Tab 18

CJA Trial Attorney Panel New Member Training

UNITED STATES DISTRICT JUDGE DALE S. FISCHER

OBLIGATIONS OF PANEL MEMBERSHIP

Panel members:

- must manage their caseloads in accordance with the appropriate standards of practice under the California Rules of Professional Responsibility as well as other standards for insuring high quality representation of indigent defendants.
- must notify the Court if they are unable to accept appointments as a result of caseload, calendar, or personal issues.
- must properly cover their duty days or ensure that their duty days are properly covered by other panel members if they are unavailable for any reason.

OBLIGATIONS (cont.)

- In addition to complying with L.Rs. 5-4.8.1 and 83-2.4, you must notify the CJA Supervising Attorney **within seven days** of any changes in phone number, email address, or office address
- must also notify the CJA Supervising Attorney **within seven days** of learning of any new information that would have been responsive to the questions on the initial application relating to disciplinary matters as detailed in the "Procedures for the CJA Trial Panel" document
- must notify the CJA Supervising Attorney **within seven days** of being terminated as appointed counsel unless due to conflict with another client or substitution by retained counsel
- must complete eight hours of continuing legal education in the area of criminal law each year
- must attend the annual meeting of the CJA Trial Panel. This meeting addresses issues concerning the administration of the panel, and provides training (including some CLE) for panel members

OBLIGATIONS (cont.)

- must take a minimum of four cases per year but no more than would allow them to represent their clients effectively.
- must be in good standing with all relevant bar associations including the California State Bar, and be admitted to practice before the Central District of California and the Court of Appeals for the Ninth Circuit, or have applications for admission pending.
- must read The Guide to Judiciary Policy, Volume 7 – Defender Services, 9th Circuit CJA Policies and Procedures, National CJA Voucher Reference Tool, and the court's Voucher Review Guidelines, Application/Procedures Memo, Duty Day Procedures, Billing Requirements Memo, Contemporaneous Time Records Memo, and all other communications from the Court.

CRIMINAL JUSTICE ACT Web Page

www.cacd.uscourts.gov/attorneys/cja

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UNITED STATES DISTRICT COURT
Central District of California
Virginia A. Phillips, Chief Judge

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Criminal Justice Act (CJA)

- Criminal Justice Act Plan
- CJA Appellate Panel Membership Application
- Application for Membership on CJA Trial Attorney Panel
- Application for Renewal of Membership on CJA Trial Attorney

Home » Attorneys » Criminal Justice Act (CJA)

Criminal Justice Act Plan

Approved by the Court: July 30, 2013
Approved by the Judicial Council of the Ninth Circuit: September 10, 2013

View General Order 13-09

HOW TO GET PAID

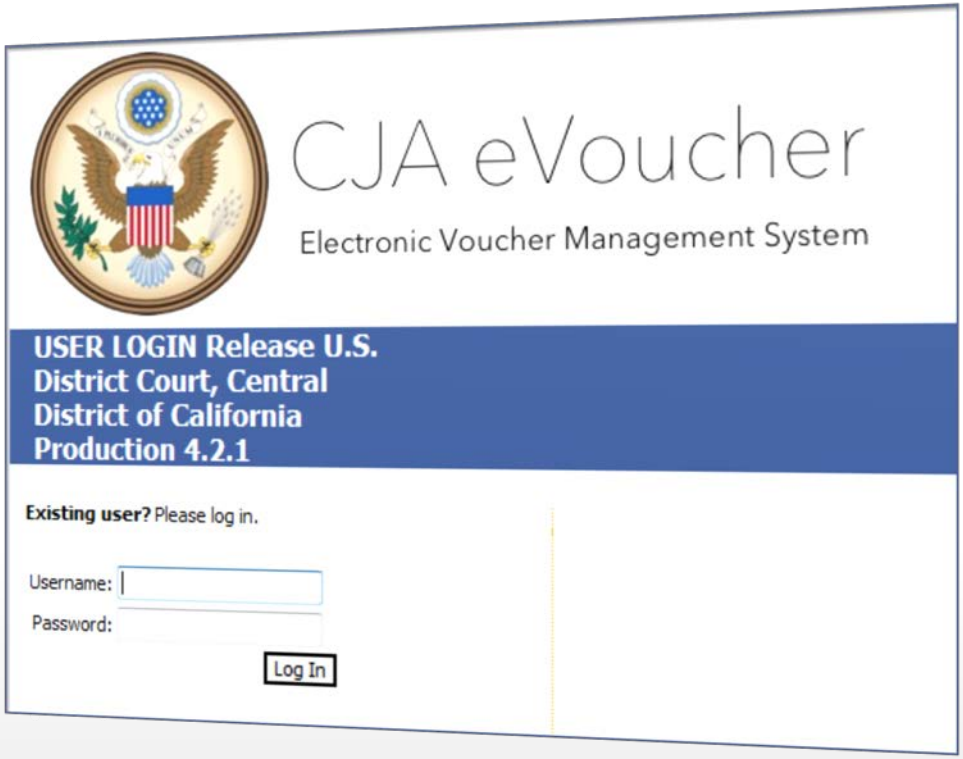
CJA eVoucher Training - January 2019

Please contact Noe Ponce if you have any other eVoucher questions.

- *Phone: (213) 894-4393*
- *Email: Noe_Ponce@cacd.uscourts.gov*

Online video tutorials and user manuals on CJA web page:

https://www.cacd.uscourts.gov/attorneys/cja/cja-evoucher-system



Voucher Submission Policy

As provided by General Order No. 13-04: In the Matter of CJA Interim and Final Voucher Submissions, which supersedes General Order No. 08-04, the following procedures govern the submission of interim and final CJA vouchers for all trial and capital habeas attorneys appointed pursuant to the CJA.

1. CJA appointed counsel are divided into three groups, by surname, and each group is assigned four quarterly billing periods throughout the year. Every attorney in each group must submit vouchers for all work completed in each quarter by the 15th day of the month following the close of that quarter. The groups, and their designated billing months, are:

   Group 1 - Surnames A - H: January, April, July, October

   Group 2 - Surnames I - P: February, May, August, November

   Group 3 - Surnames Q - Z: March, June, September, December

Voucher Submission Policy (cont.)

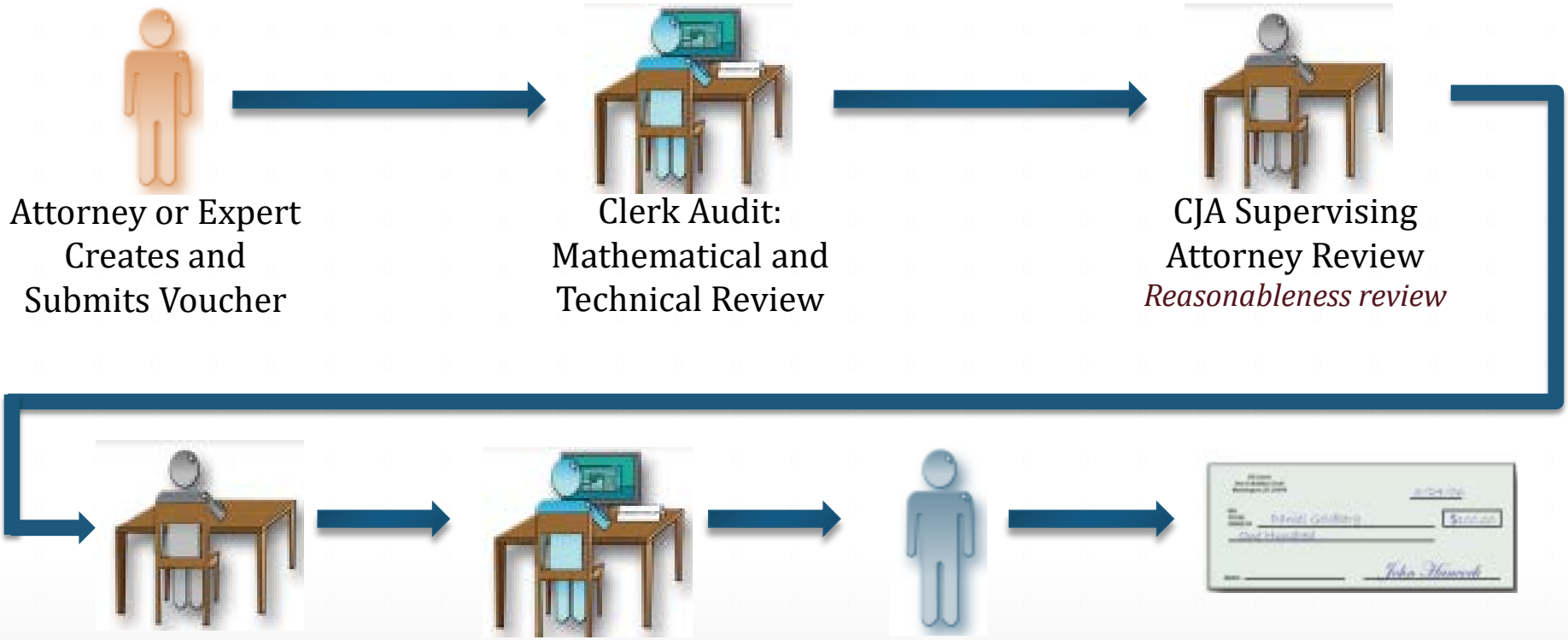
2. Do not submit INTERIM vouchers on cases where fees incurred in the preceding quarter do not exceed $500.

3. Processing of vouchers submitted after the 15th day of the month will require the approval of the CJA Committee Chair based on a showing of good cause. Preoccupation with pressing professional demands does not establish good cause.

4. Final vouchers (for cases completed in the trial court or cases on which the services of the CJA attorney have been terminated for any reason) may be submitted immediately regardless of the amount and must be submitted no later than 45 days after the attorney ceases representation. Processing of vouchers submitted after that time will require the approval of the CJA Committee Chair based on a showing of good cause. Preoccupation with pressing professional demands does not establish good cause.

5. Counsel are required to advise the CJA Supervising Attorney when they have billed more than 1800 hours on a rolling nine-month basis (see December 5, 2012 Memorandum to CJA Trial Panel Attorneys re Case Appointment Policy).

CJA VOUCHER END-TO-END PROCESS



COMMON MISTAKES THAT DELAY THE PROCESS

- Expenses not itemized – All expenses and travel must be itemized.
- Required receipts missing - All travel and any non-travel expense in excess of $50 must be accompanied by supporting documentation (e.g., receipts, canceled checks), where practical.
- Mathematical errors.
- Justification memorandum (CJA 26 – final voucher) is missing for cases exceeding statutory maximum.
- Failing to fill out the "Noteworthy Developments" subsection of the CJA-26 Form.
- Required prior authorization for services is missing (where cost of services obtained exceeds the **$800 per case** limit, excluding expenses reasonably incurred).
- Cutting and pasting which results in duplicate entries.

Do

- seek prior authorization for
  - significant but questionable fees and expenses.
  - attending hearing or trial in co-defendant's case if client is not testifying.
  - service providers to attend hearing or trial.
- prorate time but not expenses.
- check current CJA Panel Attorney hourly rates ($140) and case compensation maximums ($10,900).
- itemize and reasonably document out-of-pocket expenses.
- attach supporting documentation to your voucher claim.
- check to see that the voucher is complete and accurate.
- keep contemporaneous time records for at least three years after approval of final voucher.
- report 1800 hours in a rolling 9-months.
- bill for the lesser of actual or reasonable time.

Don't

- bill for related work in state court (including Prop 47) without prior approval.
- bill for ancillary services without prior approval.
- claim general office overhead expenses, including secretarial help, as reimbursable expenses.
- rely on staff to confirm accuracy of vouchers.
- ask the CJA Office to intervene between you and your client.
- allow anyone to bill their time as if it were the attorney's time.
- cut and paste voucher entries.

Title 18 U.S.C. § 3006A

- Appointed counsel "shall, at the conclusion of the representation or any segment thereof, be compensated… for time expended in court…and for time reasonably expended out of court." 18 U.S.C. § 3006A(d)(1).

9TH CIRCUIT REVIEW & APPROVAL

- The CJA places limitations on the general authority of presiding judicial officers to unilaterally approve attorney compensation. [*Guide*, Vol. 7, § 230.23.10(c)(1)]
- Payments above case compensation limits may be authorized when certified by the presiding judicial officer and approved by the chief judge of the circuit. The chief judge of the circuit is permitted to delegate this approval authority to another active or senior circuit judge. [*Guide*, Vol. 7, § 230.23.10(c)(2)]
- For each voucher claiming fees in excess of the case compensation maximum, counsel is required to submit a detailed memorandum (form CJA 26) supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that excess compensation is necessary to provide fair compensation. [*Guide*, Vol. 7, § 230.30(b)(1)]
    - Number of hours in each category and explanation
- For vouchers claiming amounts in excess of case compensation maximums, after the district court certifies that the "excess" amounts are authorized and appropriate, the voucher is forwarded to the circuit chief judge (frequently delegated to a circuit judge or a circuit CJA supervising attorney) for review and approval. [*Guide*, Vol. 7, § 230.30(b)(2)]

IN RE SMITH, 586 F.3D 1169, 1175 (9TH CIR. 2009)

- Congress enacted the CJA to both "assure adequate representation in the Federal courts of accused persons with insufficient means," and "afford[] reasonable compensation to counsel who are assigned." S. REP. No. 88-346, at 1 (1963).

- The question thus becomes not "what hours were actually expended," but "what hours were reasonably expended completing work necessary for adequate representation." See 18 U.S.C. § 3006A(a).

Appointed counsel must maintain contemporaneous time records (Guide, Vol 7, Pt A, Chap 2, § 230.76)

Only the lesser of actual or reasonable time (18 U.S.C. § 3006A(d)(1) and General Order 97-7)

- Memo Re: Detailed Worksheet Descriptions
- Memo Re: Ancillary Services
- Memo Re: Billing
- Memo Re: Format of Contemporaneous Time Records (Attorneys and Service Providers).
- Memo Re: Contemporaneous Time Records Policy Compliance Review

REVIEWS

- 1,000 Hour Report
- Contemporaneous Time Records Review
- 15-Hour Report
- CJA Staff Technical
- CJA SA/District Court Review
- 9th Circuit Review

CONTEMPORANEOUS RECORDS REVIEW

- Handwritten records often illegible (results in mistaken entries and duplicate billing)
- Records not kept reasonably contemporaneously (results in inaccurate billing)
- Records not kept chronologically by day, or even within a client entry (results in duplicate billing)
- Records don't contain accurate start and end times (e.g., discovery 7 a.m. to 7 p.m.; t/c AUSA 10:14 to 10:17; t/c client 8 a.m. to 8:11 a.m., etc.)
- Records don't indicate the time in tenths of an hour to be submitted on the voucher

CONTEMPORANEOUS RECORDS REVIEW (cont.)

- Records don't indicate when breaks were taken (approximately 10-15 minutes every 60-90 minutes is necessary to keep brain focused and efficient)
- Computation errors (e.g., 10:00 a.m. to 10:30 a.m. = 1 hour)
- Entries are "block-billed" (State Bar study concluded this increases time billed by 10-30%)
- Entries have inadequate descriptions
- More hours on the voucher than in the records for a particular task
- More hours on the voucher than in the records on a particular day

CONTEMPORANEOUS RECORDS REVIEW (cont.)

- Formulaic billing (1 hour for travel, 2 hours for client meeting, repeated "review and analyze emails from court clerk, court pleadings, court orders, court minutes, court docket entries, prior correspondence, internal notes, and other file materials," etc.)
- Billing ".1" for every task performed even if the task took one or two minutes
- Minimum billing (.1 for review of NEF, .2 for every phone call, etc.)
- Billing in large blocks without breaks (e.g., 8:00 a.m. to 6:00 p.m.)
- Billing excessive/impossible time in a day
- All "begin" and "end" times are in multiples of six minutes
- Overlapping time frames
- Duplicate entries
- Billing while attending seminars, etc.

Reasonableness Review

- Descriptions must be adequate to allow for evaluation of reasonableness
- Block-billing
- Acquiring basic knowledge of criminal law
- Billing for duplicated tasks such as “boilerplate” language in sentencing position papers
- Excessive time spent on tasks - time must be the lesser of “reasonable” or “actual,” and services must be billed as if performed at peak efficiency
- Travel, etc. that benefits more than one client must be prorated, even if one of the clients is a private client

Reasonableness Review (cont.)

- Communications with family, friends, etc. must advance the defense (no compensation for "hand-holding")
- Counsel should bring other CJA work whenever possible to perform while waiting at MDC, traveling, waiting for court proceedings, meetings, etc.
- Counsel should avoid traveling during peak traffic hours, and events likely to cause traffic delays (Dodger opening day, Presidential visits, etc.)
- Counsel should have meetings whenever possible at counsel's office to ensure the most productive use of counsel's time.
- Secretarial or clerical work is not compensable regardless of who performs it. E.g., mailing, downloading, calendaring, copying, filing, transmittal letters.
- Attorneys performing paralegal or investigator work must indicate that an entry should be billed at the paralegal or investigator rate.

- Communications with MDC: Counsel should communicate with MDC, including requests for medical treatment, by emailing los/execassistant@bop.gov or calling Eliezer (Eli) Ben-Shmuel (213-485-0439) at ext. 5428, Meryl White at ext. 5471, May Shin at ext. 5187 or Audrey Lambert at ext. 5474.

- Communications with USMS: Counsel should communicate with USMS, including requests for medical treatment by emailing Rogelio Nuno-Marquez at Rogelio.Nuno-Marquez@usdoj.gov or calling his desk at (213) 620-8372 or his cell at (213) 760-6284.

PER § 210.10.30
CHANGE IN CLIENT'S ELIGIBILITY

- Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court. (CJA Plan)
- Applies to both CJA Panel and FPD attorneys.
- Don't accept payment for services without court authorization and any amount received must be deducted from the fees to be approved by the court.

PER §230.60 - TRAVEL

Do:

- obtain prior approval for inter-district travel, overnight travel (inter and intra-district) and foreign travel by using the Travel form in eVoucher.
- work on CJA cases while en route if possible.
- obtain services of local providers per the Travel Policies for Service Providers memo.
- have meetings in your office whenever possible.

Don't:

- bill for travel to visit an out-of-custody client absent unusual circumstances preventing the client from coming to you.
- bill for travel to Court or elsewhere solely to
- file, deliver or pick-up documents, etc.

Case Budgeting and Technology

- Capital Case Budgeting
- AO Memo: Recommendations for the Production of Electronic Discovery in Federal Criminal Cases
- Complex Case Management Orders
- AO Memo: Services of Coordinating Discovery Attorneys in Selected Federal CJA Cases
- California State Bar Formal Opinion No. 2015-193.

Case Managing Attorney

Laura Paul

Phone: 626-229-7197
Email: lpaul@ce.9.uscourts.gov

ANCILLARY SERVICES

- All funding requests for experts, service providers, and associate counsel must be submitted through eVoucher by using the AUTH link and providing a declaration with sufficient justification to satisfy the CJA requirement that the requested services are "necessary for adequate representation."
- If approval is required by the presiding judge, the CJA Supervising Attorney will facilitate obtaining the necessary approval after the AUTH is submitted in eVoucher. For example, this would apply to funding requests for international travel, associate counsel, nunc pro tunc billing, and supplemental vouchers for work performed after the end of the case.

Paralegals and Investigators

Do:

- Make timely funding requests for service providers as *nunc pro tunc* requests for funding are highly disfavored and may not be paid.
- Parse out discrete tasks the paralegal or investigator will perform and estimate the number of hours needed to complete each task.
- Identify the correct hourly rate including the applicable hourly rate for low-level work like record collection, routine work, and work requiring specialized skills.
- Negotiate rates of retained experts, investigators, and other service providers.
- Consider geographic proximity when choosing to work with a service provider and explain to that service provider that only reasonable travel time will be compensated.

Don't:

- perform services in the courtroom without prior approval, except as a witness.
- provide transportation or provide an escort for witnesses without prior court approval.
- provide monies, books, or supplies to any defendant with the expectation of reimbursement from CJA funds. Reimbursement may be obtained with prior court approval for providing these items to pro se defendants.

Judicial Council of the 9th Circuit Established Service Provider Hourly Rates

Paralegal[1]	$35 – $60
Law Student	$15 – $25
Investigator[2]	$55 – $85
Legal Analyst/Consultant	$75 – $100
Mitigation Specialist	$75 – $100 ($55 for record collection)
Attorney Expert – Capital Case	$188
Attorney Expert – Non-Capital Case	$140
Litigation Support Expert	$65 – $129
Psychiatrist (M.D.)	$250 – $375
Neurologist (M.D.)	$250 – $375

For more service provider hourly rates, please refer to page 33 of the 9th Circuit CJA Policies and Procedures.

WHERE TO FIND YOUR SERVICE PROVIDERS

- Other panel members
- Panel Website (cja.fpdcacd.org)
- FPDO Resources (213) 894-2854
- Local Bar

DOS & DON'TS – SERVICE PROVIDERS

- **DO** submit a request for advance authorization for investigative, expert, or other services.
- **DO** timely review and certify (sign) the service provider's voucher to indicate the services were rendered as claimed.
- **DO NOT** claim expenses for investigators, experts, and/or other services authorized as out-of-pocket **attorney** expenses; claim instead on Form CJA 21/31.
- **DO NOT** allow paralegals and investigators to bill their time as if it were the attorney's time.

CJA 21 AUTHORIZATION AND VOUCHER FOR EXPERT AND OTHER SERVICES (Rev. 05/12)

1. CIR./DIST./DIV. CODE	2. PERSON REPRESENTED		VOUCHER NUMBER
3. MAG. DKT./DEF. NUMBER	4. DIST. DKT./DEF. NUMBER	5. APPEALS DKT./DEF. NUMBER	6. OTHER DKT. NUMBER
7. IN CASE/MATTER OF (Case Name)	8. PAYMENT CATEGORY ☐ Felony ☐ Petty Offense ☐ Misdemeanor ☐ Other ☐ Appeal	9. TYPE PERSON REPRESENTED ☐ Adult Defendant ☐ Appellant ☐ Juvenile Defendant ☐ Appellee ☐ Other	10. REPRESENTATION TYPE (See Instructions)

11. OFFENSE(S) CHARGED (Cite U.S. Code, Title & Section) *If more than one offense, list (up to five) major offenses charged, according to severity of offense.*

REQUEST AND AUTHORIZATION FOR EXPERT SERVICES

12. ATTORNEY'S STATEMENT

As the attorney for the person represented, who is named above, I hereby affirm that the services requested are necessary for adequate representation. I hereby request:

☐ Authorization to obtain the service. Estimated Compensation and Expenses: $ _____ OR

☐ Approval of services already obtained to be paid for by the United States pursuant to the Criminal Justice Act. *(Note: Prior authorization should be obtained for services in excess of $600, excluding expenses)*

Signature of Attorney _____ Date _____

☐ Panel Attorney ☐ Retained Attorney ☐ Pro-Se ☐ Legal Organization

ATTORNEY'S NAME *(First Name, M.I., Last Name, including any suffix)*, AND MAILING ADDRESS

Telephone Number: _____

13. DESCRIPTION OF AND JUSTIFICATION FOR SERVICES *(See Instructions)*

14. TYPE OF SERVICE PROVIDER *(See Instructions)*

01 ☐ Investigator
02 ☐ Interpreter/Translator
03 ☐ Psychologist
04 ☐ Psychiatrist
05 ☐ Polygraph
06 ☐ Documents Examiner
07 ☐ Fingerprint Analyst
08 ☐ Accountant
09 ☐ CALR (Westlaw/Lexis, etc.)
10 ☐ Chemist/Toxicologist
11 ☐ Ballistics
13 ☐ Weapons/Firearms/Explosive Expert
14 ☐ Pathologist/Medical Examiner
15 ☐ Other Medical
16 ☐ Voice/Audio Analyst
17 ☐ Hair/Fiber Expert
18 ☐ Computer (Hardware/Software/Systems)
19 ☐ Paralegal Services
20 ☐ Legal Analyst/Consultant
21 ☐ Jury Consultant
22 ☐ Mitigation Specialist
23 ☐ Duplication Services
24 ☐ Other *(Specify)* _____
25 ☐ Litigation Support Services
26 ☐ Computer Forensics Expert

15. COURT ORDER

Financial eligibility of the person represented having been established to the Court's satisfaction, the authorization requested in Item 12 is hereby granted.

_____

Signature of Presiding Judge or By Order of the Court

_____ _____

Date of Order Nunc Pro Tunc Date

Repayment or partial repayment ordered from the person represented for this service at time of authorization.

☐ YES ☐ NO

CLAIM FOR SERVICES AND EXPENSES / **FOR COURT USE ONLY**

16. SERVICES AND EXPENSES *(Attach itemization of services with dates)*	AMOUNT CLAIMED	MATH/TECHNICAL ADJUSTED AMOUNT	ADDITIONAL REVIEW
a. Compensation			
b. Travel Expenses *(lodging, parking, meals, mileage, etc.)*			
c. Other Expenses			
GRAND TOTALS (CLAIMED AND ADJUSTED):	$0.00	$0.00	

17. PAYEE'S NAME AND MAILING ADDRESS

TIN: _____

Telephone Number: _____

CLAIMANT'S CERTIFICATION FOR PERIOD OF SERVICE FROM _____ TO _____

CLAIM STATUS ☐ Final Payment ☐ Interim Payment Number _____ ☐ Supplemental Payment

I hereby certify that the above claim is for services rendered and is correct, and that I have not sought or received payment *(compensation or anything of value)* from any other source for these services.

Signature of Claimant/Payee _____ Date _____

18. CERTIFICATION OF ATTORNEY I hereby certify that the services were rendered for this case.

Signature of Attorney _____ Date _____

RESOURCES

For further information and guidance, see the National CJA Voucher Reference Tool, accessible at www.uscourts.gov/uscourts/cjaort/index.html or http://fd.org/odstb_CJAPanelInfo.htm .

CJA Contact List

NAME:	PHONE/EMAIL:
Lauren Eskenazi **CJA Supervising Attorney**	**(213) 894-0978 (work)** **(213) 335-0052 (cell/text)** **Lauren_Eskenazi-Ihrig@cacd.uscourts.gov**
Mary Lou Morales CJA 20 worksheets/vouchers and CJA 26 statements	(213) 894-5684 MaryLou_Morales@cacd.uscourts.gov
Noe Ponce CJA eVoucher Training, Budgeting, CJA 21, CJA 24, CJA 30, CJA 31 vouchers	(213) 894-4393 Noe_Ponce@cacd.uscourts.gov
Aprile Bellamy CJA Authorizations, CJA Travel Requests and CJA 20 vouchers	(213) 894-3025 Aprile_Bellamy@cacd.uscourts.gov
Tracy Nelson CJA 21 vouchers and Interpreters	(213) 894-2382 Tracy_Nelson@cacd.uscourts.gov