Tab 4

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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: FORMAT OF COMTEMPORANEOUS
TIME AND ATTENDANCE RECORDS

DATE: OCTOBER 2, 2012

As you know, the Criminal Justice Act Guidelines require CJA panel attorneys to maintain "contemporaneous time and attendance records for all work performed" as well as expense records. These records are subject to audit and must be retained for three years after approval of the final voucher for an appointment. CJA Guidelines, Volume 7, Part A, Chapter 2, § 230.76. The Guidelines do not specifically describe the format to be followed, which has made it difficult to document work performed or otherwise to audit records uniformly. Therefore, the Court's Criminal Justice Act Committee has decided to clarify its requirements and standardize the format for all CJA case time and attendance and expense records.

The CJA Committee has determined that – beginning November 1, 2012 – contemporaneous time and attendance records must be kept in the following format:

1. Time must be recorded for all CJA cases on a daily basis in a single document. In other words, a single document must reflect all work done in a single day for all CJA cases, rather than in a separate document for each client.
2. The record must indicate the specific timeframe when each type of service was performed. For example, you would indicate that from 8:30 to 9:30 you met with client Smith, from 9:30 to 9:35 you communicated with the AUSA on U.S. v. Jones, etc.

3. The time must be recorded as close as possible to the time when the services were performed.
4. You must document the time spent on discrete tasks, rather than "block billing." As you know, you are already required to identify the time spent on discrete tasks within categories of services on the worksheets you submit for payment (although on the worksheets you indicate time spent in tenths of an hour).
5. The contemporaneous records should reflect all time spent on CJA matters (whether trial, habeas, or appellate panel, and in all federal courts).
6. You must also maintain contemporaneous records for work performed by your partners, associates, and staff (if you bill for their time) as well as expense records. § 230.76.

Per § 230.50(f) and GO 97-07, you must not bill time in such a way that you have billed for more time in any day than you actually spent performing CJA services for that day. For example, if you spent four minutes talking to the AUSA on each of ten cases in a single day (and did no other CJA work that day), and billed .1 for each conversation (the CJA system only allows billing in tenths of an hour), you would have billed for one hour's worth of services. However, you can only bill .7 hour for that day, because you spent only 40 minutes (rounded up to the nearest tenth). Maintaining your records as described will assist you in insuring accurate billing and allow for an accurate and effective audit, should an audit be performed.

We understand that many panel attorneys already keep their contemporaneous time and attendance records in this format, and that there are a number of computerized time-keeping programs that can record time in this fashion. Attorneys who do not use computers for timekeeping can keep the same type of records manually.

This will not impact the way vouchers and worksheets are submitted. The contemporaneous time and attendance records would only be provided on request. Therefore, you may maintain a single record for both CJA and retained cases – and redact information not requested in an audit, if appropriate.

This requirement will be explained in greater detail at the new panel attorney training, and further information and some sample contemporaneous records will be provided at the October 13 training.

Thank you in advance for your cooperation. Please contact me if you have any questions.