

*Office of the Clerk*  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

*Lawrence K. Baerman*  
Clerk

October 23, 2008

TO: NYND CJA Panel Attorneys

RE: Increase to Case Compensation Maximum Amounts

Dear Panel Attorney:

Please be advised that as of October 13, 2008, there has been an increase to the CJA Case Compensation Maximums.

Attached you will find information as to the specific increases, as well as updated reference documents relating to CJA Panel Attorney compensation.

The CJA Panel Attorney page of the courts web-site has been updated to include this updated information, as well as other helpful information for CJA Panel Attorneys.

Very truly yours,

  
Clerk of Court

The “Judicial Administration and Technical Amendments Act of 2008,” Pub. L. No. 110-406, was enacted on October 13, 2008, and amends the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, to (1) raise the case compensation maximums applicable to appointed private “Panel” attorneys, and (2) expand the authority of the chief judge of the court of appeals to delegate the approval of excess compensation vouchers of attorneys and investigative, expert, and other service providers to include senior circuit judges. The Act amends this same delegation provision in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), recodified in part at 18 U.S.C. § 3599, with respect to investigative, expert, and other service provider excess compensation vouchers. Prior the amendment, the CJA and AEDPA delegation was limited to active circuit judges.

The impact of this legislation is to raise the case compensation maximums, which had last been revised in December 2004 to reflect the then-prevailing hourly rate of \$90. The new maximums include:

\$7,800 for felonies at the trial court level and \$5,600 for appeal (previously \$7,000/\$5,000);

\$2,200 for misdemeanors at the trial court level and \$5,600 for appeal (previously \$2,000/\$5,000);

\$7,800 for non-capital post-conviction proceedings under 18 U.S.C. §§ 2241, 2254 or 2255 and \$5,600 for appeal (previously \$7,000/\$5,000).

In addition, the amendment to subsection (d)(2) of the CJA provides for the case maximums to increase “simultaneously” with changes in the maximum hourly compensation rate. (This obviates the need to amend the amounts in the statute itself, as had been necessary with previous statutory amendments.)

The text of the amended CJA and AEDPA provisions and the revised paragraphs of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines, Volume 7, Guide to Judiciary Policies and Procedures) are included as attachments.

The CJA amendment to the attorney case compensation maximums applies to cases pending on or after the date of enactment, which is the effective date of the legislation. Specifically, the new case compensation maximums apply to a voucher submitted by appointed counsel if that person furnished any CJA-compensable work on or after October 13, 2008. The former case compensation maximums apply to a voucher submitted by appointed counsel if that person’s CJA-compensable work on the representation was completed before October 13, 2008. These same dates govern the expanded delegation authority of the chief judge of the court of appeals.

Provisions of the Criminal Justice Act and Antiterrorism and Effective Death Penalty Act  
of 1996, as amended by the  
Judicial Administration and Technical Amendments Act of 2008  
Pub. L. No. 110-406

Criminal Justice Act, 18 U.S.C. § 3006A. Adequate representation of defendants

\* \* \*

(d) Payment for representation. --

\* \* \*

- (2) Maximum amounts. For representation of a defendant before the United States magistrate judge or the district court, or both, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed \$7,000 for each attorney in a case in which one or more felonies are charged, and \$2,000 for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed \$5,000 for each attorney in each court. For representation of a petitioner in a non-capital habeas corpus proceeding, the compensation for each attorney shall not exceed the amount applicable to a felony in this paragraph for representation of a defendant before a judicial officer of the district court. For representation of such petitioner in an appellate court, the compensation for each attorney shall not exceed the amount applicable for representation of a defendant in an appellate court. For representation of an offender before the United States Parole Commission in a proceeding under section 4106A of this title, the compensation shall not exceed \$1,500 for each attorney in each proceeding; for representation of an offender in an appeal from a determination of such Commission under such section the compensation shall not exceed \$5,000 for each attorney in each court. For any other representation required or authorized by this section, the compensation shall not exceed \$1,500 for each attorney in each proceeding. *The compensation maximum amounts provided in this subsection shall increase simultaneously by the same percentage, rounded to the nearest multiple of \$100, as the aggregate percentage increases in the maximum hourly compensation rate paid pursuant to paragraph (1) for the time expended since the case maximum amounts were last adjusted.*

- (3) Waiving maximum amounts. Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for extended or complex representation whenever the court in which the representation was rendered, or the United States magistrate judge if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active or senior circuit judge.

\* \* \*

- (e) Services other than counsel.

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- (3) Maximum amounts. Compensation to be paid to a person for services rendered by him to a person under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed \$1,600, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, or by the United States magistrate judge if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active or senior circuit judge.

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Antiterrorism and Effective Death Penalty Act of 1996, recodified in part in Title 18, United States Code, Section 3599

18 U.S.C. § 3599. Counsel for financially unable defendants.

- (g)(2) Fees and expenses paid for investigative, expert, and other reasonably necessary services authorized under subsection (f) shall not exceed \$7,500 in any case, unless payment in excess of that limit is certified by the court, or by the United States magistrate judge, if the services were rendered in connection with the case disposed of entirely before such magistrate judge, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active or senior circuit judge.

# **EXPANSION OF THE DELEGATION AUTHORITY OF THE CHIEF JUDGE OF THE COURT OF APPEALS TO APPROVE EXCESS COMPENSATION AMOUNTS**

CJA Guidelines 2.22B(1)(I), 2.22B(3), 3.02A, and 6.03B

All references in the above-referenced CJA Guidelines to the chief judge of the court of appeals having authority to delegate to an “active circuit judge” the approval of vouchers in excess of the statutory maximum compensation have been revised to read an “active *or senior* circuit judge.”

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## **Instructions to Determine the Applicable Case Compensation Maximums for Panel Attorneys Under the Amendment to the Criminal Justice Act in the Judicial Administration and Technical Amendments Act of 2008 Pub. L. No. 110-406**

With the enactment of increased case compensation maximums for panel attorneys in non-capital representations under subparagraph (d)(2) of the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, effective October 13, 2008, courts must determine whether compensation claims submitted on a CJA Form 20 (Appointment and Authority to Pay Court Appointed Counsel) are governed by the new maximums or by the former maximums.

The key rules are:

The new maximums apply to appointed counsel for a representation if that person furnished any CJA compensable work on or after October 13, 2008

The former case compensation maximums apply to appointed counsel for a representation if that person’s work was completed before October 13, 2008.

## **B. CASE COMPENSATION MAXIMUMS**

- (2) Specific Proceedings
  - (I) Felonies (except federal capital prosecutions)
    - \$7,800 for trial court level
    - \$5,600 for appeal
  - (ii) Misdemeanors [including petty offenses (class B or C misdemeanors or infractions) as set forth in subsection (a)(2)(A) of the Act].
    - \$2,200 for trial court level
    - \$5,600 for appeal
  - (iii) Proceedings under § 4106A of title 18, United States Code [in connection with paroled prisoners transferred to the United States]:
    - \$1,700 for representation before the United States Parole Commission
    - \$5,600 for appeal
  - (iv) Proceedings under § 4107 and 4108 of title 18, United States Code [for counsel and guardians ad litem providing services in connection with prisoner transfer proceedings.]
    - \$2,200 for each verification proceeding
  - (v) Pre-Trial Diversion:
    - \$7,800 if offense alleged by the U.S. Attorney is a felony.
    - \$2,200 if offense alleged by the U.S. Attorney is a misdemeanor.
  - (vi) Proceedings under § 983 of title 18, United States Code [for services provided by counsel appointed under 18 U.S.C. § 983(b)(1) in connection with certain judicial civil forfeiture proceedings]:
    - \$7,800 for trial court level
    - \$5,600 for appeal
  - (vii) Non-capital Post-Conviction Proceedings under §§ 2241, 2254, or 2255 of title 18, United States Code:
    - \$7,800 for trial court level
    - \$5,600 for appeal

(viii) Proceedings to Protect Federal Jurors Employment under § 1875 of title 28, United States Code:

\$7,800 for trial court level

\$5,600 for appeal

(ix) Other Representations required or authorized by the CJA:

\$1,700 for trial court level

\$1,700 for each level of appeal

This category includes but is not limited to the following representations:

- (a) Probation Violation
- (b) Supervised Release Hearing - for persons charged with a violation of supervised release or facing modification, reduction or enlargement of a condition or extension or revocation of a term of supervised release
- (c) Parole Proceedings under chapter 311 of title 18, U.S.C.
- (d) Material Witness in Custody
- (e) Mental Condition Hearings Pursuant to chapter 313 of title 18, U.S.C. - with the exception of hearings pursuant to § 4241 and 4244 of title 18, U.S.C., which are considered part of the case in chief with no separate compensation maximums applying.
- (f) Civil or Criminal Contempt - where the person faces loss of liberty
- (g) Witness - before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, where there is a reason to believe either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty
- (h) International Extradition - under chapter 209 of title 18, U.S.C.

## **WAIVING CASE COMPENSATION MAXIMUMS.**

Payments in excess of CJA Compensation maximums may be made to provide fair compensation in cases involving extended or complex representation when so certified by the court or United States magistrate judge and approved by the chief judge of the circuit (or by an active circuit judge to whom excess compensation approval authority has been delegated.)

In determining if an excess payment is warranted, the court or United States magistrate judge and the chief judge of the circuit (or an active circuit judge to whom excess compensation approval authority has been delegated) should make a threshold determination as to whether the case is either extended or complex. 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.” If more time is reasonably required for total processing than the average case, including pre-trial and post-trial hearings, the case is “extended.”

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.



## **CASE BUDGETING.**

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 \$30,000 for appointed counsel and services other than counsel on behalf of an individual CJA defendant). If a court determines that case budgeting is appropriate (either on its own or upon request of counsel), counsel should submit a proposed initial litigation budget for court approval, subject to modification in light of facts and developments that emerge as the case proceeds. Case budgets should be submitted ex parte and filed and maintained under seal.

Recognizing that investigative, expert, and other services may be required before counsel has an opportunity to prepare a case budget or the court to approve it, courts should act upon requests for services where prompt authorization is necessary for adequate representation. Courts, in examining the case budget, may reconsider amounts authorized for services prior to the budget's approval; however, courts shall not rescind prior authorization where work has already been performed.

## **SUPPORTING MEMORANDUM.**

### **(1) Claim for Less than the Case Compensation Maximum.**

In any case in which the total compensation claimed is less than the statutory case compensation maximum, counsel may be required to submit a memorandum supporting and justifying the compensation claimed, whenever called for by local rules, standing order, or by the presiding judicial officer.

### **(2) Claim for More than the Case Compensation Maximum.**

In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel shall refer to the CJA26A **GUIDANCE TO ATTORNEYS IN DRAFTING THE MEMORANDUM REQUIRED FOR A COMPENSATION CLAIM IN EXCESS OF THE CASE COMPENSATION MAXIMUM: DISTRICT COURT** in filling out and submitting a CJA26 **SUPPLEMENTAL INFORMATION STATEMENT FOR A COMPENSATION CLAIM IN EXCESS OF THE STATUTORY CASE COMPENSATION MAXIMUM: DISTRICT COURT**