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Chambers of
DALE S. FISCHER
United States District Judge

MEMORANDUM

TO: CJA TRIAL PANEL ATTORNEYS

FROM: HON. DALE S. FISCHER, CHAIR
CRIMINAL JUSTICE ACT COMMITTEE

RE: BILLING REQUIREMENTS

DATE: AUGUST 29, 2012

As you may know, the Ninth Circuit has continued concerns with the extraordinary number of hours billed by some attorneys, the majority of whom are in our district. The CJA Committee has taken a number of proactive steps to address the issue of high billing, including random audits, training programs, and focused efforts on equitable distribution of cases. As part of the Court's continued effort and obligation to insure accurate and appropriate billing practices, and in light of identified inaccuracies, the CJA Committee has prepared the attached "Central District of California CJA Billing Requirements." This document describes the most important requirements of the applicable statute, guidelines, and CACD policy. It highlights the billing issues you will likely be applying on a regular basis, but is no substitute for thorough and complete review of these sources. All vouchers must comply with these billing requirements, and the other requirements described in the statute, guidelines, and CACD policy. Please be sure to review the document, and contact me with any questions.

CENTRAL DISTRICT OF CALIFORNIA CJA BILLING REQUIREMENTS

(Criminal Justice Act, 18 U.S.C. § 3006A; CJA Guidelines, Volume 7, Part A, Chapters 2 and 3)

1. Per § 230.53.10, co-counsel or associate attorneys may not be compensated in the absence of a specific court order (not CJA Supervising Attorney authorization), which requires a specific showing (and finding by the Court) that the appointment of an attorney in a "difficult" case was "necessary and in the interests of justice." In CACD, you may not bill for services performed by another attorney - or any other person - on the voucher submitted in your name, even if the attorney is your partner or associate, or the person is employed or paid by you.

2. Per 18 U.S.C. § 3006A(d), you may bill only for the amount of time reasonably spent on a particular matter, even if you actually spent more time. See also, § 230.23.40. Similarly, you must use paralegals, law clerks, investigators, etc. for tasks for which an attorney's expertise is not required. Alternatively, you may charge for your time spent on such tasks only what a paralegal, law clerk, investigator, etc. would charge. Per CACD policy, these services must be separately billed via a CJA Form 21 or 31, even if the paralegal, law clerk, investigator, etc. is your employee or an employee of your firm. See also, § 310.40.

3. Per § 230.50(d), you must prorate any time spent in common on two or more cases, and must cross-reference all cases on the supporting materials to the vouchers. Time spent exclusively on one case must properly be charged for that case. Similarly, time spent researching and drafting "boilerplate" (such as portions of sentencing papers discussing Booker, § 3553(a) factors, etc.) can only be billed to one client. Future use of the same language is not a billable event. Time spent updating the language and tailoring it to a later matter may, of course, be billed to the later client's matter.

4. Per § 230.50(e) and (f), (and unlike the proration requirement for time set forth in § 230.50(d)), you must bill expenses spent in common (expenses incurred for more than one representation - such as travel on behalf of more than one client) to only one representation. In other words, you may neither "double-bill" for expenses nor prorate the expenses among the representations. The supporting materials for the voucher must cross-reference the other CJA representations.

5. Per § 230.50(g), if you bill for time or expenses, including travel, that was spent

in common for a purpose other than a CJA representation, you must report that to the Court (through the CJA Supervising Attorney) at the time of submission of the relevant voucher, along with information sufficient for the Court to determine, in fairness to counsel, how the time or expenses should be apportioned and compensation should be authorized for the time or expenses reasonably attributed to the CJA representation. The specific rationale for billing under the CJA must be provided. (Time and expenses that actually were compensated by private clients or in connection with furthering other purposes, or which benefitted the attorney personally (other than in some minimal way) should not be billed to the CJA representation.)

6. Per § 230.50(f), you must not prorate time in such a way that you have billed a larger amount than you would have billed if all the time was assigned to one representation. You must not bill for more time in any day than you actually spent performing CJA services for that day - even if the addition of the time billed to each individual category exceeds the time actually billed on that day. See also, GO 97-07. Time spent must be billed to the nearest tenth of an hour.

7. Per §230.60, you may bill for "necessary and reasonable travel," which means only time actually spent in travel or awaiting transit. (For example, if your travel requires overnight lodging, you may charge only for actual travel time from your office to the hotel, and from the hotel (or other departure location such as witness interview, meeting, etc.) to your office.) You may not bill for travel to the courthouse or elsewhere simply to file or deliver documents, etc. If filing or delivery is performed during a trip for a client-related purpose, the actual time spent filing or delivering the documents should be charged to the relevant client (so long as it is equal to or less than the cost of a messenger service), while the travel and other related service is charged to the client for whom the travel was "necessary and reasonable."

8. Per § 230.66.10, you may not bill for secretarial services - whether performed by you or other personnel.

9. You may not bill for preparation of your CJA 20 or CJA 30 voucher, i.e., no billing for billing. See CACD Voucher Review Guidelines for Non-Death Penalty Cases.

10. Per § 230.76, you must maintain contemporaneous time and attendance records

and expense records for all work performed. These records are subject to audit and must be maintained for three years after approval of the final voucher for an appointment.

11. Per § 210.10.30, you must advise the Court whenever you obtain information that a client is financially able to make a payment in whole or in part, for legal or other services in connection with the client's representation, if the information is not protected as a privileged communication. Per 18 U.S.C. §3006A and § 230.40, you may not accept payment from a represented person without court authorization, and any amounts received must be deducted from the fee to be approved by the Court.

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