Tab 16

United States District Court
Central District of California

Voucher Review Guidelines for Capital Habeas and Capital Prosecution Cases

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Introduction

The process of voucher review enables the Court to fulfill its responsibility of furnishing adequate compensation to attorneys appointed under the Criminal Justice Act ("CJA") to represent persons financially unable to obtain representation. It also ensures that only the most cost effective services are rendered and compensated. These guidelines have been prepared to inform CJA panel attorneys of the Court's expectations and provide an understanding of the voucher review process.

Voucher review entails the review and analysis of vouchers submitted by CJA panel attorneys to determine that the services rendered and expenses incurred are in accordance with the policies, requirements, practices and procedures of the judiciary. The guidelines provide a summary of recurring allowable and non-allowable charges. While it is impossible to address all possible voucher infractions, the guidelines are intended to serve as a basic resource. Once familiarized with the guidelines, CJA panel attorneys can refer to the "Detailed Review Processing Checklist and Adjustment Form" which is attached. Referral to the form will assist in the preparation of vouchers which conform with these guidelines.

CAVEAT - The guidelines are not exclusive. Please also refer to pertinent local rules, general and specific court orders and the Guidelines for Administering the CJA and Related Statutes, Volume 7A, Guide to Judiciary Policy.

Voucher Review Guidelines

I. In-Office Work

A. Staffing a Case

Compensation will only be paid for services provided by appointed counsel.

1. Appointed counsel will not be compensated for the work of experts, investigators, interpreters, partners, associates or paraprofessionals without the prior authorization of the Court.
2. Generally the Court will only approve the use of one attorney and, if appropriate, one paraprofessional to assist in a petition. In addition, assistance should be obtained from the individual with the least expensive billing rate who is competent to handle the matter. In no event will the assisting individual receive compensation at an hourly rate exceeding the maximum allowed by the Act.
3. Appointed counsel will not be compensated for the work of more than one partner or associate and one paraprofessional unless the prior authorization of the Court so specifies.
4. Appointed counsel will be compensated for reasonable charges resulting from the substitution of attorneys. Typical charges that will be compensated are transfer reports, file reviews, update meetings, redrafting, etc.
5. Appointed counsel will not be compensated for work performed by attorneys that could or should be performed by other less expensive court authorized staff (e.g. paraprofessional, clerks, etc.).
6. Whenever appropriate, without compromising the quality of the work, the services that are performed should be performed by the least expensive, competent staff member authorized by the Court and capable of performing the work. For example, lawyers should not be used for court filings, service of papers, file organization, photocopying, etc.
7. Secretarial or clerical services will not be compensated regardless of whether the person performing the functions is an attorney, law clerk, paralegal or secretary; regardless of whether that person is regularly or specially employed, performing normal, overtime, or supplemental work; and regardless of whether the CJA panel attorney has any regularly employed secretary. These services are considered to be general overhead.

B. Research

1. Each CJA panel attorney is expected to have a basic knowledge of federal criminal law and procedure. Compensation will be paid for reasonable and necessary research related to the case.

C. Conferences

1. A CJA panel attorney will not be compensated for any conferences that are:
    - merely for the exchange of information, particularly among attorneys of similar expertise;
    - to familiarize other attorneys with a matter for “back-up” purposes;
    - intra-office meetings; or
    - to transfer a matter among attorneys.

2. Conferences not within (1) above should be charged only at the rate of the highest paid (not to exceed the statutory maximum) Court authorized and necessary attorney at the meeting. The coordination of efforts between members of the same firm working on a file is the responsibility of the firm and not a charge for which the Court will pay. The CJA panel attorney should absorb the costs of the other participants.

D. Duplicate and Excessive Services

1. A CJA panel attorney should use his or her own resources (e.g. similar cases previously handled) and briefs and pleadings prepared on previous matters, to the extent practical to minimize charges.
2. A CJA panel attorney must provide adequate representation to his or her client. Charges for excessive services such as the following will be scrutinized and should be justified:
   - excessive "file reviews." (A CJA panel attorney will be compensated for initial review of a matter and a review after a long period of inactivity in the case. When the file is initially reviewed, the attorney should include a summary in the file to avoid subsequent reviews);
   - excessive document revisions and "polishing";
   - overcharging or excessive time for routine matters; or
   - papering a file when a telephone call to update the client would be adequate.
3. Time spent on multiple cases for the Court that require overlapping services (e.g. research, attendance at court) should be appropriately allocated among the cases and not charged in full to each case.
4. Compensation will not be allowed for "double billing" (i.e. two persons drafting the **same** claim, too many attorneys or paralegals working on the same petition; and two or more people attending the <u>same</u> meeting or interview).

II. Out of Office Work

A. Time

1. Waiting-time. Reasonable waiting-time will be compensated. However, the court will not compensate a panel attorney for "foreseeable" waiting time during which the CJA panel attorney could have been working on other matters unless justification is provided explaining why the charge is being incurred.
   - A reasonable "review/preparation" time before a meeting or appearance is an appropriate charge, even though such "review/preparation is conducted while waiting However, when counsel is aware that "waiting time" may be substantial (e.g. waiting for conferences with the client) the CJA panel attorney should have other work to occupy the time.
2. For court matters, a CJA panel attorney should allocate the time spent at court among all the cases for which the attorney had made an appearance on that day. A CJA panel attorney may not "double bill" by charging the full court

time separately for each of the several different matters heard on the same day.

- The detailed statement submitted with the voucher should indicate on what other matters the CJA panel attorney made court appearances on that day, whether CJA or non-CJA matters.

B. Meetings

1. A CJA panel attorney will not be compensated for the unauthorized use of additional attorneys/staff at meetings and court appearances. Only the appointed attorney may bill for services.
   - Only the appointed attorney may make a court appearance, interview witnesses, and attend a meeting on behalf of the client unless it is less expensive for another attorney or paraprofessional to handle the matter and still competently represent the client.
   - Replacing an attorney, for any other reason than stated above or having multiple persons attend, will not be compensated without the Court's prior authorization.
2. A CJA panel attorney will not be compensated for excessive and/or unnecessary outside meetings.
   - An attorney should have meetings in his or her office whenever possible to avoid excessive billing time traveling to and waiting for meetings.

III. Reimbursable Expenses

A. Travel

1. Case related travel by privately owned automobile should be claimed at the rate then in effect for federal judiciary employees. Reimbursement is also granted for case related parking fees, and required bridge/road tolls.
2. Transportation other than by privately owned automobile will be reimbursed on an actual expense basis. Every effort to obtain the lowest possible fares or rates must be made. There is no reimbursement for first class or business class travel expenses, for unnecessary add-ons or upgrades when renting an automobile, or for the excessive cost of refueling a rental car at the rental agency.
3. For individuals arranging their own court authorized travel and not using contracted government rates or other rates that are deemed most advantageous to the Court, reimbursement will be made using the contracted government coach fare or lower. Reimbursement will be for the common carrier that is the most efficient, expeditious, and advantageous to the Court.
4. During overnight authorized travel, reimbursement will be made for hotel accommodations provided the accommodations are moderately priced. Expenses for luxury hotels and special services are not to be charged to the Court and are not reimbursable.
5. Reimbursement for meals will not be allowed <u>unless</u> in overnight authorized travel status. Meals obtained while in authorized overnight travel status should be in accordance with existing government travel regulations.

6. In determining the reasonableness of travel costs, the Court will be guided by the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations.
7. Receipts must be submitted for all travel (including to and from the Court) regardless of the amount incurred; including parking, tolls, taxi, airfare, hotel, etc.

B. Telephone

1. Reimbursement is made for the actual cost of case related long distance telephone calls. Long distance calls must be itemized including a brief description of the issue being addressed and to whom the call was made. Accepting excessive collect calls from the client should be avoided. The Court will not pay for any surcharges or local telephone service.

C. Facsimile

1. Reimbursement for facsimile costs is limited to the actual cost of long distance phone transmissions for outgoing documents. There is no cost associated with receiving such transmissions and therefore any charge for incoming facsimiles is inappropriate. The costs of the machine, its supplies and phone line are considered general office overhead expenses which are not reimbursable.

D. Photocopying

1. The actual out-of-pocket expenses incurred in photocopying up to a maximum of $0.10 per page will be reimbursed. This rate applies both to in-house and outside photocopying. Large photocopying jobs are to be sent to an outside photocopy service unless in-house photocopying is more economical.

E. Postage

1. Reimbursement will be made for the actual cost of case related regular U.S. postage. Reimbursement for the actual cost of other postal services or the use of non-federal carriers (such as overnight or two-day delivery) will be reimbursed only if circumstances require the use of such services. For example, no reimbursement will be made for expedited delivery costs for routine correspondence, including submission of court documents that are not filed pursuant to a deadline.

F. Messenger or Attorney Service

1. Expenses for messenger or attorney services will not be reimbursed when regular U.S. postage, other postal services or non-federal carriers services are more advantageous to the Court. The use of messenger or attorney services must be justified.

G. Transcripts

1. In the event that transcripts are required, counsel should arrange with the court reporter(s) to bill the court directly through use of a CJA Form 24. Only the necessary parts of the transcripts should be ordered. The request should include justification explaining the need for all requested portions of the transcript. In the rare event counsel pays for the transcript, the cost will be reimbursed.

H. Computer Assisted Legal Research

1. Reimbursement is provided for the actual cost, including any discount received from the vendor, of reasonable and necessary computer assisted legal research.

IV. Miscellaneous

A. Vouchers/Services Rendered

1. In accordance with General Order 97-7 and to avoid disallowances and voucher review problems, a detailed statement must be included with the voucher. Fees shall be chronologically and fully itemized with individual narrative entries showing the date of the service, precise description of the service including relevance of the service to the federal proceedings, actual time consumed for that service in hours and tenths of hours, name of the individual providing the service, hourly rate of the individual providing the service, and calculation of rate/hours equaling the charge for the individual entry. The hours and charges shall be totaled for all services and a calculation tape from an adding machine attached to the statement.
2. Expenses shall be itemized and stated separately on the statement. The itemized expenses shall state as to each item the date incurred and the description (i.e. person called, mileage, number of copies made and unit charged per copy, destination of messenger, etc.). All supporting documentation (receipts, canceled checks, etc.) shall be attached. The charges shall be totaled for all expenses/costs and a calculation tape from an adding machine attached to the invoice.

B. Overhead

1. A CJA panel attorney will not be compensated or reimbursed for items that are part of general office overhead including, without limitation:
   - secretarial or clerical services regardless of whether the person performing the functions is an attorney, law clerk, paralegal or secretary; regardless of whether that person is regularly or specially employed, performing normal, overtime, or supplemental work; and regardless of whether the CJA panel attorney has any regularly employed secretary;
   - general law office supplies;
   - word processing or computer time (except actual charges for Westlaw or Lexis);
   - mark ups on any supplies or services;
   - time spent filing documents when there are more cost effective means such as the use of U.S. postal services.
2. Compensation will not be provided for the preparation of CJA vouchers, the detailed statement or voucher review issues.

C. Items and Services of a Personal Nature

1. No compensation will be granted for the cost of items of a personal nature purchased for or on behalf of the person represented, such as purchasing clothing, having clothing cleaned or picked up and delivered; getting a

haircut; furnishing cigarettes, candy or meals; providing transportation, etc. The cost of services of a personal nature and expenses incidental thereto which cannot be considered legal representation will not be compensated, such as assisting the defendant in the disposition of his or her personal property, arranging for the placement of minor children of the defendant, assisting the defendant in executing the conditions of probation, assisting the defendant in modifying bond terms such as drafting applications for his or her travel, providing legal assistance in matters unrelated to the litigation of the case although incidental to the defendant's arrest, etc.

D. Other Non-Reimbursable Items

1. Appointed counsel may not claim reimbursement for the following:
   - printing of briefs; however, the cost of mimeographing, photocopying or similar copying service is reimbursable;
   - service of process, witness fees, travel costs and expenses for service of subpoena on fact witnesses, are not payable out of the CJA appropriation but are governed by Rule 17, Fed. R. Crim. P. and 28 U.S.C. §1825;
   - taxes paid on attorney compensation received pursuant to the CJA, whether based on income, sales, or gross receipts, are not reimbursable expenses;
   - books, journals or other publications;
   - costs related to educational seminars, including travel, attendance, registration, or materials;
   - time and expenses involved in the preparation of an appeal (whether from interlocutory orders or final judgments) or work related to the review of proceedings before this Court. These are considered as applicable to the case before the United States Court of Appeals, and should be included on the voucher for services performed in that court; and
   - work related to state court proceedings.

E. Expenditures Over $800

1. Any expenditure over $800 must be authorized in advance by the court. Upon a finding that timely procurement of such goods or services could not practicably await prior authorization, in the interest of justice, the court may authorize the provision of and payment for such goods or services.