

Excerpt from June 28, 2006, letter from Chief Judge Washington to CJA Panel Members concerning the payment of vouchers in excess of the statutory maximum amount:

Under the CJA, payment above the statutory maximum is only authorized when the representation undertaken is either complex or extended. In the appellate context, the term complex is understood to mean that the issues actually raised on appeal are reasonable, as well as novel and/or complicated and thus, worthy of the additional time spent in conducting research and formulating the particular argument. The term “extended” is generally understood by the Court to mean that either the procedural history of the case involved some unusual twists and thus, there were significant additional matters that one would not expect to see in a typical criminal appeal or the number of trial days, and thus the number of transcript pages that had to be reviewed were unusual for a typical misdemeanor or felony case. In addition, there may be other circumstances where the court would consider a representation to be either complex or extended, but those circumstances would also have to be somewhat distinguishable from the typical misdemeanor or felony criminal case.

The point made by the Court in *United States v. Nichols*, 184 F.3d 1169, 1171-21 (10th Cir. 1999) is very valid here:

The balance between providing counsel with fair payment and, at the same time, acting as trustees of the public’s fund, is most precarious. We are committed not only to compensating counsel adequately for work that is extremely difficult, but also to acting as guardians of the taxpayers’ dollars.

The balance discussed in *Nichols* underlies a fundamental principle of the CJA. An attorney seeking compensation under the CJA is entitled to “fair compensation,” which is not necessarily “full compensation.” *United States v. Jewett*, 625 F.Supp. 498, 500 (W.D. Mo. 1985). “[A]cceptance of an appointment under the CJA is tantamount to acceptance of public service, and is for the purpose of protecting the rights of the indigent [convict] rather than to provide income to attorneys.” *United States v. Hamilton*, No. 96-10018-02, 1996 U.S. Dist. LEXIS 16166 (D. Kansas October 8, 1996), quoting with approval *United States v. Cook*, 628 F.Supp. 38, 41 (D. Colo. 1985). Our CJA, like its federal counterpart, assumes that public service is a significant component of the representation.

While this Court believes that an appellate counsel has a duty to pursue every reasonable claim of error in discharging his or her obligations to his or her client, doing so does not require, nor necessarily warrant, payment under the CJA for the results, in terms of hours spent, of all of his or her choices.