

**Voucher Guidelines for Attorneys Appointed
by the D.C. Court of Appeals
Under the District of Columbia Criminal Justice Act**

These Guidelines are intended to assist attorneys appointed by the D.C. Court of Appeals to represent indigent defendants under the District of Columbia Criminal Justice Act (CJA), D.C. Code §§ 11-2601-2608 (2012 Repl.). These Guidelines are also intended to promote consistent and complete submission of vouchers by attorneys and consistent review of submitted vouchers.

I. General Voucher Procedures

A. Getting Started

After counsel has been appointed in a case, the courts' Web Voucher System will generate a voucher. When counsel has completed her work in a case, she will fill in this voucher to obtain payment. It is counsel's responsibility to ensure that she has been issued a voucher. It is the court's preference that counsel submit only one voucher per case, but interim and supplemental vouchers will be issued upon request as outlined below.

B. Types of Vouchers

1. The Initial Voucher—Timing for Submission

Claims for compensation or reimbursement of expenses must be filed within 120 days of the termination of representation. The termination of representation will be the issuance of the final decision of the court, whether by opinion, memorandum opinion and judgment, order, or judgment. If a petition for rehearing/rehearing en banc is filed, termination is defined as the date the petition is resolved. If a petition for certiorari is filed, termination is defined as the date the petition is filed with the U.S. Supreme Court. The filing of a *Qualls* letter, *see Qualls v. United States*, 718 A.2d 1039 (D.C. 1998), does not extend the 120-day period for submission of vouchers. **This is a change from past procedure**, which did allow a *Qualls* letter to extend the 120-day period for submission of the voucher as long as the *Qualls* letter was filed within a reasonable period of time from the court's final decision in the case. Vouchers filed after the time limit will not be approved except where it can be documented that it was impossible to file a claim because of actual physical or mental incapacity or death of the attorney furnishing the representation. The press of business will not be grounds for exception.

An attorney may submit a voucher prior to the termination of representation for all work done to that point, but only after the case is submitted or argued. **This is also a change from prior practice.** If the appeal is subject to

the presumptive maximum limitation, counsel shall identify the presumption in the attorney comment field on the voucher.

2. Supplemental Voucher

After the initial voucher has been submitted and paid, counsel may request the issuance of one supplemental voucher in the following situations: to seek compensation for work done (1) any supplemental briefing ordered by the court after the case is argued or submitted and any argument thereafter; (2) to notify the client of the court's decision and to prepare a *Qualls* statement; or (3) to file a petition for rehearing/rehearing en banc and to notify the client upon conclusion of the case. This supplemental voucher may only include time spent on the above delineated purposes and may only be filed once the petition has been resolved, the client has been informed of the results and any additional options, and the *Qualls* letter has been filed with the court.

Counsel may request the issuance of one additional supplemental voucher after filing a petition for writ of certiorari. Counsel should provide the Supreme Court docket number in the comment section of the supplemental voucher and be prepared to provide a copy of the petition upon request.

3. Interim Voucher

Interim vouchers are reserved for the rare appeals in which, because of the extended nature of the trial and the complexity of the appeal, it is likely that the appeal will consume most of counsel's time over an extended period, thereby creating a situation where counsel is unavailable for appointment to other cases. Motions requesting the approval of interim vouchers must outline the extenuating circumstances that would justify a departure from the guidelines. The Chief Judge's decision regarding these motions is final and a denial does not provide a basis for counsel seeking to withdraw. In cases where an interim order is approved, it is presumed that counsel will exceed the maximum allowable payment for that type of case. In order to fulfill the court's fiduciary duty regarding court funds, however, the court will require more detailed information regarding work performed, as specified in separate guidelines for interim vouchers that will be provided to attorneys for whom interim vouchers are approved.

C. Payment and Audit Process

After a voucher is filed through the Web Voucher System, it is then sent to the Court of Appeals for review and approval by the Chief Judge. The voucher may be returned with instructions that counsel provide further information. With respect to legal vouchers, if the voucher is denied or approved with a reduction, counsel may within 30 days re-submit the reduced or denied voucher, along with a detailed explanation for the request, to the Chief Judge for reconsideration. The decision of the Chief Judge on any requests for reconsideration is final. With

respect to expert vouchers, the Chief Judge’s initial decision to deny or reduce an expert voucher is final and no request for reconsideration of the decision will be accepted. After approval by the Chief Judge, vouchers are sent to the Defender Services Branch for payment.

Each attorney participating in the Criminal Justice Act program is subject to a periodic audit of payments made. The audit is primarily concerned with time overlaps between claims and any other items not previously detected. At the end of the calendar year, all payments made to participating attorneys will be summarized on an Internal Revenue Service Information Return in accordance with IRS regulations.

II. Guidelines for Payment of Expenses

A. How To Document Out-of-Court Time

1. Conferences

Out-of-court time includes reasonable time spent conferring with the defendant about the appeal, conferring with trial counsel, and undertaking investigations necessary to fulfill the obligations under *Doe v United States*, 583 A.2d 670 (D.C. 1990), to determine whether a D.C. Code § 23-110 motion should be filed.

2. Legal Research and Brief Writing

Time spent researching appellate issues and writing the appellate brief or dispositive motion should be included under this category. Sufficient detail should be included to inform the court of the relevance of the research and justification of time spent. Counsel is reminded that the time needed to educate an attorney in the fundamentals of criminal law and procedure is not compensable under the Criminal Justice Act. *In re Criminal Justice Act Voucher*, 128 DWLR at 1571 (“an attorney may not claim the time it takes to obtain general competence in a particular area of law, or charge for legal research that one skilled in the law would not need to do,” and the CJA may not “be used as a device to further the basic education of a lawyer at government expense”) (quoting *Carnevale*, 624 F. Supp. at 388-89). Additionally, the voucher should provide an explanation if substantial time was invested in research on an issue that was subsequently not included in the brief.

3. Reviewing Records and Transcripts

Time spent reviewing the transcript and the record should be included in the category “Investigation and Other Work.” In detailing the time spent for each entry counsel should identify the hours spent reading and digesting the transcript. Additionally, counsel is required to identify the total number of transcript pages

for the appeal and identify the total trial transcript pages and pre-trial transcript pages in the attorney comment section of the voucher.

4. Travel Time

Time spent traveling to the courthouse for oral argument or to see the client is permissible. See the discussion *infra* at sections II.C.1.d and II.C.1.e.

5. Preparing for Oral Argument

Time spent preparing for oral argument should be included in the category “Investigation and Other Work” and contain a detailed explanation of time spent.

B. Compensation and Presumptive Maximum Payments

D.C. Code § 11-2604 (b)(2) provides that the maximum compensation for CJA representation shall be governed by the amounts set forth in 18 U.S.C. § 3006A (d)(2). Payments above the statutory maximum are 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 or complicated and therefore warrant 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 accordingly involved 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—was unusual for a typical misdemeanor or felony case. There may also be other circumstances where the court would consider a representation to be either complex or extended, but those circumstances also must be 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), applies 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” that 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 [defendant] 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 *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 it is the court’s view that appellate counsel has a duty to pursue every reasonable claim of error in discharging his obligations to his 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.

Presumptive Maximum Payments

Aside from the statutory maximum provided in D.C. Code § 11-2604 (b)(2) and 18 U.S.C. § 3006A (d)(2), the court has adopted presumptive maximum payments for certain types of cases:

- Conditional pleas—both felony and misdemeanor: \$2500.00
- Misdemeanor bench trials with four or fewer witnesses lasting three days or less: \$2500.00
- Misdemeanor jury trials: \$3500.00
- D.C. Code § 23-110 motions without a hearing: \$2500.00
- Any other post-conviction or sentencing hearing: \$2500.00

Any request for compensation in excess of the presumptive maximum must be accompanied by a note in the attorney comment section explaining why the representation in that particular case is deserving of greater compensation than is provided for above and can only be submitted once the case is resolved prior to calendaring or after the case has been submitted or argued (assuming the request is within the statutory maximum).

C. Reimbursable expenses

1. Fees that are reimbursable include:

- a. Long distance telephone calls to the client.
- b. Copying costs for the reproduction of briefs, appendices, motions for summary disposition, petitions for rehearing or rehearing en banc, and petitions for certiorari. The submitted costs shall not exceed 25 cents per page, and counsel should provide actual receipts for copying upon request. The court discourages the professional binding of briefs and appendices; copies secured by staple or binder clip are acceptable. The number of copies shall not exceed the number necessary to submit to the court, service copies for the government, and copies for the client, other codefendants, and any amicus curiae. Because the Court Reporting and Recording Division now provides, upon request, a paper copy of the transcript to give to the client, attorneys generally should not submit

copying costs for the transcript.

- c. Postage, either by the U.S. Postal Service or private postal company, for the filing of matters with the court, opposing counsel, and the client.
- d. Travel within the metropolitan area, including travel to the courthouse for oral argument and travel to visit the client (tolls, public transportation, or mileage—compensated at the prevailing rate for federal judicial employees) if the client is located within the expanded metropolitan area, which means within 250 miles of Washington, D.C. See Miscellaneous Order Oct 2012.
- e. Travel outside the metropolitan area when an attorney appointed to represent a client under the CJA believes it to be necessary in order to confer with that client. Counsel shall seek advance approval by filing a motion for leave to travel accompanied by an estimation of travel and lodging expenses. All reasonable requests will be granted.

Counsel will be reimbursed only for those expenses that have been reasonably incurred, and counsel's estimate should be prepared accordingly. As noted above, travel by private vehicle will be compensated at the prevailing rate for federal judicial employees who use this form of transportation, which can be found at www.gsa.gov/portal/content/100715. Counsel will also be reimbursed for necessary incidental expenses, such as parking fees, ferry fares, and bridge, road, and tunnel tolls. Transportation by means other than private automobile should be estimated on an actual expense basis.

With respect to the time for which counsel expects to seek compensation, counsel will be compensated at the prevailing CJA rate—set forth in D.C. Code § 11-2604 (a)—for time reasonably spent in transit or in awaiting transportation in connection with previously approved travel. If meals and overnight lodging are required, counsel will be reimbursed for reasonable expenditures.

The court's approval of an attorney's application for leave to travel does not constitute advance approval of counsel's actual expenses. The amount of reimbursement to which an attorney is entitled will ordinarily be determined upon the submission of a voucher—and all receipts—at the conclusion of the representation. See D.C. Code §11-2604 (a) (2001). Interim reimbursement may be authorized in extraordinary cases in which counsel's travel-related expenses exceed \$500.

- f. Translation and expert services. A motion must be filed with this court and granted for the service to be approved and the voucher issued. In accordance with the policy underlying the Hearing Impaired and Non-English Speaking Persons Act of 1987, D.C. Code § 2-1901 *et seq.* (2012

Repl.), the D.C. Court of Appeals endeavors to appoint counsel with appropriate language skills for appellants who need such accommodations. If this is not possible, however, counsel seeking interpreter services must file a motion that includes: (a) a statement of the need for interpreter services and an explanation of how counsel expects to utilize those services, and (b) the name, address, and hourly rate of the interpreter you will be using. Attorneys are reminded that all interpreters must be certified in the language for which they are providing services and must be registered vendors with the web voucher system. The Office of Interpreter Services, located in Room 3148 on the third floor of the H. Carl Moultrie Building, maintains a list of certified interpreters who are also registered vendors.

If the court approves the motion, an initial voucher of up to \$1000 will be approved. Additional services may be requested in a second motion once the initially requested funds have been exhausted. Any motion should explain the basis for the additional request.

2. Fees that are not reimbursable include:

- a. Courier fees
- b. Fees paid to third parties for the preparation and binding of briefs and appendices
- c. Office overhead charges, including the time spent preparing the voucher
- d. Electronic legal research (note that active members of the D.C. Bar have free online access to both D.C. and federal cases, codes, and regulations through Fastcase)
- e. Work done by associates, law clerks, or paralegals

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