

**Voucher Preparation Guidelines for Attorneys Appointed
Under the District of Columbia Criminal Justice Act**
Effective October 15, 2012

These Guidelines are intended to assist attorneys appointed to represent indigent defendants before the Superior Court of the District of Columbia under the District of Columbia Criminal Justice Act (“CJA”), D.C. Code §§ 11-2601-2608. Additional guidance can be found in the Plan for Furnishing Representation to Indigents under the District of Columbia Criminal Justice Act dated March 1, 2009 (“Plan”). These Guidelines are also intended to promote reasonable and consistent review of vouchers by judicial officers.

The Guidelines have been revised by the Voucher Review Committee, which consists of three Associate Judges and the President of the Superior Court Trial Lawyers Association. The Committee sought comments from the bench and bar about proposed revisions. Suggestions for further revisions should be submitted to the Committee.

I. Issuance of Vouchers

A request by counsel for compensation and reimbursement for expenses shall be in the form of a voucher issued by the Fiscal Office of the District of Columbia Courts and submitted through the Court’s Web Voucher System. While vouchers normally are issued to counsel at the time of appointment, any vouchers not automatically issued must be requested by counsel through the Web Voucher System. It is counsel’s responsibility to ensure that he or she has been issued vouchers. Since all claims for payment are subject to both pre-payment and post-payment audits by the Fiscal Office of the District of Columbia Courts, counsel should verify the accuracy of the appointment information on the voucher as well as the compensation and expense information provided by counsel.

II. Filing the Voucher for Payment

A. Standard Vouchers

Claims for compensation or reimbursement of expenses must be filed within 120 days of the termination of representation. The termination of representation will normally be the last official court action, such as acquittal, sentencing, dismissal, *nolle prosequi*, substitution of counsel, completion of a probation review/revocation, or 30 days after the issuance of a bench warrant. If the 120th calendar day falls on a weekend or holiday, the due date will be the court day immediately following the 120th calendar day. If a bench warrant has been issued for the defendant, representation is considered to be terminated 30 days after the issuance of the warrant. Representation in a case where the defendant has entered a diversion program is not considered terminated until the defendant completes the diversion program. Representation in a case where probation reviews are ordered is not considered terminated until the final review has been held. A communication with the client, whether in writing, or by phone, does not determine the date on which representation is terminated.

B. Guideline Fee Vouchers

A guideline fee voucher is a fixed compensation voucher set by the Court for selected offenses. An attorney shall submit a guideline voucher within 30 days after completion of a case eligible for a guideline fee. A case is completed upon dismissal for any reason, *nolle prosequi*, substitution of counsel, acquittal, sentencing after plea or trial, final probation review, or revocation or vacation of a show cause. If a bench warrant has been issued for the defendant, the case is considered completed on the date the bench warrant is issued. Representation in a case where the defendant has entered a diversion program is not considered terminated until the defendant completes the diversion program. The guideline fee voucher shall compensate counsel for all work performed in representation of the defendant, including any motion for reduction of sentence. If an attorney has opted for a guideline fee voucher, the attorney may not later switch to a standard voucher simply because it will be more financially advantageous.

III. Guidelines for Specific Items

“[I]t unquestionably is the intention of the [Criminal Justice] Act that attorneys appointed thereunder be reasonably and fairly compensated.” *Thompson v. District of Columbia*, 407 A.2d 678, 682 (D.C. 1979). Attorneys deserve “fair compensation” for their representation of indigent defendants. *See* D.C. Code § 11-2604(c). D.C. Code § 11-2604(a) provides that in addition to compensation for their time at a statutorily established rate, attorneys “shall be reimbursed for expenses reasonably incurred.”

“Common sense confines [the] value [of the representation] to reasonably competent and productive effort, and excludes bumbling and wasteful activity from the count.” *United States v. Bailey*, 189 U.S. App. D.C. 206, 581 F.2d 984, 987 (D.C. Cir. 1978). “[O]nly reasonably productive time is deserving of recompense.” *United States v. Carnevale*, 624 F. Supp. 381, 384 (D.R.I. 1985). These principles are consistent with the D.C. Rules of Professional Conduct. Fair compensation includes representing “a client zealously and diligently within the bounds of the law” as required by Rule 1.3(a). However, as Rule 1.5 provides, “A lawyer’s fee shall be reasonable.” As Comment [1] to Rule 1.3 states, although a lawyer should act with commitment and dedication to the interests of the client, “a lawyer is not bound to press for every advantage that might be realized for a client,” and “[a] lawyer has professional discretion in determining the means by which a matter should be pursued.”

Although the CJA provides for “fair compensation,” it does not necessarily provide for “full compensation.” *United States v. Jewett*, 625 F. Supp. 498, 500 (W.D. Mo. 1985). Compensation in CJA cases “was intended to prevent economic hardship and ease the financial burden of counsel in these cases, not to eliminate that burden entirely.” *In re Criminal Justice Act Voucher*, 128 DWLR 1565, 1571 (Super. Ct. May 12, 2000) (Henry F. Greene, J.) (quoting *Jewett*, 625 F. Supp. at 500). “[A] substantial element of appointed counsel’s representation under the Act remains public service.” *In re Criminal Justice Act Voucher*, 128 DWLR at 1571 (quoting *Carnevale*, 624 F. Supp. at 384). Charging for every minute that can possibly be

charged, even in good faith, is contrary to the spirit of the CJA and the continuing duty of all lawyers to provide *pro bono* legal representation.

“[A] reduction in the amount represented by an attorney as being properly due should only be made on an informed and rational basis.” *Thompson*, 407 A.2d at 682. Judges use a rule of reason to determine whether time and expenses are reasonably necessary to effective representation.

A. Out-of-Pocket Expenses

The Plan allows for the reimbursement of reasonable out-of-pocket expenses paid in connection with the particular representation if such expenses are itemized and can be supported by paid, original receipts or other suitable documentation. Attorneys shall not be reimbursed for office overhead expenses or other normal costs of doing business.

Examples of reimbursable case-related expenses include:

- Cost of long-distance telephone calls.
- Duplication of briefs, if such cost is borne by the attorney. Reimbursement may not exceed actual cost. In no event shall it exceed \$.25 per page.
- Case-related travel expenses inside and outside the District of Columbia (mileage, tolls, and public transportation). Travel expenses are not allowed for commuting from the attorney’s home or office to the courthouse or its environs, including the prosecutor’s office, the Public Defender Service, and MPD Headquarters, or for parking in the courthouse area. If an attorney expects to incur extraordinary travel costs outside the D.C. metropolitan area, the attorney must obtain in advance a written order from the trial judge authorizing specified travel expenses.
- Fees paid for obtaining records.

Out-of pocket expenses that are **not** reimbursable include:

- Money given to defendants or to defendants’ families for any reason.
- Local transportation of witnesses. Travel costs of witnesses from outside of the metropolitan area may be payable through the witness fee program if such costs have been pre-authorized.
- Expert witness or investigator expenses, except when pre-authorized.
- Postage expenses.

- Local telephone calls and facsimiles.
- Payments to staff, including law clerks, paralegals, or secretaries.

B. Time Spent in Open Court

This category includes only time spent representing the defendant in open court before a judicial officer. This does not include time waiting for the case to be called.

C. Time Spent Out of Court

This part of the voucher is used for claiming all time spent outside of open court.

1. Interviews and Conferences

This category is intended to compensate attorneys for time reasonably spent interviewing and conferring with the defendant, witnesses, prosecutors, members of the defendant's family, Pretrial Services Agency, probation officers, experts, and others to obtain information germane to adequate representation. Excessive time spent discussing matters not directly relevant to the defense of the case should not be claimed and may be disallowed. If the interview of the defendant or witness takes place at a detention facility, the time necessarily spent for the client to be brought to the interview shall be compensated. Interviews and conferences with judges' administrative assistants and law clerks may also be claimed to the extent such communications pertain to the case. Time spent composing and answering case-related emails may also be included in this category.

2. Legal Research and Brief Writing

All claims under this category must be specific enough to explain the relevance of the legal work to the defense. If legal research is necessary for a trial or hearing but is not used in a written submission, the claim should explain the relevance of the research.

This category of claim is intended to compensate attorneys for legal research concerning specific issues raised by the case – not for basic research that would be unnecessary for an attorney with reasonable experience in District of Columbia law. Time spent to educate an attorney in fundamental criminal law and procedure is not compensable under the Criminal Justice Act. *In re Criminal Justice Act Voucher*, 128 DWLR at 1571 (“an attorney may not claim the time it takes to obtain general competence in a particular area of law, or charge for legal research that one skilled in the law would not need to do,” and the CJA may not “be used as a device to further the basic education of a lawyer at government expense”) (quoting *Carnevale*, 624 F. Supp. at 388-89).

Time spent writing motions, briefs, or memoranda should be included in this category even if the motion (like many motions to suppress) raises primarily factual issues that will be

resolved at an evidentiary hearing. Lawyers should provide an explanation if substantial time invested in research did not yield results included in any submission to the court. Substantial time spent on research that is not reflected in written submissions should be justified in the comment section of the voucher.

Claims relating to discovery (such as preparation of *Rosser* letters) and to trial preparation (such as planning direct and cross-examinations) do not belong in this category.

3. Investigation and Reviewing Records

This category should be used for personal investigation by the attorney, such as viewing a crime scene and obtaining and reviewing records, including audio and video evidence.

Time spent obtaining and reviewing records, including preparing *Rosser* letters, should be included in this category. Time spent preparing *Rosser* letters should generally not exceed 0.3-0.5 hour because these letters generally do not require substantial tailoring for individual cases. If the claim exceeds 0.5 hour, the lawyer should provide a case-specific explanation in the comment section of the voucher.

Some cases involve recordings of telephone calls by the defendant or co-defendants from the D.C. Jail. A lawyer who concludes that it may be appropriate to listen to a substantial number of jail calls should consider seeking prior approval from the judge. In advance of trial, the lawyer should also consider asking the judge to require the government to identify any calls it intends to use at trial and to take other steps to minimize the number of calls that the defense needs to review. A lawyer who listens to all or even a substantial percentage of jail calls in such cases should identify, in a request to the judge for pre-approval or in the comment section of the voucher, any reason to believe that any calls that the government does not intend to use would be helpful to the defense. A lawyer should also explain whether and how he or she coordinated the review of jail calls with lawyers for any co-defendant and why he or she did not use an investigator to listen to calls. In evaluating the reasonableness of the claim, a judge may consider the number of jail calls that were actually used at trial, as well as the low probability that any call contained relevant information.

4. Travel Time

Time spent traveling to locations other than the D.C. Court complex and environs may be allowed if such travel is related to the defense. Attorneys are never compensated for traveling to and from the courthouse. Likewise, if a stop is made related to a case while the lawyer is traveling between the courthouse and home or office, the attorney may bill only for the extra time occasioned by the stop, not for the entire trip. Where travel time to a destination from the attorney's home or office is greater than the time from the courthouse to that destination, the attorney is only entitled to the lesser of those times. For example, a lawyer traveling to the jail from his or her office in Rockville instead of from the courthouse is not entitled to bill the extra time it takes to travel that distance. The rationale behind this rule is that the Court should not be subsidizing attorneys who choose to live or work in areas outside the District of Columbia.

All travel outside the metropolitan D.C. area must be pre-approved by the presiding judicial officer. The metropolitan area consists of Montgomery, Prince Georges, Arlington, and Fairfax counties, and the city of Alexandria.

5. Court Waiting Time

Time necessarily spent waiting in a courtroom for a proceeding before a judicial officer to begin may be compensated. However, public funds may not be expended for excessive “waiting time.” The reasonableness of waiting time is reviewed on a case-by-case basis. Any time claimed for waiting before the judge is scheduled to take the bench will be denied. In addition, any waiting time claimed when the court has recessed for lunch and any waiting time claimed while counsel is awaiting a verdict will be denied. Similarly, without sufficient justification, time spent waiting for a case to be certified to another judge will not be allowed. Counsel will not be compensated for waiting time if they arrive in the courtroom after the judge has started a trial and before the judge breaks to call the remaining cases on the calendar. Waiting time outside of the court day, such as waiting for a witness or client or waiting to obtain documents, should not be billed. On the other hand, reasonable waiting time at the D.C. Jail or a prosecutor’s office may be compensated. Waiting time in excess of 30 minutes may be considered excessive. Counsel is encouraged to include in the comment section, when the voucher is initially submitted, an explanation for any waiting time that could be perceived as excessive.

Because the Court is a busy urban court, waiting time is sometimes an unavoidable part of the workday for counsel. Counsel are encouraged to bring other work that can be done (such as pleadings to read or research that can be performed on laptops) while waiting in order to minimize actual waiting time.

Due to the number of cases scheduled daily in Courtroom C-10, some waiting time may be incurred there. Counsel who sign up for CJA appointments that are initiated in C-10 should conduct all interviews and conferences with their client, the Pretrial Services Agency, prosecutors, and courtroom staff, etc., before a case is called in order to avoid requesting a “pass” that may result in waiting time.

Counsel are also encouraged to schedule cases in a manner that allows sufficient time to appear before the court and handle all matters timely. In scheduling, counsel should limit the number of matters set at 9:30 a.m. or earlier so as to assure appearance in every courtroom before 10:30 a.m.

6. Other

The “other” category is designed for items that do not fall under other specific categories. All claims under this category must specify the work performed and its relevance to the case.

This category includes time spent in preparing for trial, except for client and witness interviews which belong in the “interviews and conferences” category.

Claims for time spent filling out a voucher request for an expert may not exceed 0.1 hour. Time claimed for preparing a witness fee voucher may not exceed 0.1 hour.

Claims will **not** be allowed for:

- “Miscellaneous”
- Failure of a defendant to keep an office appointment
- Preparation of CJA vouchers
- Time spent locating witness fee vouchers
- Time spent in the CJA Program Office for any reason

7. Over the Limit Vouchers

D.C. Code § 11-2604(b)(1) provides that the maximum compensation for CJA representation shall be governed by the amounts set forth in 18 U.S.C. § 3006A(d)(2). As of 2012, that amount is \$7,000.00 for felonies and \$2,000.00 for misdemeanors. If a claim is being made in excess of those amounts, D.C. Code § 11-2604(c) allows for over the limit compensation “for extended or complex representation whenever such representation is necessary to provide fair compensation,” and must be approved by the Chief Judge. Where excess compensation is sought, counsel must provide a detailed explanation setting forth the justification in the space provided on the computerized voucher form. Based on this explanation, the presiding judicial officer will make a recommendation and forward the request to the Chief Judge.

Not every claim for excess compensation will be granted. Because the statutory standard is based on the circumstances of an individual case, reasonable people can and do differ as to the application of the standard in § 2604(c). An excellent discussion of the history of this provision and the factors to be considered is contained in *In re Criminal Justice Act Voucher*, 128 DWLR 1565 (Super. Ct. May 12, 2000) (Henry F. Greene, J.). The Court will strictly apply the “extended or complex” standard and will not routinely approve over-limit vouchers simply because the claimed hours were expended.

IV. The Audit and Payment Process

Vouchers must be filed through the Web Voucher System on the Court’s website. When a completed voucher has been presented for payment, the Defender Services Branch pre-audits the voucher for mathematical accuracy, overlaps of time, claims which are not allowable, and any unusual items. The voucher is then sent to the appropriate judicial officer for review and approval. Vouchers cannot be paid without judicial approval. After the appropriate judicial review, vouchers are returned to the Defender Services Branch for payment.

Each attorney participating in the Criminal Justice Act program is subject to a periodic post-audit of payments made. The post-audit is primarily concerned with time overlaps between claims and any other items not detected during the pre-payment audit.

At the end of the calendar year, all payments made to participating attorneys will be summarized on an Internal Revenue Service Information Return in accordance with IRS regulations. Attorneys who receive CJA payments beyond the yearly limit (presently \$135,000) will be subject to discipline, including removal from the CJA panel.