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Chambers of
DALE S. FISCHER
United States District Judge

MEMORANDUM

To: CJA Trial Panel Attorneys

From: Honorable Dale S. Fischer, Chair
Criminal Justice Act Committee

Re: Nunc Pro Tunc Requests on Behalf of Service Providers

Date: January 14, 2013

Recently, the CJA Office has received a number of nunc pro tunc requests from counsel on behalf of service providers. As you know, requests for services that will exceed $800 must be approved in advance. See CJA Guidelines, Volume 7, Part A, §310.20.30; Order of the Chief Judge, 12-049, In The Matter of Obtaining CJA Services Without Prior Authorization. I understand that proper representation of your clients may occasionally require an investigation, interview, etc. that was not previously contemplated and that requires immediate action, such that permission could not be sought in advance. However, such occasions should be rare, and the hours requested should be minimal. Because these services and hours have not been approved in advance, there is a risk that the CJA Supervising Attorney or the presiding judicial officer will conclude that compensation would not be consistent with the Guidelines. You should so advise your service providers.

In addition, nunc pro tunc requests are especially labor and time intensive for CJA staff, and delay the processing of properly submitted vouchers. Consequently, nunc pro tunc requests will be a low priority and will be delayed in payment, and may not be paid at all. If a nunc pro tunc request is unavoidable, it should be made as soon as possible after the services are rendered.

Proper supervision and oversight of ancillary service providers and their voucher submissions is a condition of membership on the panel. In that regard, you should advise your service providers that - like you - they are required to "maintain contemporaneous time and attendance records for all work billed by them, as well as expense records," and that "[s]uch records are subject to audit and must be retained for three years after approval of the appointed counsel's or the service provider's final voucher, whichever is later, for a representation." CJA Guidelines, Volume 7, Part A, §320.90. Service providers are also generally subject to requirements similar to those described in the Central District of California CJA Billing Requirements. A similar document pertaining to service providers will be distributed soon. As you may know, the Judicial Council of the Ninth Circuit's Habeas Costs Policy provides that "[e]very effort should be made to retain experts, investigators, and other service providers who maintain offices in the geographic area in which work is to be performed." In these economic times, it is more important than ever to heed cost-saving policies such as this one. I intend to propose that the CJA Committee adopt a similar policy. In the meantime, the reasonableness of requests for reimbursement for travel, and the location of the service provider, will be considered by the CJA Supervising Attorney when evaluating service provider requests.