

EXPERT AND SERVICE PROVIDERS REQUESTS

Resources for Judges and CJA Counsel

Criminal cases are no longer run of the mill and require assistance in many areas. The hiring of other professionals in the case will keep costs down. The CJA lawyer who performs all the functions in defense of a criminal case is typically charging more money if they perform every function themselves; for example, investigation, discovery review with the client, and trial preparation duties. These activities on the case are known as cost drivers, and according to Meg Alverson, the budget attorney at the Fifth Circuit Court of Appeals, these activities could be performed by lower-cost service providers and/or associates in lieu of appointed counsel. As she wrote, “[e]xamples include voluminous discovery - particularly electronically stored information (ESI) - ...statutory and non-statutory aggravating factors which must be investigated and defended in addition to the crime(s) charged, the need for an unusual amount of contact with the client/family, extensive record collection and review, and in all cases, the need for travel to see witnesses and incarcerated clients.” Please see Meg Alverson’s memo attached as a link herein on page 5.

<https://www.lb5.uscourts.gov/CJA2/CaseBudgetingDocs/CaseBudgetingOverview.pdf>

She further wrote:

a. Use of Service Providers

Counsel are encouraged to use well-qualified paralegals, law clerks, investigators, and other service providers who bill at a lower hourly rate than appointed counsel in lieu of having appointed counsel perform certain tasks where doing so would save money and time. Tasks may include records collection, organizing discovery, locating witnesses, logistical arrangements for interviews, etc. Counsel should assess whether delegating tasks, with the implicit need to give sufficient instruction and supervision, is more cost efficient than having the experienced lawyer perform the task, whether because of the skills required, or because it only imposes an extra layer of review of the work product. It will depend on the nature of the task and the experience of the lower cost personnel. Requests for such resources should specify the tasks, projected number of hours, hourly rate, and total anticipated expenditure.

b. Use of Associates

Appointed counsel are encouraged to use well-qualified associates who bill at a lower rate when to do so is cost-efficient and does not diminish the quality of the representation.

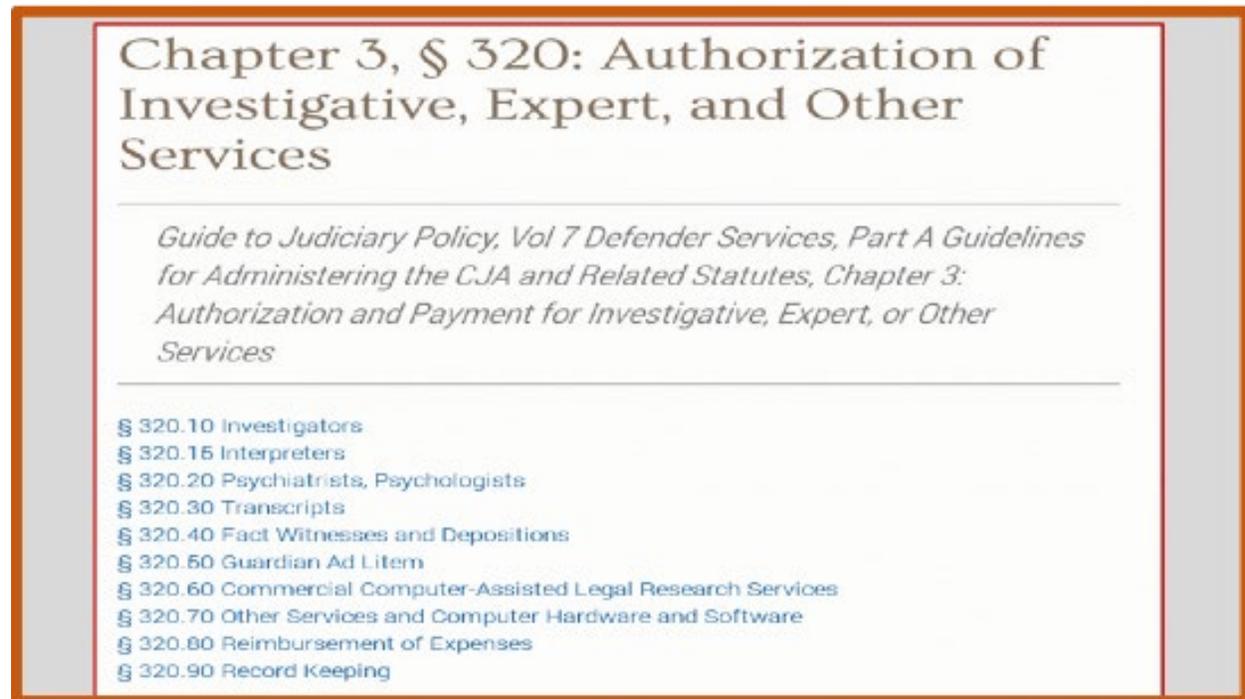
[at 6-7]

Ms. Alverson noted that the “CJA Guidelines § 230.53.10(b) pertaining to non-capital cases [do] not require prior approval for use of associates.”

Further, experts and service providers should be used in most cases to:

- INVESTIGATE THE CHARGES
- CHALLENGE THE GOVERNMENT'S EXPERT WITH DEFENSE EXPERTS

- ESI MANAGEMENT
- PARALEGAL SUPPORT
- DISCOVERY REVIEW
- SENTENCING ISSUES / MITIGATION



Experts and Service Providers - Examples

• EXPERTS:

- Computer expert // Cell phone / tower expert
- DNA // Ballistics // Forensics // CPA // fraud examiner
- Mental health experts – guilt / sentence mitigation / competency

• SERVICE PROVIDERS:

- Investigators
- Paralegals
- Mitigation specialists
- Assistance to catalogue and review numerous jail calls

The CJA Act presumes these expenditures are authorized where necessary. The motion for an expert or service provider should set forth facts that support the need for the assistance; a description of services to be performed and the time required; the resume or CV of the expert or service provider; the hourly rate or fee schedule. Vet the expert (call the Federal Public Defender's office for ideas or to check out the expert, i.e., if they have used him/her before).

18 U.S.C § 3006A (e)

Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request them in an *ex parte* application.

Upon finding, after appropriate inquiry in an *ex parte* proceeding, that the services are necessary and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.¹

No Court approval is necessary for total costs for investigative, expert, or other services if the amount is \$900 or less.

District Court approval is needed for each service provider or expert if the amount is \$2700 or more. Pre-approval may be waived in the interests of justice where the judge finds that timely procurement of services could not wait for prior authorization.

Circuit Court approval is needed for any service provider or expert whose services are expected to exceed \$2700. The district court must certify the expert or service provider expense is "necessary to provide fair compensation for services of an unusual character or duration." The Chief Judge of the Circuit or his/her designee must approve.

Finally, contact Meg Alverson, Circuit CJA Case Budgeting Attorney if you have any questions or if you need any other assistance. Her telephone number is 504-310-7799 and her email address is: [Margaret Alverson@ca5.uscourts.gov](mailto:Margaret.Alverson@ca5.uscourts.gov). Also, please see generally the Guide to Judiciary Policy, Vol. 7 – Defender Services <http://www.uscourts.gov/rules-policies/judiciary-policies/criminal-justice-act-cja-guidelines> for additional information regarding court appointed representations.

¹ Keep in mind that retain counsel may seek funding for experts or service providers if the Defendant lacks funds to secure required experts or service providers.