VOUCHER BEST PRACTICES AND COMPENSABILITY ISSUES

Compensability under the Criminal Justice Act (CJA) is governed by applicable statutes, the *Guide to Judiciary Policy, Vol. 7* (CJA Guidelines), and CJA Plans adopted by each court. Counsel are required to familiarize themselves with the governing statutes, polices and plans as well as preferences of presiding judges.

Not every task undertaken in the course of a representation is compensable. The following guidance is provided to assist appointed counsel and service providers with compensability questions. This addendum covers many common compensability situations but is not exhaustive. As a reminder, counsel and service providers are required to keep contemporaneous time records, which must be sufficiently detailed to allow for meaningful reasonableness review of the time claimed.

The following practices apply to appointed counsel and service providers including paralegals, investigators, and mitigation specialists.

Compensability

Administrative Tasks

Under CJA Guidelines § 230.66.10 and § 320.80.10, general office overhead, including clerical assistance, is incorporated into the authorized hourly rate for panel attorneys and service providers and is not separately reimbursable. Administrative or clerical tasks are not compensable under the Guidelines regardless of who performs them (*i.e.*, counsel, support staff, or service providers, including paralegals), except under extraordinary circumstances. § 230.66.10. Examples of tasks that generally are not compensable—no matter who performs the tasks—include, but are not limited to:

- creating a physical or electronic case file;
- viewing, accessing, downloading, opening, renaming, saving, printing, or forwarding electronic files (including notices of electronic filing in CM/ECF);
- entering calls, meetings, due dates, or court appearances in a calendar;
- rote or routine scheduling-related communications, including scheduling intra-team communications and communications with the court or opposing counsel;
- leaving non-substantive voicemail messages;
- filing or lodging electronic documents in CM/ECF;
- creating payment vouchers in eVoucher and entering or justifying billed time and expenses;
- emailing courtesy copies or proposed orders;
- copying, scanning, or printing;
- office filing;
- preparing documents for mailing; and
- and traveling to and wait time at a post office, copy center, or office supply store.

If counsel believes a task that is presumptively administrative or clerical should be considered compensable, counsel should include in their time entries an explanation as to why the task required legal knowledge, professional judgment, or otherwise involved representational strategy.

Note: Counsel are required to certify that services and expenses billed on a service provider voucher (CJA-21/31) were rendered and that sufficient funds are available under a court-approved budget before submitting the voucher to the court. Review of service provider vouchers for purposes of certification is compensable, but counsel should not bill for the administrative task of creating or submitting the CJA- 21/31.

Aggregation of Tasks

Because reviewing a single ECF notice typically takes less than 0.1 hour, reviewing multiple ECF notices in a day should be aggregated into one block of time to reflect actual time spent. Counsel are expected to exercise professional judgment in billing time for reviewing ECF notices that require no substantive response, especially in multi-defendant cases where notices or filed documents may be irrelevant to counsel's specific client.

Other common tasks that should be aggregated over the course of a single day include reading and responding to emails, short telephone calls, and sending or reviewing text messages. For example, if counsel (or a service provider) spends less than 6 minutes per email in a thread or series of emails, counsel should aggregate the time spent on the entire thread or series.

Discrete tasks should be billed in separate service entries *except* those tasks taking less than 0.1 hour such as those described above, which should be aggregated.

Intrateam Communications

Attorneys and service providers should exercise professional judgment in billing for reviewing communications and materials that do not pertain to their specific role or responsibility on the case. While defense team members need to stay informed of developments in a case, reviewing daily emails between other team members could be construed as not reasonably necessary. Sufficient detail should be provided by counsel and service providers to identify the representational purposes of the communication and its relevance to that person's particular role in the case.

Routine or rote communications that are purely administrative in nature are considered administrative overhead and are not separately compensable. Examples include checking the availability of the court or an individual (e.g., experts, counsel for co-defendants) for the purpose of scheduling a meeting, interview, or hearing.

Communications where a scheduling-related discussion is incidental to some other case-specific topic or issue are compensable. For these types of "mixed" calls or emails, counsel's billing entry should reference the non-administrative aspect of the communication.

Learning Time

Counsel are expected to keep current with the law and have a working knowledge of federal criminal substantive and procedural law as well as local and federal rules of procedure. While a reasonable amount of time spent reading materials to become conversant with a case-related topic may be reimbursable in connection with effective representation in a specific CJA matter, time spent on general caselaw reading, reviewing rules of procedure, skill building, professional development, and CLE or other training events is generally not compensable. To facilitate voucher review, billing entries must provide a detailed explanation for how the work is case-specific and advances specific representational purposes. Counsel should exercise professional judgment in determining whether the time is better characterized as non-compensable self-enrichment, training, or continuing legal education.

Voucher Best Practices

Contemporaneous Timekeeping

Guidelines § 230.76 requires appointed counsel to maintain contemporaneous time records for themselves and support staff for three years after approval of the final voucher for an appointment.

Sufficient Detail

Counsel and service providers should describe services in sufficient detail to allow judges and CJA staff to assess the reasonableness of the time expended.

- *Interviews and conferences*: specify with whom (client, AUSA), the type of communication (telephone, email, text exchange), and general topic
    - For intrateam communications, counsel and service providers should explain how these exchanges furthered the goals of the representation
- *Discovery and records review*: specify the type of discovery and, if applicable, the length (*i.e.*, page numbers, length of a video or audio recording, etc.)
- *Legal research and writing*: specify the issue researched or motion prepared; include docket number or explanation of why pleading was not filed
- *Travel time*: Include origin and destination and whether round trip or one-way; if time claimed is atypical, explain the cause (accident on interstate, inclement weather, etc.)
- *In-court time*: Separate out wait time, conferences with clients or AUSA