks before the argument date. Appointed counsel must present argument unless a motion to permit co-counsel to argue is granted by the Court.

POST-DECISION:

In due course, a decision will be issued by the Court. You should promptly advise the client not only of the decision but, if the decision is adverse, of the availability of rehearing and a petition for writ of *certiorari*.

If the decision is in favor of your client, your appointment obligation would ordinarily end at this point, although most counsel consider it a part of their representation to at least set in motion the process to release the client from confinement, if necessary. If the decision in favor of your client is in the nature of a reversal or remand which would lead to further proceedings in the District Court, you are under no obligation to continue to represent him or her in these new proceedings. Should you wish to represent appellant in the District Court, you may move that Court for such appointment.

If the decision is adverse to your client, you should consider whether a petition for panel or en banc rehearing is appropriate. If it is your judgment that the case

warrants such a step, your appointment extends to the preparation and filing of the petition for panel or en banc rehearing. If it is your judgment that a request for rehearing is not warranted, you should promptly advise your client of that fact. If you feel a petition is not warranted, you are not required to file such a pleading, even if your client insists. The client may wish to file a pro se petition for panel or en banc rehearing. If so, you should advise him or her of the requirements and time factor. The Clerk's Office will reproduce the necessary copies of any petition, but you or the pro se appellant must serve copies upon opposing counsel and attach a certificate of service.

The situation with regard to a petition for writ of *certiorari* is different. If the client requests that such a petition be filed, you are under an obligation to do so only if non-frivolous grounds therefor exist, and your appointment by this Court pursuant to the Act extends to such proceedings. If you determine that there are no non-frivolous grounds for filing a petition for writ of *certiorari*, you must notify your client within twenty days of judgment that you will not file a petition, briefly explaining why. You must also inform your client about the procedures both for filing a petition for *certiorari* pro se and for asking the Court of Appeals to appoint new counsel to prepare a petition for *certiorari*. You should caution your client that it is unlikely the Court will appoint new counsel and that the client should be prepared to file a petition for *certiorari* pro se within the prescribed time. (A model letter is attached.) Once you have provided this notice to the client, you must notify the Court that your representation has ceased. The Clerk will notify the appellant in writing of the effective date of the termination of your appointment. If you fail to comply with the foregoing procedures, the Court may refuse to approve your voucher.

VOUCHER FOR PAYMENT:

You may generate your CJA Form 20 voucher entitled "Appointment of and Authority to Pay Court Appointed Counsel," through the CJA eVoucher system. The Act permits payment for services necessarily performed. It measures payment in terms of what is necessary for an experienced practitioner to devote to a case. You should recognize that if you are not familiar with criminal matters, your preparation will likely require you to devote time and study for which you may not be reimbursed but which you probably will not be required to repeat in future cases. You should keep an accurate time record. The voucher requires a detailed report of the time spent to support separate itemizations.

The completed voucher must be filed within 45 days of the final decision of this Court or within 45 days of the grant or denial of any petition for writ of *certiorari*.

Revised: January 10, 2020

ATTACHMENTS

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.

Issued: May 26, 1998

MODEL LETTER TO CLIENT FROM APPOINTED COUNSEL WITHDRAWING FROM REPRESENTATION AT CERTIORARI STAGE

Dear [Client Name]:

I am sorry to tell you that the court of appeals has affirmed your conviction and/or sentence. A copy of the decision is enclosed. Unfortunately, there is nothing further I can do for you in this case. Every possible issue was raised in the brief I filed with the court of appeals. After having reviewed the opinion of the court of appeals, it is my professional judgment that seeking further review from the Supreme Court of the United States is not appropriate.

As you may know, there is no right to appeal to the Supreme Court in a case like yours. Rather, a document called a "Petition for a Writ of Certiorari" can be filed. The Supreme Court then decides whether or not to hear the case. That Court grants very few petitions in criminal cases and thus hears only a small number of such cases a year. Under the Supreme Court's rules, a serious certiorari petition should be based on either a conflict between the ruling of the court of appeals and another court of appeals, a state supreme court, or the Supreme Court, or on an important question of federal law that should be settled by the Supreme Court. Very few cases meet these standards, and I do not believe that this case does. For that reason, I will not be filing a petition seeking discretionary review by the Supreme Court.

Despite my conclusions, you may file your own certiorari petition with the Supreme Court. Such a petition is due within 90 days after the decision of the court of appeals, which means it is due in the Supreme Court by [insert date]. If you are planning to file your own petition, you ought to consult the Supreme Court rules to determine the proper way to do so. You also may request in writing that the court of appeals appoint new counsel for you to file a certiorari petition. Your request should contain an explanation of why you think Supreme Court review is warranted in this case. Please understand, however, it is highly unlikely the court of appeals will appoint new counsel. Therefore, even if you have requested new counsel, you must be prepared to file a certiorari petition in a timely way on your own, if you wish to do so. If the court does appoint new counsel, it will notify you.

If you have any questions, please do not hesitate to contact me. Good luck and best wishes.

Sincerely,

[Attorney Name]

Enclosure

United States Court of Appeals

District of Columbia Circuit
Washington, D.C. 20001-2866

CRIMINAL JUSTICE ACT (CJA) AUTHORIZED RATES FOR COMPENSATION
Revised: January 10, 2020

COMPENSATION

I. Recording Service Time on Vouchers

All attorney and investigator service time must be recorded in tenths of an hour:

06	minutes	=	.1 hour	36	minutes	=	.6 hour
12	"	=	.2 hour	42	"	=	.7 hour
18	"	=	.3 hour	48	"	=	.8 hour
24	"	=	.4 hour	54	"	=	.9 hour
30	"	=	.5 hour	60	"	=	1.0 hour

II. Hourly Rates (In-Court or Out-of-Court)

Compensation paid to appointed counsel for time expended in-court or out-of-court may not exceed the rates in the following table:

For services performed on...	Non-Capital Cases	Capital Cases*
01/01/2020 to present	$152.00	$195.00
02/15/2019 through 12/31/2019	$148.00	$190.00
03/23/2018 through 02/14/2019	$140.00	$188.00
05/05/2017 through 03/22/2018	$132.00	$185.00
01/01/2016 through 05/04/2017	$129.00	$183.00
01/01/2015 through 12/31/2015	$127.00	$181.00
03/01/2014 through 12/31/2014	$126.00	$180.00
09/01/2013 through 02/28/2014	$110.00	$163.00
01/01/2010 through 08/31/2013	$125.00	$178.00
03/11/2009 through 12/31/2009	$110.00	$175.00
01/01/2008 through 03/10/2009	$100.00	$170.00
05/20/2007 through 12/31/2007	$94.00	$166.00
01/01/2006 through 05/19/2007	$92.00	$163.00

For services performed on...	Non-Capital Cases	Capital Cases*
02/01/2005 through 12/31/2005	$90.00	$160.00
05/01/2002 through 01/31/2005	$90.00	$125.00
01/01/1990 through 04/30/2002	$75.00	$125.00

* The presiding judicial officer shall set the hourly compensation rate for appointed counsel in an amount not to exceed the maximum shown. ***The non-capital hourly rate will be applied for all capital appeals in this Circuit unless appointed counsel requests a higher rate by filing a motion.***

III. Case Compensation Maximums

There is neither a statutory case compensation maximum for appointed counsel nor provision for review and approval by the chief judge of the circuit of the case compensation amount in capital cases.

For counsel appointed to an appeal in a non-capital case the maximum that can be claimed for in-court and out-of-court compensation are as follows:

For services performed on...	Appeal from Felony, Misdemeanor, or Post-conviction Proceeding	Appeal of Other Representation
01/01/2020 to present	$8,400	$2,500
02/15/2019 through 12/31/2019	$8,200	$2,500
03/23/2018 through 02/14/2019	$7,800	$2,300
05/05/2017 through 03/22/2018	$7,300	$2,200
01/01/2016 through 05/04/2017	$7,200	$2,100
01/01/2015 through 12/31/2015	$7,100	$2,100
03/01/2014 through 12/31/2014	$7,000	$2,100
01/01/2010 through 02/28/2014	$6,900	$2,100
03/11/2009 through 12/31/2009	$6,100	$1,800
10/13/2008 through 03/10/2009	$5,600	$1,700
12/08/2004 through 10/12/2008	$5,000	$1,500

Note: If a voucher is submitted for more than the maximum amount, the voucher must be accompanied with a Form CJA-27 or letter of justification.

IV. Waivable Compensation Maximums for Services Other than Counsel (e.g., Investigators and Experts):

For capital representations commenced, and capital appeals perfected on or after April 24, 1996, there is a waivable limit of $7,500. The $7,500 limit applies to the total payments for investigative, expert, and other services in a case, not to each service individually.

Case compensation maximums applicable to a provider of investigative, expert, or other services for a representation furnishing any CJA-compensable work in a non-capital case are as follows:

For services performed on...	Without Prior Court Authorization	With Prior Court Authorization
02/15/2019 to present	$900	$2,600
01/01/2016 through 02/14/2019	$800	$2,500
05/27/2010 through 12/31/2015	$800	$2,400
12/08/2004 through 05/26/2010	$500	$1,600
11/14/1986 through 12/07/2004	$300	$1,000

Note: The maximum with prior authorization applies separately for each service provider; the maximum without prior authorization applies for each category of service.

MILEAGE

I. The following rates apply for attorney and investigator private automobile mileage:

For mileage incurred on...	Rate Per Mile
01/01/2020 to present	$0.575
01/01/2019 through 12/31/2019	$0.58
01/01/2018 through 12/31/2018	$0.545
01/01/2017 through 12/31/2017	$0.535
01/01/2016 through 12/31/2016	$0.54
01/01/2015 through 12/31/2015	$0.575
01/01/2014 through 12/31/2014	$0.56
01/01/2013 through 12/31/2013	$0.565
04/17/2012 through 12/31/2012	$0.555
01/01/2011 through 04/16/2012	$0.51
01/01/2010 through 12/31/2010	$0.50

For mileage incurred on...	Rate Per Mile
02/01/2009 through 12/31/2009	$0.55
08/01/2008 through 01/31/2009	$0.585
03/19/2008 through 07/31/2009	$0.505
02/01/2007 through 03/18/2008	$0.485
01/01/2006 through 01/31/2007	$0.445
09/01/2005 through 12/31/2005	$0.485
02/04/2005 through 08/31/2005	$0.405
01/01/2004 through 02/03/2005	$0.375
01/01/2003 through 12/31/2003	$0.36
01/21/2002 through 12/31/2003	$0.365
01/22/2001 through 01/20/2002	$0.345
01/14/2000 through 01/21/2001	$0.325

COPIES

I. Attorney's maximum copying fee is $0.25 cents per page.