

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
GUIDELINES FOR REPRESENTING CLIENTS and SUBMITTING CLAIMS FOR
COMPENSATION UNDER THE CRIMINAL JUSTICE ACT

PHILOSOPHY OF THE ACT

The underlying philosophy of the Act, 28 U.S.C. § 3006A et seq., is that attorneys as members of the bar of the Court owe a responsibility to represent persons financially unable to obtain adequate representation. 3rd LAR Misc. 109.1 provides, “Trial counsel in criminal cases, whether retained or appointed, are expected to continue on appeal absent extraordinary circumstances.” The rates specified by the Act are the maximum rates allowable and counsel should not expect to receive compensation which equates to private counsel fees.

ATTORNEY REPRESENTATION

Appeal

An attorney’s representation commences from the date of appointment until the termination of the appeal or until he or she is relieved from court appointment by order of this Court. Motions to withdraw will not be granted absent extraordinary circumstances.

Pursuant to 3rd Cir. LAR Misc. 109.1, trial counsel in criminal cases, **whether retained or appointed**, are expected to continue on appeal absent extraordinary circumstances. After the entry of an order of judgment by the trial court, counsel will not be permitted to withdraw from a direct criminal appeal without specific leave of this court. Trial counsel not members of the bar of this court must promptly move for admission pursuant to 3d Cir. L.A.R. 46.1.

If after diligent search of the trial record for appealable issues, counsel is convinced that the appeal presents no issue of even arguable merit, counsel may file a motion to withdraw and supporting brief pursuant to Anders v. California, 386 U.S. 738 (1967). 3rd LAR Misc. 109.2(a). The Anders brief must be served upon the appellant and the United States.

An Anders brief must provide “sufficient indicia that counsel has explored all possible issues for appeal.” United States v. Marvin, 211 F.3d 778, 781 (3d Cir. 2000). The brief must also explain why possible issues are frivolous. Counsel must insure that an adequate appendix, including transcripts and presentence report if applicable, is filed. Id. Briefs in which “counsel argue the purportedly frivolous issues aggressively without explaining the faults in the arguments,” as well as those in which the court is “not satisfied that counsel adequately attempted to uncover the best arguments for his or her client” will be rejected. The motion to withdraw will be denied and counsel will be directed to file a new brief. Id. at 781-2.

En Banc and Panel Rehearing

As noted in Fed. R. App. P. 35, en banc hearing or rehearing for appeals is not favored. Counsel has a duty to the Court commensurate with that owed his or her client to read with attention and observe with restraint the Required Statement for Rehearing En Banc set forth in 3rd Cir. LAR 35.1. Counsel is reminded that in every case the duty of counsel is fully discharged without filing a suggestion for rehearing en banc unless the case meets the rigorous requirements of Fed. R. App. P. 35 and 3rd Cir. LAR 25.1. If the person for whom the attorney is appointed requests a petition for rehearing, but the attorney is of the position that the case does not meet the rigorous requirements of Fed. R. App. P. 35 and 3rd Cir. LAR 35.1., counsel should file a motion for leave to withdraw, with notice to the appellant that he or she may file a pro se petition for rehearing and the deadline for doing so. If needed, counsel should request additional time for his or her client to file a petition for rehearing. See United States v. Coney, 120 F.3d 26 (3d Cir. 1997). In the event that the deadline for filing a petition for rehearing has passed or will expire shortly, counsel may ask that the time be extended for the pro se appellant in counsel's motion to withdraw.

Certiorari to Supreme Court

If, after an adverse decision by the Court of Appeals, a review by the Supreme Court of the United States is to be sought, the appointed attorney **shall** if requested to do so after communication with the person for whom the attorney is appointed, prepare a Petition for Writ of Certiorari in the United States Supreme Court. If counsel is of the opinion that no issues arrant review by the Supreme Court, counsel shall promptly file with the Court of Appeals a motion stating that opinion with particularity and requesting leave to withdraw with notice to the appellant that he or she may file a pro se petition for writ of certiorari and the deadline for doing so. See Austin v. United States, 513 U.S.5, 115 S. Ct. 380 (1994). See also 3rd Cir. LAR Misc. 109.2(b). Counsel shall promptly file such motion keeping in mind the deadlines for filing Petitions for Writ of Certiorari so as not to impede the litigant's ability to file in a timely manner a Petition for Writ of Certiorari pro se.

eVOUCHER AND VOUCHER PREPARATION

The Third Circuit Court of Appeals has implemented eVoucher. Counsel will be provided a login and password by the Clerk's Office. The Clerk's Office will create an appointment for each case where counsel is appointed which will appear in counsel's My Documents Box in eVoucher. Manuals and instructional information regarding eVoucher is available on the Court's website at [Criminal Justice Act and Appointed Counsel Information](#).

Vouchers and accompanying detailed supporting information **must be submitted through eVoucher**. Vouchers must not be filed through the Court's ECF system.

Vouchers which are submitted without all necessary supporting information, such as receipts for expenses over \$50.00 or statements for claims in excess of the statutory maximum, will be rejected by the Clerk's Office. Any rejected vouchers will appear as highlighted entries in

counsel's eVoucher My Documents box. The Clerk's Office will include directions regarding what actions are required on behalf of counsel. Counsel will need to re-submit the voucher.

TIME LIMIT FOR FILING VOUCHER

A final voucher **must** be filed with the Clerk **within 45 days** after the final decision of the Court of Appeals, unless a Petition for Writ of Certiorari is filed. A decision is final at the time the judgment is entered unless a petition for rehearing is filed by counsel. No voucher will be accepted after these time periods without permission to file out-of-time. See 3rd Cir. LAR Misc. 108.3.

If a Petition for Writ of Certiorari is filed, the voucher together with supporting documents **must** be filed with the Clerk of this Court **within 45 days** after the petition is filed with the Clerk of the Supreme Court of the United States. A supplemental voucher may be filed for time and expenses incurred for activity after the filing of the Petition for Certiorari, if need.

When submitting the voucher, counsel is required to indicate whether a petition for writ of certiorari has been filed, whether the client declined to seek relief before the Supreme Court, or whether the client wished to pursue relief before the Supreme Court but counsel is of the opinion that no issues meet the standard for certiorari relief and a motion to withdraw is pending. A form has been created for counsel's use which is available on the Court's website.

SUBMITTING A VOUCHER OUT OF TIME

If a voucher is submitted out of time, it must be accompanied by a motion to file out of time. When the voucher is submitted through eVoucher, a motion to file out of time must be included under the documents tab. Vouchers which are not timely submitted and do not include a motion to file out of time will be rejected. Counsel will need to re-submit the voucher along with the required motion.

RECORD KEEPING

Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the final voucher for an appointment.

PUBLIC DISCLOSURE OF VOUCHER INFORMATION

Title 18 U.S.C. §3006A(d)(4) and (e)(4) requires public disclosure of the amounts paid for representation and other services. Section 3006A(d)(4)(C) requires unless the Court has determined certain interests which warrant limitation are implicated, disclosure of the form CJA 20/30 but not the supporting information and attachments. Under the new procedures, a copy of

the voucher must be available to the public. The Clerk's Office will not release the supporting documents, including time sheets and statements supporting requests for excess compensation.

If you desire to limit access to the voucher for any of the reasons stated in 18 U.S.C. §3006A(d)(4)(D), you must file the voucher along with a motion as a document through eVoucher. The motion must set forth how the interests set forth in subparagraph (D) are implicated. This matter will be handled *ex parte*. If no such motion is filed, a copy of the Form CJA 20/30 produced by the eVoucher system, minus any supporting documentation, will be subject to public inspection.

For practical purposes, if you file a motion to have only certain portions of the voucher available for public access, and the Court grants your motion, the Clerk's Office will prepare a substitute CJA form 20/30 which summarizes the information which will be accessible to the public. A certified copy will be filed in this case which is open to the public inspection, and a copy will be sent to you.

INTERIM PAYMENTS

Counsel seeking any interim payment including reimbursement for brief and appendix reproduction costs prior to the termination of representation, must file a motion along with the interim voucher through eVoucher.

The motion must include the reason why counsel cannot wait until the termination of the appeal to claim all costs. No interim payment vouchers will be processed for payment without court approval.

If the brief and appendix have not yet been produced, the motion must contain an itemized estimate of the reproduction costs broken down into estimated costs for actual reproduction (copying), collating, covers, binding and delivery, if any.

REIMBURSEMENT FOR ATTORNEY TIME

Court-appointed counsel may claim compensation for appellate work, including any work performed in connection with the preparation and filing of a Petition for Writ of Certiorari as well as any related expenses.

Time expended by law clerks or paralegals should be submitted on a CJA 21 Form.

DETAILED SUPPORTING INFORMATION

A chronological breakdown of hours expended for "Out of Court" and "In Court" work is entered in eVoucher. Each of the categories for which a claim is made is broken down by date, description of work performed and hours spent on each date.

REQUESTS FOR COMPENSATION ABOVE THE STATUTORY MAXIMUM

In any case in which the total compensation claimed is in **excess of the statutory case compensation maximum**, counsel shall submit with the voucher a separate statement justifying counsel's claim that excess compensation is necessary to provide fair compensation as the case involved extended or complex representation.

Counsel should not expect to receive excess compensation *if* the case is not extended (if more time is reasonably required for total processing than the average case) or complex (if the legal or factual issues in a case are unusual, requiring the expenditure of more time, skill and effort by the attorney than would normally be required in an average case). Determination as to whether a case is extended or complex is made by the voucher approving judge who authored the decision in the appeal and approved by a second circuit judge designated by the Chief Judge.

A form for counsel's use requesting compensation above the statutory maximum is available on the Court's website.

REIMBURSEMENT FOR EXPENSES

Any individual expense item claim which is over \$50.00, **must** be accompanied by a copy of the invoice with a notation of payment and check number noted if applicable. "In house" copying is the only exception. See "Briefs" under expenses.

Time and Expenses Shared by Multiple Defendants

You must prorate time and expenses spent when visiting multiple incarcerated defendants at the same location.

Travel (Attorney Travel)

Travel expenses and other expenses reasonably incurred and necessary for adequate representation on appeal including travel expenses to and from court for presentation of oral argument may be claimed. Travel must be accomplished by the most economical means possible. Bridge, roads, and tunnel tolls may be claimed as well as parking fees.

Air Travel – Court-appointed counsel are encouraged to obtain more favorable Government contract travel rates. This applies only to airfare for travel to and from oral arguments before this Court and court-approved visits to incarcerated clients, if travel requires air transportation.

Contact this office at (267-299-4908) for further details and instructions.

Travel by Privately-Owned Automobile – the mileage rates corresponding to the time of travel may be found at [Mileage Reimbursement Rates](#)

Travel (To Visit Incarcerated Clients)

Travel to visit incarcerated clients **may be claimed only if prior court approval has been secured**. Prior approval is sought by filing a motion through ECF which must contain an estimate of the most economical method of travel. The motion must state the purpose, destination, estimated expense(s) of and justification for such additional travel, explaining why it is reasonable and necessary to meet with his or her incarcerated client. In the event that the contents of the motion reveal confidential information, the motion may be filed ex parte in hard copy. Ex parte motions must not be filed through ECF.

Meals and Lodgings

The CJA provides for reimbursement of expenses actually incurred while traveling. Counsel's expenses for meals and lodging incurred while traveling in the representation of the defendant would constitute reimbursable "out-of-pocket" expenses. In determining whether actual expenses incurred are "reasonable," expenses should not exceed the per diem rates applicable to federal judiciary employees for the particular locality where counsel is traveling. The current per diem rates may be found at [GSA Per Diem Rates](#). Counsel should attach receipts for meals which exceed \$50.00 and a copy of the hotel bill to the voucher under the documents tab in eVoucher.

Briefs and Appendices

The Court has instituted electronic filing. The electronic version is the official filed version for the Court's records. Costs are not permitted if counsel uses a third party vendor for the task of electronic filing.

The cost of **photocopying** appellate briefs and reply briefs, if any, as well as the appendix may be claimed as an expense. Costs are not reimbursable for brief and appendices produced by typists or offset method. Photocopying by outside establishments must be supported by an *itemized* bill copy.

Itemization of photocopying costs claimed must be broken down into the following categories:

- a) number of documents copied;
- b) number of pages per copy;
- c) cost per page (limited to 10 cents per page – See 3rd Cir. LAR 39.3(c)(2));
- d) cost, if any, for covers (limited to \$2.00);
- e) cost, if any, for binding (limited to \$4.00 per copy).

Delivery charges to and from outside photocopying establishment will not be reimbursed to counsel. Overnight or Express Mail charges solely to meet a standard filing deadline will not be permitted.

Number of Copies

The Court still requires the submission of hard copies of the briefs and appendices. Seven (7) copies of brief and reply brief, if any, must be filed with the Clerk of Court. An additional five (5) copies may be claimed as an expense provided hard copies are actually provided (two for opposing counsel, one for the client, one file copy and one extra copy if needed).

Unless otherwise ordered, four (4) copies of the appendix must be filed if counsel represents the appellant. An additional four (4) copies of the appendix may be claimed as an expense provided a hard copy is actually provided (one for opposing counsel, one for the client, one file copy and one extra copy if needed).

Appendix (Contents and Shared Costs)

Only those documents necessary for the determination of the issues presented on appeal shall be included in the appendix. Reproduction of the entire transcript is unnecessary and shall be avoided. However, there may be instances, such as when the sufficiency of the evidence to convict is challenged that require reproduction of most or the entire transcript. See Fed. R. App. P. 30(b). Court-appointed counsel in multiple consolidated appeals are encouraged to prepare and file one joint appendix covering those appeals. Thus the costs for the joint appendix must be shared by counsel. If not shared, only the attorney responsible for filing the joint appendix may claim appendix costs.

Telephone

Telephone toll calls may be reimbursed where it is determined that the calls were reasonable and necessary for proper handling of the case. Requests for reimbursement of such expenses should be submitted in the form of an itemized list indicating the date of each call, the charge for the call and the purpose of the call.

Computer Assisted Legal Research (CALR)

The cost of use, by appointed counsel, of computer-assisted legal research services, may be allowed as a reimbursable out-of-pocket expense, provided that the amount claimed is reasonable.

Whenever appointed counsel incurs charges for computer-assisted legal research, counsel should attach to the compensation voucher a copy of the bill and receipt for the use of the legal research services or an explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges, or by charges identifiable to the specific research).

If the amount claimed is more than \$500 or if it includes costs for downloading or printing, counsel should include a brief statement of justification.

Postage and Other Delivery Charges

Postage is considered a reimbursable expense. Express delivery charges and courier charges will be not ordinarily be allowed. Reimbursement for such services is limited to situations where there is a demonstrable need; counsel will be asked to support the inclusion of such expenses in certain cases. Dilatory conduct of counsel is not a justifiable reason for reimbursing such special services. **Overnight or Express Mail charges solely to meet a standard filing deadline will not be permitted.**

A receipt must be provided for postage or delivery charges in excess of \$50.00.

Transcripts of COA Oral Argument

Should the Court order transcripts of oral argument in an appeal, court appointed counsel's portion of the cost for the transcript may be claimed as a reimbursable expense.

ALL CATEGORIES MUST BE SEPARATELY ITEMIZED IN eVOUCHER. DO NOT COMBINE CATEGORIES. eVoucher requires a type description for a claimed expense. The descriptions currently available in eVoucher are: 1) travel miles, 2) travel misc., 3) fax; 4) long distance; 5) photocopies; 6) postage; and 6) other expenses.

EXPENSES NOT COVERED

Printing

Printing of briefs (either by Standard Typographic Printing or Offset Printing) cannot be claimed and **will not be reimbursed**. Only **photocopying** expenses (limited to 10 cents per page) will be reimbursed.

General Office Overhead

General Office Overhead may not be claimed as an expense. This would include, but is not limited to personnel costs, rent, telephone service and secretarial help (whether regularly or specially employed, performing normal, overtime, or supplemental work, even if counsel has not regularly employed secretary).

Fees

Filing fees are not required because the client is a pauper and counsel should not advance and pay these fees. Should the client later qualify for appointment under the CJA during the court of the appeal, the appeal and docketing fee which was paid may later be claimed as an expense. Admission fees for either this Court or the Supreme Court of the United States will not be reimbursed. Petition for Writ of Certiorari should be accompanied by a Petition for Leave to Proceed in Forma Pauperis.

Transcripts of Lower Court Proceedings

Payment for transcripts under the Criminal Justice act is the responsibility of the government; therefore, as with filing fees, counsel should not pay for this expense. Counsel should file a CJA Form 24 with the District Court in order to obtain transcripts even if counsel was not initially appointed by the District Court.

In multi-defendant cases only one official transcript will be permitted under the CJA. Copies should be obtained at a reasonable copying rates.

COURT REDUCTION OF VOUCHER

The Guide to Judiciary Policies and Procedures Volume 78, Chapter II, Section 2.22 has been amended to provide counsel notice when the Court reduces the amount claimed and to permit counsel an opportunity to respond. The Guide now directs that:

If the court determines that a claim should be reduced, appointed counsel should be provided (a) prior notice of the proposed reduction with a brief statement of the reason(s) for it, and (b) an opportunity to address the matter. However, notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.

If the Court believes that the voucher should be reduced, the Clerk's Office will then issue a notice to counsel. The notice will set forth the intended reduction, summarize the basis for the reduction, and inform counsel that an objection may be filed within 10 days from the date of the notice. If counsel submits an objection the objection will be forwarded to the Court.

Questions concerning completion of the CJA Form 20/30 or eVoucher which are not answered in these Instructions should be addressed to the Clerk's Office CJA Voucher Processing Deputy at Telephone No. (267-299-4908).

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