

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**



USDC-NH CJA COST CONTAINMENT CHANGES

September 1, 2013

Preamble: In the fall of 2011, the District of New Hampshire, pursuant to a directive from the First Circuit Judicial Council, began an initiative to modify CJA billing practices and to identify CJA procedures that could be improved and/or standardized in an effort to reduce CJA costs. Below is a chronologically organized cumulative list of CJA cost containment initiatives adopted in this District to date.

1. USDC-NH Automated Voucher Creation Program (Developed prior to CJA cost containment initiative): The court provides CJA panel members with an Excel "CJA Complete Workbook" to assist them in preparing CJA 20 Vouchers. The CJA Complete Workbook is available at Sections 1(b)(ii) & (iii) of the District's online CJA Reference Manual.

2. National CJA On-Line Reference Tool Prominently Featured On USDC-NH Website (Effective February 24, 2012): This tool is highlighted at the top of the District's online CJA Reference Manual and includes worksheets for CJA panel attorneys when submitting a case budget.

3. Production of Electronically Stored Information (ESI) (Effective June 1, 2012): The court took the following actions to facilitate the expeditious production and review of discovery (including ESI):

(A) Adoption of ESI Discovery Recommendations: The Administrative Office of the United States Courts and the Department of Justice, in consultation with federal defender organizations, developed "Recommendations for the Production of Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases." The recommendations are intended to provide suggestions and guidance in cases in which the volume and/or nature of the ESI produced as discovery significantly increases the complexity of the case. After having reviewed the recommendations with local criminal defense attorneys and the United States Attorney's Office, the court agreed to post the recommendations as a resource that both prosecutors and defense counsel may consult on the production of ESI in this district. The recommendations, however, do not have the

force and effect of a local rule of this court and, as expressly stated in the recommendations themselves, may not serve as the basis for allegations of misconduct or claims for relief and do not create any rights or privileges for any party. Section 10(l) of the District's online CJA Reference Manual has been updated accordingly.

(B) Other Local Discovery Measures: The government presently produces bate stamped discovery on disc in a text searchable tiff or pdf format, employs a protocol that discourages "data dumps" on defense counsel, and often includes a "hot document" list with the discovery material. In appropriate cases, the government will also agree to conduct a "Case Review Meeting," at which an AUSA meets with defense counsel upon request to review the merits of their case as well as a review of key prosecution documents. The government is not obligated to accommodate a "Case Review Meeting" request and, if they do conduct such a meeting, they are not bound, limited, or otherwise prejudiced going forward on the evidence they ultimately will rely upon, or theories they pursue, in the case.

4. Preapproval of Compensation Requests for Ancillary Matters (CJA Panel reminded of policy on June 11, 2012): CJA panel members must seek advance approval to receive compensation for work related to "ancillary matters" to ensure that only "ancillary matters appropriate to the proceedings" are compensated. This policy is consistent with past practice in this District.

5. Withholding 20% on All Interim Vouchers (CJA Panel reminded of policy on June 11, 2012): As required by the Guide to Judiciary Policy, Vol. 7A, Appx. 2C, the USDC-NH will withhold 20% on all interim vouchers to ensure that the total bill is not excessive. This policy is consistent with past practice in this District.

6. Preference to Conduct PSR Interview Following Change of Plea ("COP") Hearing (Effective July 20, 2012): The court created a new PSR interview protocol that encourages a United States Probation Officer ("USPO") to conduct the PSR interview immediately following a COP hearing. This protocol will save the costs associated with CJA counsel traveling back to the court or to a pretrial incarceration facility to participate in the PSR interview on a future date. Because various factors may make it impractical to conduct the interview following the COP hearing, the protocol is merely stated as a preference or informal policy and not a mandatory rule. Thus, the clerk's office and probation/pretrial adopted various scheduling protocols to try and facilitate this informal policy. In short, whenever practicable clerk's office staff will attempt to schedule COPs in the morning and a USPO will contact counsel and attempt to schedule the PSR interview following the COP hearing. If CJA panel members have any questions regarding this procedure, they should contact USPO Deputy Chief Kevin Lavigne.

7. Mandatory Immediate Submission of CJA 20 Voucher When Attorney's Fees Exceed Case Maximum (Effective in All Cases Filed on or After August 2, 2012): If at any point during a court appointed representation the total unpaid attorney compensation (i.e. the amount

inserted on CJA 20, sections 15 & 16 combined) exceeds the statutory maximum as provided in 18 U.S.C. § 3006A(d)(2), which currently is \$9,700, CJA counsel shall immediately conventionally file a CJA 20 voucher. Thereafter, counsel shall conventionally file a CJA 20 voucher when the accumulated (and not previously paid) attorney compensation exceeds \$5,000.

These vouchers must be accompanied by an ex parte motion and a proposed budget that outlines the anticipated future attorney compensation that will be incurred until the resolution of the case. Additional details regarding the required content for the ex parte motion and proposed budget are contained in the standing order governing attorney compensation exceeding the case maximum, which is available on the court's website (www.nhd.uscourts.gov) under "Opinions/Orders" and selecting the flyout option "Standing Orders." Sections 4(a)-(d) of the District's online CJA Reference Manual have been updated accordingly.

8. Motion for Interim Payments Accompanied by Case Budget (Effective in All Cases Filed on or After August 2, 2012): Similar to requests for compensation when attorney's fees exceed \$9,700, any motion to receive interim payments throughout the entirety of the case shall be accompanied by a case budget. Section 10(g)(i) of the District's online CJA Reference Manual has been updated accordingly.

9. Use of Mitigation Specialist/Sentencing Consultant (Effective in All Cases Filed on or After August 2, 2012): CJA counsel shall file an ex parte motion for permission to secure the services of a mitigation specialist/sentencing consultant (a) prior to the commencement of such services, and (b) regardless of whether the anticipated cost for the services exceeds \$800. The presumptive rate for mitigation specialist/sentencing consulting services shall be \$100 per hour. The standing order governing the use of mitigation specialists/sentencing consultants is available on the court's website (www.nhd.uscourts.gov) under "Opinions/Orders" and selecting the flyout option "Standing Orders." Section 2(e) of the District's online CJA Reference Manual has been updated accordingly.

10. \$800 Limit on Services Other Than Counsel Applies "Per Case" and Not "Per Provider" (Effective in All Cases Filed on or After August 2, 2012): In the past the USDC-NH interpreted the \$800 services other than counsel limit to apply "per provider" (i.e. attorneys could spend up to \$800 per provider, such as \$800 for an interpreter and \$800 for an investigator, without having to file a motion for approval). Pursuant to a directive from the Office of Defender Services, however, the \$800 limit now applies "per case" (i.e. attorneys must add ALL services other than counsel together and, if that cumulative total exceeds \$800, counsel must file a motion to exceed). Thus, under the new rule, once the \$800 limitation has been met by any one or combination of service providers, prior authorization must be obtained from the court. Sections 2(a) and 2(d) of the District's online CJA Reference Manual have been updated accordingly.

11. Reimbursement for PACER Fees Prohibited (Effective August 2, 2012): CJA panel members who do not use a PACER exempt account in connection with their CJA appointments

will not be reimbursed for PACER fees on their vouchers. Section 7 of the District's online CJA Reference Manual has been updated accordingly.

12. Standardized Rates for Interpreters (Effective August 12, 2012): On August 12, 2012, court interpreters were notified that interpreter fees for out-of-court services may not exceed the actual private rate charged for the service or the AO established rate, whichever is lower. Previously, interpreters who provided out-of-court services to CJA counsel were permitted to bill at their desired rate of compensation. While "certified interpreters" routinely billed at rates set by the AO, "non-certified interpreters" were allowed to bill above the AO rate for out-of-court services. This new policy rectified that inconsistency.

13. Availability of "Coordinating Discovery Attorney" to Assist in CJA Cases (Effective September 2012): Effective September of 2012, the Office of Defender Services' National Litigation Support Team announced the availability of "Coordinating Discovery Attorneys" to assist CJA panel members in document intensive or otherwise complex cases. In sum, the Office of Defender Services has retained three contractors to assist CJA counsel with the management of large volumes of discovery in selected cases. These contractors, known as Coordinating Discovery Attorneys (CDAs), work with defense counsel on cases in which there are a large number of defendants, voluminous discovery, or complicated electronic discovery issues. CJA counsel is not responsible to track or report the CDA's hours or seek reimbursement for the CDA as they are paid out of a separate account managed by the Office of Defender Services. Information regarding CDAs has been added to Section 10(m) of the District's online CJA Reference Manual.

14. Payment of Paralegal Fees (Effective For All Vouchers Submitted After February 1, 2013, Regardless of When the Appointment Was Made): Paralegal time must be separately billed on a Form CJA 21 like an outside service provider and counted toward the cumulative \$800 "services other than counsel" case maximum. This will require CJA counsel to file a motion to exceed in any case in which they anticipate that "services other than counsel" expenses, such as expenses for investigators, experts, and now paralegals, might exceed \$800. Sections 8 and 8(a) of the District's online CJA Reference Manual has been updated accordingly.

15. Compensation for "Client Conference Time" (Effective For All Vouchers Submitted After February 1, 2013, Regardless of When the Appointment Was Made): Only one attorney may bill for "client conference time." This is similar to the rule that prohibits billing for more than one attorney for "in-court time." Section 1(l) of the District's online CJA Reference Manual has been updated accordingly.

16. Compensation for Law Students (Effective For All Vouchers Submitted After February 1, 2013, Regardless of When the Appointment Was Made): CJA counsel may not request compensation for law students who receive academic credit for the work performed on a CJA case. If a law student is not receiving academic credits and CJA counsel would like to seek compensation for the student's work, CJA counsel must file a motion in advance requesting

permission to receive such compensation. The compensation rate for any court approved student work on a CJA case may not exceed 50% of the applicable CJA rate for attorney compensation. Finally, like paralegal time, law student compensation must be separately billed on a Form CJA 21 like an outside service provider and counted toward the cumulative \$800 "services other than counsel" case maximum. Section 10(n) of the District's online CJA Reference Manual has been updated accordingly.

17. Proration of Claims for Time Spent in Common Between Two or More CJA Representations (Effective For All Vouchers Submitted After February 1, 2013, Regardless of When the Appointment Was Made): In order to assist CJA counsel from inadvertently double billing when spending time in common on two (2) or more representations, the court created a new "Time and Expense in Common Form." It should be used whenever a CJA panel member, or a service provider, need to prorate time between two (2) or more representations. The new form and instruction sheet can be accessed at Sections 1(n)(i) and 2(f)(i) of the District's online CJA Reference Manual.

18. Copying Rate Cap (Effective For All Vouchers Submitted on or After September 1, 2013, Regardless of When the Appointment Was Made): All in-house and out-sourced copying will be reimbursed at a rate of .10¢ per page. Section 6(a) of the District's online CJA Reference Manual has been updated accordingly.

19. Rebuttable Presumptive Maximum Rate of \$80-\$90 Per Hour for "Partners and Associates" Who Assist a CJA Panel Member (Effective in All Cases Filed on or After September 1, 2013): Partners and associates who provide assistance to a CJA panel member will be subject to a rebuttable presumptive maximum compensation rate of \$80/hour for non-CJA panel members and \$90/hour for CJA panel members. Note that this is a rebuttable presumptive maximum rate: Not every attorney will warrant the full rate and special circumstances (e.g. a special skill or knowledge) might warrant a higher rate. In order to obtain the higher rate, counsel will need to file a motion with the court (preferably before the partner/associate performs the work). Sections 1(l) and 1(l) (1) of the District's online CJA Reference Manual have been updated accordingly.

20. Rebuttable Presumptive Maximum Rate of \$50 Per Hour for Paralegal Work (Effective in All Cases Filed on or After September 1, 2013): Reimbursement for work by paralegals will be subject to a rebuttable presumptive maximum compensation rate of \$50 per hour. Like partner and associate compensation, any request to exceed this rate must be made by motion and justified by special circumstances (e.g. a special skill or knowledge). Sections 8 and 8(a) of the District's online CJA Reference Manual have been updated accordingly.

21. Reduction of CJA Attorney Hourly Rate to \$110 Per Hour (Applicable for All Work Performed on or After September 1, 2013 to September 30, 2014): The Executive Committee of the Judicial Conference of the United States has determined that the budget shortfall in the Defender Services account constitutes an emergency requiring immediate action to preserve the indigent criminal defense function and Federal Defender staffing. Subject to the

receipt of additional funding or other steps to reduce funding requirements, the Executive Committee reduced the hourly rate to \$110 per hour for work performed from September 1, 2013 through September 30, 2014. Sections 1(d)(ii) and 1(h) of the District's online CJA Reference Manual have been updated accordingly.

22. Deferral of CJA Panel Payments: The Executive Committee of the Judicial Conference of the United States also determined it necessary to defer CJA panel attorney payments for several weeks at the end of this fiscal year (Sept. 30, 2013) and for up to four weeks at the end of next fiscal year (Sept. 30, 2014). Please note that court staff will continue to process all vouchers as usual notwithstanding the foregoing measures. In other words, these temporary emergency measures are not cause to delay the submission of CJA vouchers.

23. USDC-NH Cost Containment Training Sessions (ongoing): The USDC-NH clerk's office conducted a CJA Cost Containment/Voucher Preparation Training on February 24, 2012, and regularly updates CJA panel members of new cost containment developments by email.