

**2.27 Reimbursable Out-of-Pocket Expenses.** Out-of-pocket expenses reasonably incurred may be claimed on the voucher, and must be itemized and reasonably documented. Expenses for investigations or other services under subsection (e) of the Act shall not be considered out-of-pocket expenses.

#### **A. Reimbursement for Transcripts.**

(1) Generally, court reporters or reporting services which furnish court authorized transcripts in CJA cases claim and receive compensation for their services on the CJA Form 24, "Authorization and Voucher for Payment of Transcript," (See paragraph 3.12 of these **Guidelines**). While this is the preferred method for payment of transcripts, if assigned counsel has elected to pay for the court authorized transcripts "out-of-pocket," the cost may be claimed as a reimbursable expense, as provided for in subsection (d)(1) of the Criminal Justice Act. However, unlike most reimbursable expenses, which should be claimed on the CJA Form 20, "Appointment of and Authority to Pay Court Appointed Counsel," reimbursement to the attorney who has paid for the transcript as an "out-of-pocket" expense should be claimed on a CJA Form 24. (See Appendix A).

(2) The cost of transcribing depositions in criminal cases is the responsibility of the Department of Justice pursuant to Rule 17b of Fed. R. Crim. P. (but when witness is an expert, then the Administrative Office will pay out of CJA funds)(53 Comp. Gen. 638 (1974)).

**B. Computer-Assisted Legal Research.** The cost of use, by appointed counsel, of computer-assisted legal research services, may be allowed as a reimbursable out-of-pocket expense, provided that the amount claimed is reasonable. Whenever appointed counsel incurs charges for computer-

assisted legal research, counsel should attach to the compensation voucher a copy of the bill and receipt for the use of the legal research services or an explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges, or by charges identifiable to the specific research). If the amount claimed is in excess of \$500 or if it includes costs for downloading or printing, counsel should include a brief statement of justification.

**C. Travel Expenses.** Travel by privately owned automobile should be claimed at the rate currently prescribed for federal judiciary employees who use a private automobile for conduct of official business, plus parking fees, ferry fares, and bridge, road, and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis.

Per diem in lieu of subsistence is not allowable, since the Act provides for reimbursement of expenses actually incurred. Therefore, counsel's expenses for meals and lodging incurred in the representation of the defendant would constitute reimbursable "out-of-pocket" expenses. In determining whether actual expenses incurred are "reasonable," counsel should be guided by the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations.

Government travel rates at substantial reductions from ordinary commercial rates may be available from common carriers for travel authorized by the court in connection with representation under the CJA. To obtain such rates, attorneys must contact the clerk of the court and obtain prior approval from the presiding judicial officer.

**D. Interim Reimbursement for Expenses.** Where it is considered necessary and appropriate in a specific case, the presiding judge or United States magistrate judge may, in consultation with the Administrative Office, arrange for interim reimbursement to counsel of extraordinary and substantial expenses incurred in providing representation in a case. Interim reimbursement should be authorized when counsel's reasonably-incurred, out-of-pocket expenses for duplication of discoverable materials made available by the prosecution exceed \$500.

**E. Reimbursement for Expenses Incurred Defending Malpractice Allegations.**

The CJA was amended by the Federal Courts Improvement Act of 2000, Pub. L. No. 106-518, to authorize courts to reimburse panel attorneys for expenses reasonably incurred in defending actions alleging malpractice in furnishing representational services under the CJA. The amendment covers expenses incurred on or after its effective date (November 13, 2000). No reimbursement shall be made if a judgment of malpractice is rendered against the attorney; in view of this prohibition, no reimbursement should be provided until the malpractice claim is resolved.

The total reimbursement shall not exceed the deductible amount of counsel's professional liability insurance policy or \$5,000, whichever is less. Expenses qualifying for reimbursement may include, but are not limited to, the costs of transcripts, witness fees and costs, and attorney fees. In determining reasonable attorney fees for this purpose, CJA rates are inapplicable. Reimbursement shall not include compensation for representing oneself in defending the action alleging malpractice, or, if represented by counsel, for time spent assisting that counsel in defending the action.

Reimbursement should be claimed under the expense categories on a CJA Form 20 (or, where the appointment was in a capital matter, CJA Form 30), and supporting documentation should be attached.

**F. Other.** This would include items such as telephone toll calls, telegrams,

copying (except printing -- see paragraph 2.28 D below) and photographs.