

**OBTAINING EXPERT AND OTHER
LITIGATION SUPPORT SERVICES**

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NOTES

USING SERVICE PROVIDERS

WDVA/EDVA CJA Training

April 7, 2017

Presented By

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WHAT WE WILL COVER TODAY

What are Service Providers and How to
Use them Effectively

Rules Under the CJA

How to best request them

How to get them paid

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WHAT IS A SERVICE PROVIDER



Investigators



Paralegals



Other
Experts

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HOW CAN THEY HELP YOU, THE CJA ATTORNEY

- Help with full review of discovery in large discovery cases
-
- A force multiplier
-
- Use to help develop appropriate trial theory and/or mitigation

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SERVICE PROVIDERS-HOW TO USE THEM

Expert services are underutilized by CJA attorneys in both the EDVA and WDVA

Excluding interpreters—5% of cases
Not being requested

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TYPES OF SERVICE PROVIDERS

Investigative and Support Services

- Investigators
- Paralegals

Scientific or Technical Experts

- Mental Health Professionals
- Computer Experts
- Cell Phone Experts

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DUTY TO INVESTIGATE

ABA Standard 4-4.1

Defense counsel's duty to make independent investigation of the "circumstances of the case"

ABA Standard 4-8.1

Defense counsel's duty to "verify" PSR

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WHY USE INVESTIGATOR

Specialized training
Law enforcement experience
Investigative tools
Use as witness

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USING INVESTIGATOR

Prepare investigator
Government's case
Your case
Discovery review with defendant
Cooperating defendant
Case Agent

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**EFFECTIVE USE OF
PARALEGALS**

Discovery
Investigation
Trial Preparation
Trial
Appeal

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**NON-CAPITAL
MITIGATION**

ABA Duty-Verify PSR
Investigator & Paralegal
Records
Interviews

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**GUIDE TO JUDICIARY POLICY
VOLUME 7, CHAPTER 3
(SEE 18 USC § 3006A(E))**

- \$800 maximum, without prior approval (all Service Providers combined)
-
- \$2,500 maximum, with prior approval by District Court Judge (per Service Provider)
-
- Anything above \$2,500 needs Circuit Court Chief Judge approval

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**GUIDE TO JUDICIARY POLICY
VOLUME 7A, CHAPTER 6
(SEE 18 USC § 3599(G)(2))**

- \$800 maximum, without prior approval (all Service Providers combined)
-
- \$7,500 maximum, with prior approval by District Court Judge (all Service Providers combined)
-
- Anything above \$7,500 needs Circuit Court Chief Judge approval

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EFFECTIVE REQUESTS



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WHO

- Who do you want. Explain how they are qualified for the position.
-
- Consider providing a copy of CV

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WHAT

- What do you expect them to accomplish.

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WHERE

- Where are they from
- Where are they going to conduct the work

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WHEN

- When do you need the work accomplished and how long will it take

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WHY

- Why do you need this provider

- Why can't you do the work yourself, and how is this saving costs

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HOW

- How will this accomplish your needs

- How long will it take

- How much is he charging and how many hours do you need

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GETTING YOUR SERVICE PROVIDER PAID

Use an Engagement Letter
Monitor their hours and work
Have them file regular interim payment request

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**TIPS FOR SERVICE PROVIDER
VOUCHERS**

Fine line between paralegals and administrative tasks
Cannot give them Advanced Pay
Cannot use investigators/paralegals merely to serve subpoenas
Cannot reimburse an expert for "lost wages"
Consider reduced travel rates for experts
Attorneys should travel to expert's office rather than vice versa

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**CALL FOR
ASSISTANCE**

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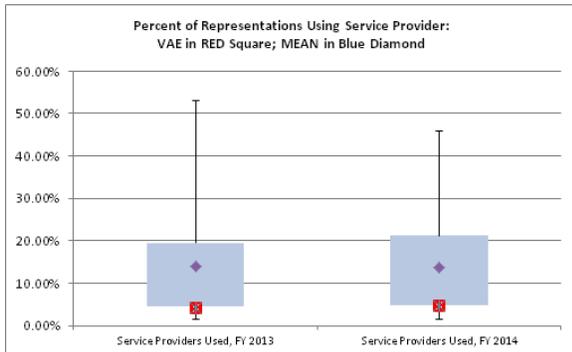
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**DUNHAM CONFERENCE SESSION:
USE OF EXPERT SERVICES**

CURRENT USAGE OF SERVICES IN WDVA and EDVA

Statistics collected by the clerks' offices show that CJA attorneys in both the EDVA and WDVA underutilize the expert services that are available to them. Although there has been no scientific survey to prove this proposition, it appears that the underutilization is a result of the failure of panel attorneys to request services, not the fault of the district judges in denying the requests.

In the WDVA for the calendar years 2007 through January 2017, there were a total of 2320 CJA appointments. Expert services, including interpreters (130), were used in only 247 cases, a rate of 11%. If interpreters are excluded, expert services were used in only 5% of cases. [See attached table] The most commonly used expert services were investigators (36), paralegals (17), and psychiatrists (11).



Statistics for the EDVA are similar. In FY 2013 the usage rate (excluding interpreters) for CJA attorneys was 4% of cases, and in FY 2014 it was 5%.

TYPES OF SERVICE PROVIDERS

Service providers for the most part fall into one of two categories: (1) investigative and support services; and (2) scientific and technical experts. Your need for expert services will depend upon the requirements of the specific case, including the nature of the charges, the complexity of the facts, the volume of discovery (and restrictions on discovery), and the designation of any expert opinions by the government.

SCIENTIFIC OR TECHNICAL EXPERTS

The most common type of scientific or technical experts used are mental health experts. They are helpful in a number of circumstances, including situations where you want a preliminary evaluation done in order to determine whether there is a good basis for requesting a court-ordered evaluation for:

(1) Competency, to determine whether a defendant is competent to stand trial; [18 USC 4241]

(2) Sanity, to determine whether your client is suffering from a mental disease or defect that would support an insanity defense; [18 USC 4242] or

(3) Post-conviction hospitalization, to determine whether a person convicted of an offense, but not yet sentenced, is in need of custody for care or treatment. [18 USC 4244]

Mental health experts may also be useful at both the pre-trial stage of the case or the sentencing phase of the case for purposes of:

(1) Psycho-sexual evaluation in child pornography cases and failure to register cases to determine whether the defendant creates a risk—often used for bail hearings;

(2) Substance abuse evaluation, for use in determining treatment needs and evidence to argue for pre-trial drug treatment; or

(6) Mitigation review of defendant's mental health history prior to sentencing, particularly if PSR contains mental health information.

Other expert services that may be useful include computer experts (child pornography cases), cell phone and cell tower experts, toxicologists and chemists, forensic accountants (financial fraud cases), and ballistics and firearms experts. [Attached list of all types of experts used in the district.]

If the government is going to use an expert witness at trial, the government is required by FRCrP 16(F) and (G) to disclose the results of any physical or mental examination and any scientific test or experiment, and provide a written summary of any testimony by an expert under FRE 702, 703 or 705. Your own expert can review the government expert's finding and

opinions and help you (1) prepare to interview the government's expert, (2) cross-examine the government's expert at trial, and (3) provide evidence to rebut the government's expert.

INVESTIGATION

A. DUTY TO INVESTIGATE

The ABA Standards include a section on investigation and preparation, which is in the "Defense Function" part of the Criminal Justice Section Standards. In February 1991, the ABA House of Delegates approved these "black letter" standards that have been published with commentary in *ABA Standards for Criminal Justice: Prosecution and Defense Function*, 3d ed., ©1993 American Bar Association.

Standard 4- 4.1 Duty to Investigate

(a) Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty.

Relying in large part on this standard, the Supreme Court has stated that defense counsel has a constitutional duty "to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v. Washington*, 466 U.S. 668, 691 (1984). This means, at a minimum, an independent investigation of the facts, and seeking out and interviewing potential witnesses. A defense attorney may not rely solely on information provided by the prosecution, or by the client.

B. WHY USE AN INVESTIGATOR?

Investigators are trained and experienced in ways that a lawyer isn't. Many investigators have a law enforcement background that becomes very useful, and some still have contacts from their experience in law enforcement that come in handy. Investigators usually have specialized software that

allows them to obtain information (personal, financial, background, etc.) about a person that most people can't or don't know how to access.

Being your own investigator is fraught with problems.

Rule 3.7 prohibits a lawyer from acting as both lawyer and witness unless the testimony (1) relates to an uncontested issue; (2) relates to value of legal services; or (3) disqualification would work a substantial hardship.

Many of you have probably encountered the situation where you interview a witness and then at trial the witness changes his story, making him ripe for impeachment. But how do you confront the witness with his prior inconsistent statement without making yourself a witness?

Some lawyers think you can proceed in this fashion: On cross-examination ask the witness, "Remember when we talked two weeks ago? Didn't you tell me at that time that the light was green?" Better yet, before asking the question, deliberately open your file and remove your notes (or a reasonable facsimile) and look at them first. If the witness admits making the statement, he can go on to explain why he is now making a contradictory statement (e.g., "I've thought more about it"). If he *denies* making the statement, you either have to let it go, or you have to move to withdraw as counsel in order to testify.

However, the majority of the ethics opinions on this subject appear to condemn asking even the first question, "Didn't you tell me. . .?," as it is a form of testimony by the lawyer. If this problem arises, you are going to have to move to withdraw in order to testify. If there is a question as to what a lawyer should do, the 4CCA says: "Where the question arises, doubts should be resolved in favor of the lawyer testifying and against his becoming or continuing as an advocate." *International Woodworkers of Am. V. Chesapeake Bay Plywood Corp.*, 659 F.2d 1259, 1272 (4th Cir 1980).

If your investigator interviewed the witness, or was present when the attorney interviewed the witness, the investigator can testify as to the prior inconsistent statement and the attorney doesn't have to withdraw.

C. USE OF INVESTIGATOR

1. Prepare the Investigator

Give the investigator a copy of the indictment, or complaint, and tell him what you know about the case: the allegations, the nature of charges, the potential penalties, the codefendants, the prosecutor, the cops, the witnesses, the victims, and anybody and anything else. At this point what you want is information, and the more information you provide to the investigator, the more information you are likely to get back.

Because many investigators have backgrounds in law enforcement, they may already have some familiarity with substantive law and criminal procedure. Unfortunately, this is likely to be experience in state court, and may be more of a hindrance than a help. Explain what procedures must be followed, what deadlines and time constraints are in effect, and what resources are available.

Go over the rules. If your discovery is subject to a protective order, make sure your investigator is aware of that and what it means. If your investigator is not aware of your obligation to disclose reverse-Jencks, make sure you explain that so he doesn't go around recording interviews.

To the extent you can, outline for investigator (1) what elements the government has to prove, and (2) what facts the government needs to prove each element. If you have developed a theory of the case, explain that: for example, the defendant sold heroin, but less than the 100 grams charged; or the defendant sold heroin, but that's know what caused the death.

2. The Government's Case

Your investigator should review the discovery materials provided by the government. The threshold question to be addressed is whether the government has the goods. In other words, does the government have evidence to prove—at least on a prima facie basis—each element of the offense charged? If so, then the investigation should focus on determining the validity and reliability of the government's evidence.

Attacking the integrity of the government's case is a recognized defense strategy. See *Kyles v. Whitney*, 514 419, 437 (1995): [T]he evidence withheld denied the defense the ability to "undermine the ostensible integrity of the [police]

investigation" and "lay the foundation for a vigorous argument that the police had been guilty of negligence."

Typical sources of information found in discovery are:

(a) Police reports, witness interviews, audio and video recordings, criminal histories, physical evidence, visiting crime scenes, laboratory reports, autopsy and medical examiner reports, photographs, etc.

And the investigator can follow with his own research by:

(b) Interviewing witnesses, researching social media, obtaining telephone records (text messages, cell tower information), interview medical examiner, lab techs.

After reviewing the government's evidence the investigator should make a time-line of events, and a summary of how different persons (defendants, coconspirators, witnesses, victims, etc.) fit into the time-line. That should be your working narrative of the case.

3. Building Your Own Case

This part of your investigation should fit in with your theory of the case, e.g., mistaken identity, lying witnesses, lack of intent, and so on. Your investigator can help in various ways, such as, locating new witnesses, researching social media, obtaining criminal history and other impeachment information (e.g., mental health, drug treatment) of government witnesses.

4. Working with Defendant

Counsel has an ethical obligation to keep a defendant informed, and as a practical matter, the defendant should be given access to the evidence that is going to be used against him so that he can (1) assist in his defense, and (2) make informed decisions as to whether to plead or go to trial.

Making discovery material accessible to defendants has become increasingly difficult because of the increasing use of protective orders to restrict dissemination of discovery materials. These orders typically contain language that prohibit giving copies of discovery materials to defendants in custody. Read literally, some orders would require counsel to be personally present to review discovery materials with the

defendant. However, the orders usually expressly include, or are interpreted to include "agents" of defense counsel, such as investigators and paralegals.

Your investigator, then, can be of great service to you by going to the jail and reviewing discovery materials with the defendant so you don't have to do it. Don't overlook this service when requesting funds for an investigator. If the courts want to impose these onerous restrictions, they should pay for them.

5. Helping the Cooperating Defendant

Even if your defendant decides to cooperate, that by itself does not mean he will get a substantial assistance motion. The prosecutors and the case agents have their own arbitrary standards in determining who qualifies. But, as a general rule, the more useful the defendant's information, the more likely the 5K. However, even if a defendant provides valuable information, it's not worth much if it isn't used to advance an investigation.

The investigator can help in this regard by following up on the information provided by the defendant to conduct his own investigation to obtain information that can be served up to the government. In other words, doing the government's job for it. This can make the difference between your client getting a 5K or being stuck with a mandatory minimum sentence.

6. Case Agent

Your investigator can act as your case agent at trial. Sitting at counsel table, comparing witness testimony with prior statements for impeachment. Prepping and debriefing witnesses. Organizing documents and exhibits.

D. EFFECTIVE USE OF PARALEGALS

1. Role of Paralegal

Paralegals provide support services, but the nature of the services will vary depending on the needs of the attorney in a particular case and the capabilities of the particular paralegal. Some paralegals are highly skilled and are capable of performing many of the tasks usually done by attorneys, such as legal research, drafting pre-trial motions and briefs, and preparing jury instructions. It is more likely that you will

have someone who performs more of a role of generic assistant, and whose tasks may overlap to some extent with those of an investigator and those of a legal secretary. Nevertheless, a paralegal can be immensely helpful in case preparation.

2. Case Preparation

(a) Discovery

The paralegal can review the discovery materials provided by the government and (1) prepare an inventory and index of the materials, and (2) prepare individual summaries of grand jury testimony, witness interviews, police reports, etc. If the paralegal has software, such as CaseMap, the discovery can be entered into that system. Otherwise, the paralegal can organize the discovery manually. Like the investigator, the paralegal can review discovery with a defendant in custody.

(b) Investigation

The paralegal can perform some investigative services, such as preliminary interviews with the defendant and family members for bail purposes, and contacts with prospective witnesses and expert service providers. The paralegal can obtain records (employment, health, education, etc.) and can prepare subpoenas for documents and witnesses.

(c) Trial Preparation

The paralegal can prepare trial exhibits and assist in the presentation of exhibits at trial. The paralegal can assist with the logistics of getting witnesses to trial and coordinate the appearances of trial witnesses.

(d) Trial

The paralegal can assist in jury voir dire and selection--particularly when juror questionnaires are being used--keep files organized, take notes, order trial transcripts, review and summarize transcripts, and prep witnesses.

(e) Appeal

The paralegal can order transcripts, organize documents, order exhibits, and prepare the joint appendix.

E. NON-CAPITAL MITIGATION

Both the investigator and the paralegal can be useful in collecting and developing non-capital mitigation materials.

It is a mistake to simply rely on the presentence investigation report. For one thing they often contain mistakes, and for another, despite the protestations of the probation office to the contrary, they are often prejudiced in favor of the government. In the WDVA Standing Order No. 2010-6 gives the probation officers authority to see the case files of the U.S. Attorney's office to prepare the PSR. This is where they get their information about your client's case, and you have no idea what else they are told.

ABA Standard 4-8.1 requires defense counsel to "seek to verify the information contained in [the presentence report] and should be prepared to supplement or challenge it if necessary." That means you have to do your own investigation, even if it means duplicating what the probation office has done.

The paralegal can be particularly helpful in obtaining records. If there is a question about a conviction that affects your client's criminal history, or his classification as, e.g., a career offender, you will need to get the underlying documents associated with the conviction. You might also need to obtain records related to employment, education, physical health, mental health, and substance abuse and treatment. As a starting point the client can review the PSR with you and help sort out what is accurate and what needs to be verified.

If there is a large volume of health/mental health information, or if it is particularly complicated, you may want to request the services of a medical person, such as a nurse, to review and summarize the medical records for you. Depending on what you get, you may want to request the services of a physician or psychologist or other expert to confirm or dispute a diagnosis and/or prognosis.

The paralegal or investigator may also assist you by locating and interviewing your client's family members, friends, teachers, coaches, etc., and you may be able to obtain from them things like photographs, certificates, award documents, even report cards, etc. The paralegal is also better-positioned to develop a friendly relationship and help prepare these persons for appearances at a sentencing hearing.

Name of Expert	Type of Expert
Gillespie CPA PC, Darryl J.	Accountant
Graham & Poirot CPA's LLC	Accountant
Poirot, Peter A	Accountant
Hitechew, Ronald W.	Arson Expert
Conrad, William E.	Ballistics Expert
Davis, Ann	Ballistics Expert
Daniel M.D. J.D, Jack	Chemist/Toxicologist
Harris, Heather	Chemist/Toxicologist
Harris, Thomas M	Chemist/Toxicologist
Lee, Matthew C.	Chemist/Toxicologist
Dardick, Glenn S.	Computer (Hard/Software)
Garretson Consulting, Inc	Computer (Hard/Software)
Spencer Tech Solutions	Computer (Hard/Software)
Sensei Enterprises Inc	Computer Forensics Expert
Cunningham Ph.D., Mark D.	Corrections Expert
James E. Aiken And Associates, Inc.	Corrections Expert
Larry A. Peters, Inc	Education Expert
Arden Forensics	Forensic Pathologist
Schwartz-Watts, Donna	Forensic Psychiatrist
Advance Technology Investigations, Llc	Forensic Text Retrieval
Arden, Jonathan	Forensics
Callery, Richard M.D	Forensic Pathologist
Marquart, James W.	Gang Expert
Slack, Jeremy	Gang Expert
Abreu Language Services, Ltd	Interpreter
Beleno, Olga	Interpreter
Boliix, Paula	Interpreter
Boloix, Edward	Interpreter
Borkowsky, Fabiana	Interpreter
Caballero, Stephanie	Interpreter
Cohen, Esther	Interpreter
Dau, Daniela	Interpreter
De Velasco, Liana Arias	Interpreter
Dellaria, Massimo A.	Interpreter
Ding, Xuemei	Interpreter
Dressler, Margaret	Interpreter
French, Fabiana B.	Interpreter
Gallaway, Emily	Interpreter
Griffith, Milca S	Interpreter
Hoy, Mildred S.	Interpreter
Hoy, Mildred Schoenfeld	Interpreter
International Rescue Committe	Interpreter
Jennings Jr., Lloyd B.	Interpreter
Karlinsky, Leanne	Interpreter
Lamas, Roxana	Interpreter
Latham, Andrew	Interpreter

Name of Expert	Type of Expert
Linguistic Services Llc	Interpreter
Lopez-Cotaina, Jose	Interpreter
Lunsford, Ernest J.	Interpreter
Map International, Inc.	Interpreter
Nunez, Isolina	Interpreter
Rodriguez, Tania L.	Interpreter
Sigler, Myriam C.	Interpreter
Spanish Resources Llc	Interpreter
Valcourt, Carol	Interpreter
Versteylen, Chany	Interpreter
Viva Spanish LLC	Interpreter
Youssefi, Ali	Interpreter
Advanced Private Investigations, LLC	Investigator
Caudel, Marc	Investigator
Chapman, Robert	Investigator
Complete Surveillance And Investigative	Investigator
Confidential Investigative Services	Investigator
Dean, Steven	Investigator
Heilberg, David L	Investigator
Holt, Diana L.	Investigator
Ingram Investigations Incorporated	Investigator
James Sr, Gary Lee	Investigator
Janney, Alfred D.	Investigator
Litton, Kimberly R.	Investigator
Mountain Investigations	Investigator
Mullikin, Candace	Investigator
Pye, Doris	Investigator
Richard A. Ress & Associates Llc	Investigator
S. Yount Investigations, Inc	Investigator
Sullivan Investigations	Investigator
Wilson, Kenneth L.	Investigator
Wittig, Randall M.	Investigator
Wynne Investigation, Inc	Investigator
Kolovrat, Melissa M.	Legal Research
Daum M.D.P.C., Conrad H.	Mental Health Expert
Cummings, Ron	Mitigation Specialist
Durr, Leslie	Mitigation Specialist
Frosch, Phoebe	Mitigation Specialist
National Center On Institutions	Mitigation Specialist
Vogelsang Consulting Inc	Mitigation Specialist
Swerdlow, Russell H	Neurologist
James, Joette Deanna	Neuropsychologist
Moshlak, Steven	Other
Poarch, Christine	Other
Vanover, Kayla	Other
DNA Diagnostics, Inc.	Other Medical Expert

Name of Expert	Type of Expert
Phillips, Austin	Paralegal Services
Lambert, William Gregory	Presentence Investigation Expert
Caruso, Keith A.	Psychiatrist
Rector And Visitors Of The University Of Virginia	Psychiatrist
Thomas Jr. M.D., J. Anderson	Psychiatrist
Leippe, Phd, Michael	Psychological Eyewitness Expert
Boyd, Sara E.	Psychologist
Cornell Phd, Dewey G.	Psychologist
Corvin M.D., George P.	Psychologist
Danville Pittsylvania Community Services	Psychologist
Fletcher, Constance N.	Psychologist
Fracher, Dr., Jeffrey C.	Psychologist
Gravel, Trevor	Psychologist
Minrath Ph.D. , Marilyn F.	Psychologist
Reschly, Daniel J.	Psychologist
Spica Ph.D., D. Malcolm	Psychologist
Farrow, Thomas E.	Technical Services
Rudiger And Green	Transcriber
Shenandoah Reporting	Transcriber
Professional Audio Laboratories	Video Analyst
Custom Video And Photography Services	Videographer

Guide to Judiciary Policy

Vol. 7: Defender Services

Pt. A: Guidelines for Administering the CJA and Related Statutes

Ch. 3: Authorization and Payment for Investigative, Expert, or Other Services

[§ 310 In General](#)

[§ 310.10 Availability](#)

[§ 310.20 Limitations](#)

[§ 310.30 *Ex Parte* Applications](#)

[§ 310.40 Claims for Services Other than Counsel](#)

[§ 310.50 Forms for the Authorization and Payment for Services Other than Counsel](#)

[§ 310.60 Interim Payments](#)

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[§ 320 Authorization of Investigative, Expert, and Other Services](#)

[§ 320.10 Investigators](#)

[§ 320.15 Interpreters](#)

[§ 320.20 Psychiatrists, Psychologists](#)

[§ 320.30 Transcripts](#)

[§ 320.40 Fact Witnesses and Depositions](#)

[§ 320.50 Guardian Ad Litem](#)

[§ 320.60 Commercial Computer-Assisted Legal Research Services](#)

[§ 320.70 Other Services and Computer Hardware and Software](#)

[§ 320.80 Reimbursement of Expenses](#)

[§ 320.90 Record Keeping](#)

Appendices

[Appx. 3A Sample Request for Advance Authorization for Investigative, Expert, or Other Services](#)

[Appx. 3B Procedures for Interim Payments to Service Providers in Non-Death Penalty Cases](#)

[Appx. 3C Procedures for Interim Payments to Service Providers in Capital Proceedings](#)

[Appx. 3D Sample Order Authorizing the Acquisition of Computer \(Hardware and/or Software\) under the CJA](#)

§ 310 In General

§ 310.10 Availability

§ 310.10.10 Overview

- (a) Investigative, expert, or other services necessary to adequate representation, as authorized by subsection (e) of the Criminal Justice Act (CJA) ([18 U.S.C. § 3006A](#)), are available to persons who are eligible under the CJA, including persons who have retained counsel but who are found by the court to be financially unable to obtain the necessary services.
- (b) In this connection, a person with retained counsel is financially unable to obtain the necessary services if the person's resources are in excess of the amount needed to provide the person and the person's dependents with the necessities of life, provide defendant's release on bond, and pay a reasonable fee to the person's retained counsel, but are insufficient to pay for the necessary services.

§ 310.10.20 Retained Counsel and Fee Arrangements

- (a) In responding to requests for services under [18 U.S.C. § 3006A\(e\)](#) by a person represented by retained counsel, the court should inquire into the fee arrangement between the retained attorney and the client.
- (b) If the court finds the fee arrangement unreasonable in relation to fees customarily paid to qualified practitioners in the community for services in criminal matters of similar duration and complexity, or that it was made with a gross disregard of the defendant's trial expenses, the court may order the retained attorney to pay out of such fees all or such part of the costs and expenses as the court may direct.
- (c) The procedure outlined in the [Guide, Vol. 7A, § 210.40.40](#) applies to such persons who are financially able to pay some, but unable to pay all, the costs of necessary services.

§ 310.10.30 Pro Se Representation

- (a) Persons who are eligible for representation under the CJA, but who have elected to proceed pro se, may, upon request, be authorized to obtain investigative, expert, and other services in accordance with [18 U.S.C. § 3006A\(e\)](#).
- (b) The court should authorize subsection (e) services for pro se litigants and review and approve resulting claims in the same manner as is its practice with respect to requests made by CJA panel attorneys. However, in

matters for which appointment of counsel is discretionary under [18 U.S.C. § 3006A\(a\)\(2\)](#), the court should make a threshold determination that the case is one in which the interests of justice would have required the furnishing of representation.

- (c) Although a federal defender organization may be requested to provide administrative assistance to pro se litigants who wish to arrange for subsection (e) services, the investigative, paralegal or other services or resources of the organization should ordinarily be employed only when the organization is appointed as counsel of record, responsible for the conduct of the litigation.

§ 310.20 Limitations

§ 310.20.05 Engaging Relatives for Compensable Services

- (a) Prior to engaging any relative (as the term is defined in [5 U.S.C. § 3110](#)) to perform CJA compensable services, other than as associate counsel in the same law firm (**see:** [Guide, Vol. 7A, § 230.53.10](#)), counsel should first provide notification of the relationship and potential services to the presiding judicial authority.
- (b) The court may, in the interest of justice, and upon finding that timely procurement of necessary services could not await prior notification, approve payment for such services up to the dollar threshold for obtaining services without prior authorization under [18 U.S.C. § 3006A\(e\)\(2\)](#) and the [CJA Guidelines \(Guide, Vol. 7A, § 310.20.30\)](#).

§ 310.20.10 With Prior Authorization

- (a) With prior authorization, compensation for investigative, expert, and other services is limited to the amounts in the following table for CJA-compensable work performed on or after the effective date. For guidelines applicable to capital cases, **see:** [Guide, Vol. 7A, § 660.10.40](#) and [§ 660.20](#).

§ 310.20.10(a) Waivable Case Compensation Maximums for Investigative, Expert, and Other Services		
If services were performed between...	The compensation maximum is ...	Authority
01/01/16 to present	\$2,500	Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, enacted on Dec. 18, 2015.

§ 310.20.10(a) Waivable Case Compensation Maximums for Investigative, Expert, and Other Services		
If services were performed between...	The compensation maximum is ...	Authority
05/27/10 to 12/31/15	\$2,400	Federal Judiciary Administrative Improvements Act of 2010, Pub. L. No. 111-174, enacted on May 27, 2010.
12/8/04 to 5/26/10	\$1,600	Omnibus Appropriations Act, Fiscal Year 2005, Pub. L. No. 108-447, H.R. 4818, enacted December 8, 2004.
11/14/86 to 12/7/04	\$1,000	Pub. L. No. 99-651, 1986 HR 3004, enacted November 14, 1986.

- (b) The waivable case compensation maximum amounts apply per organization or individual, exclusive of reimbursement for expenses reasonably incurred, and per individual authorization to perform said service, except with regard to capital cases. **See:** [Guide, Vol. 7A, § 660.20](#).
- (c) A separate authorization should be obtained for each type of service for each person served, and for each defendant served, and for each case.
- (d) While the service provider may be compensated separately for each person served, care should be taken to ensure that duplicate charges are not being made for the same services.
- (e) If, under [18 U.S.C. § 3006A\(e\)](#), such services are rendered by members of an organization such as a corporation, unincorporated association, or partnership (other than those created under [18 U.S.C. § 3006A\(g\)](#)), in their capacities as members of that organization, compensation is deemed to have been earned by the organization and is paid to it only once, per CJA client served, in an amount not to exceed the statutory maximum, exclusive of reimbursement for expenses reasonably incurred.

§ 310.20.20 Waiving the Case Compensation Maximums

- (a) Payment in excess of the case compensation limit for services authorized prior to the performance thereof may be made when certified by the court or U.S. magistrate judge and approved by the chief judge of the circuit (or an active or senior circuit judge to whom excess compensation approval authority has been delegated) as being necessary to provide fair compensation for services of an unusual character or duration.

- (b) If it can be anticipated that the compensation will exceed the statutory maximum, advance approval should be obtained from the court and the chief judge of the circuit (or the active or senior circuit judge to whom excess compensation approval authority has been delegated). **See:** [Appx. 3A \(Sample Request for Advance Authorization for Investigative, Expert, or Other Services\)](#).

§ 310.20.30 Without Prior Authorization

- (a) [18 U.S.C. § 3006A\(e\)\(2\)\(A\)](#) authorizes the obtaining of investigative, expert, and other services, without prior authorization but subject to subsequent review, providing the cost of the services obtained does not exceed the amounts listed in the following table, plus expenses reasonably incurred. For information regarding obtaining investigative, expert, and other services in capital cases, **see:** [Guide, Vol. 7A, § 660](#).

§ 310.20.30(a) Limitations on Services Without Prior Authorization		
If services were performed between...	The compensation maximum is ...	Authority
05/27/10 to present	\$800	Federal Judiciary Administrative Improvements Act of 2010, Pub. L. No. 111-174, enacted on May 27, 2010.
12/8/04 to 5/26/10	\$500	Omnibus Appropriations Act, Fiscal Year 2005, Pub. L. No. 108-447, H.R. 4818, enacted December 8, 2004.
11/14/86 to 12/7/04	\$300	Pub. L. No. 99-651, 186 H.R. 3004, enacted November 14, 1986.

- (b) The limitation noted above in § 310.20.30(a) may be waived, however, if the presiding judge or U.S. magistrate judge (if the services were rendered in a case disposed of entirely before the U.S. magistrate judge), in the interest of justice, finds that timely procurement of necessary services could not await prior authorization. **See:** [18 U.S.C. § 3006A\(e\)\(2\)\(B\)](#).

§ 310.20.40 Periodic Increases to the Waivable Case Compensation Maximums

The Federal Judiciary Administrative Improvements Act of 2010, Pub. L. No. 111-174, enacted on May 27, 2010, amended the CJA to increase the waivable case compensation amounts listed in [§ 310.20.10](#) and [§ 310.20.30](#) simultaneously with any subsequent, cumulative adjustments under [5 U.S.C. § 5303](#) in the rates of pay under the General Schedule (currently calculated based on the determination of the annual Employment Cost Index adjustment), rounded to the nearest hundred dollars. The

Administrative Office will provide notice when new threshold amounts are effective under this provision.

§ 310.30 *Ex Parte* Applications

Ex parte applications for services other than counsel under [18 U.S.C. § 3006A\(e\)](#) must be heard *in camera*, and must not be revealed without the consent of the defendant. The application must be placed under seal until the final disposition of the case in the trial court, subject to further order of the court. Maintaining the secrecy of the application prevents the possibility that an open hearing may cause defendants to reveal their defense. Appointed counsel may not be required to submit evidence of a prior attempt to enter into a stipulation with the U.S. attorney as a prerequisite to obtaining services under 18 U.S.C. § 3006A(e). The court may encourage counsel to enter into stipulations, in the interest of expedition and economy, without, however, disclosing the contents or otherwise compromising the secret nature of the *ex parte* application.

§ 310.40 Claims for Services Other than Counsel

All claims for services other than counsel, under [18 U.S.C. § 3006A\(e\)](#), should include the following:

- (a) a statement as to the type of, dates of, and time expended for, the services provided;
- (b) an explanation of the fee arrangement (e.g., hourly rate, *per diem* rate, etc.);
- (c) an itemized statement of all expenses for which reimbursement is claimed; and
- (d) supporting documentation, where practicable, for all expenses of lodgings and subsistence, and for any expenses in excess of \$50.

§ 310.50 Forms for the Authorization and Payment for Services Other than Counsel

Forms for the authorization and payment for services other than counsel, together with instructions for the execution and distribution thereof, can be found on the [judiciary's public website](#).

§ 310.60 Interim Payments

§ 310.60.10 Non-Death Penalty Cases

- (a) Where it is considered necessary and appropriate in a specific case, the presiding trial judge may arrange for periodic or interim payments to an

individual whose services are obtained under [18 U.S.C. § 3006A\(e\)](#). For instructions on the procedures for effecting interim payments to persons other than counsel, as well as a sample memorandum order on this subject which provides for two alternative payment methods, **see:** [Appx. 3B \(Procedures for Interim Payments to Service Providers in Non-Death Penalty Cases\)](#).

- (b) The payment options provided in Appx. 3B are designed to strike a balance between the interest in relieving [subsection \(e\)](#) service providers of financial hardships in extended and complex cases, and the practical application of the statutorily imposed responsibility of the chief judge of the circuit to provide a meaningful review of claims for excess compensation. Other interim payment arrangements which effectuate this balance may be devised in consultation with the Administrative Office of the U.S. Courts' (AO) Defender Services Office.

§ 310.60.20 Death Penalty Cases

Presiding judicial officers are urged to permit interim payment in death penalty cases. Because the CJA compensation maximums for investigative, expert, and other services set out in [§ 310.20.10\(a\)](#) do not apply in capital cases, different procedures and memorandum orders must be used in those cases. **See:** [Guide, Vol. 7A, § 660.20](#). These procedures and sample memorandum orders are also set forth in [Appx. 3C \(Procedures for Interim Payments to Service Providers in Capital Proceedings\)](#).

§ 310.65 Proration of Claims

§ 310.65.10 In General

- (a) If services were provided for more than one CJA representation, the time spent in common, including travel time, must be represented on the voucher forms by:
- prorating the service time among the representations on separate vouchers; or
 - billing the entire service time on a voucher pertaining to one of the representations

The supporting materials to the vouchers must explain the method of billing and, when applicable, cross-reference the other CJA representations (**see:** [§ 310.65.20](#)).

- (b) When a service provider incurs travel or other expenses applicable to more than one CJA representation, the entire amount of the expenses must be billed on one voucher.

Time or expenses “spent in common” includes work performed simultaneously or within the same unit of time, or expenses incurred, for more than one representation (e.g., travel for more than one client). Double billing of time or expenses is prohibited (e.g., billing the same travel time or expenses applicable to more than one representation on more than one voucher).

- (c) A “CJA representation” is one in which the attorney is:
- a federal public or community defender providing representation under the CJA or related statutes, or
 - a CJA panel attorney or other attorney or entity authorized to obtain services for a particular representation under the CJA or related statutes.

Reference to a “voucher” in this section includes invoices submitted to a federal public or community defender organization for work performed for that entity.

For information regarding the overlap of billing time periods in the interpreter context specifically, see: [§ 320.15.30](#).

§ 310.65.20 Cross-Referencing Vouchers

- (a) Whenever a service provider submits a voucher, as provided by this section, that includes time spent in common, if the time is prorated then each CJA representation must be cross-referenced on the supporting documentation to each voucher. If the time is billed to one representation, the other representations must be cross-referenced on the supporting documentation to that voucher. However, to ensure that an appointed attorney does not receive inappropriate information as to another attorney’s use of the service provider, the CJA representations that are cross-referenced should not be identified by name and case number if the work was performed for an attorney other than the one who will be certifying the voucher, although the number of other representations should be listed.
- (b) After the attorney certifies the service provider’s voucher, the service provider, upon the request of the court’s designated CJA voucher review personnel, must provide the name, case number, and any other identifying information for such representations.

§ 310.65.30 Prorating Time Limitation

Proration of time among CJA representations must not result in a service provider billing a larger amount than would have been billed if all the time was assigned to one voucher.

§ 310.65.40 Application of the Case Compensation Maximum

Where compensation is claimed on a voucher for time spent in common on more than one CJA representation, the compensation will be applied to the pre-authorized and case compensation maximum amounts for the representation on that voucher.

§ 310.65.50 Time Spent in Common with Non-CJA Representations

- (a) If the service provider is billing under the CJA for time or expenses, including travel, that were spent in common for a purpose other than a CJA representation, the service provider must report such information so that the court can determine whether, in fairness to the provider, the time or expenses should be apportioned and the provider compensated for the time or expenses reasonably attributable to the CJA.

Note: There is no apportionment between a contract court interpreter's work for a court unit and the CJA, **see:** [§ 320.15.30](#).

- (b) The service provider should explain the rationale for billing under the CJA, and the court may conduct a further inquiry.
- (c) In determining whether time or expenses spent in common for a purpose other than a CJA representation should be apportioned, the court should consider:
- the time or expenses reasonably expended in the performance of the service provider's duties under the CJA in relation to the time and expenses expended furthering other purposes;
 - the significance to the representation of the duties performed or expenses incurred; and
 - the likelihood that the service provider would have performed the services or incurred the expenses under the CJA in the absence of the other purposes.

§ 310.70 Review of Vouchers

Absent extraordinary circumstances, judges should act upon claims for compensation for investigative, expert, or other services within 30 days of submission.

§ 320 Authorization of Investigative, Expert, and Other Services

§ 320.10 Investigators

When necessary to an adequate representation as described above, the court may authorize, under [18 U.S.C. § 3006A\(e\)](#), the services of an investigator.

§ 320.15 Interpreters

§ 320.15.10 Terms of Compensation

- (a) Interpreting services provided under the CJA may be compensated:
 - according to the terms and conditions set forth in the court interpreter services contract;
 - on an hourly rate basis; or
 - on another appropriate basis.
- (b) Interpreters should be compensated consistently throughout the district or, if applicable, in individual court locations.

§ 320.15.20 Reviewing the Rate of Compensation

- (a) In determining the reasonableness of rates paid to interpreters under the CJA, courts should utilize either:
 - (1) the half- and full-day rates established by the Director for contract court interpreters performing in-court services; or
 - (2) an hourly rate. The half- and full-day rates (prorated hourly) or the hourly overtime rate should be used as a guidepost for the reasonableness of the hourly rate.
- (b) Justification should be submitted to the presiding judicial officer if compensation is sought for an interpreter by a method different from or in an amount in excess of presumptive or maximum rates adopted by a court.
- (c) Appointed counsel may negotiate rates with the interpreter consistent with the guidance contained in this section.

§ 320.15.30 Overlap of Billing Time Periods

- (a) Contract court interpreters must not bill or receive funds from any other federal court unit, federal public defender, community defender organization, or other attorneys or entities obtaining interpreting services under the CJA or related statutes for any services rendered during the same half- or full-day for which the contract court interpreter is being compensated pursuant to the court interpreter services contract. **See:** [Guide, Vol. 5, § 220.30.20](#). Thus, an interpreter retained by the court under the court contract for a one-half or full-day period may not bill the CJA for any work performed during that same half-day or full-day period even if the court no longer requires the interpreter's services.

- (b) An interpreter billing on a half- or full-day rate basis, hourly basis, or other unit of time under the CJA must not charge any other federal court unit, federal public defender, community defender, CJA panel attorney, or other person or entity otherwise authorized by the court to obtain the services of an interpreter under the CJA or related statutes for any services rendered within the same time period.
- (c) When an interpreter is invoicing under the CJA on a half-day rate basis and works one half-day for a court unit and another half-day for a CJA representation, or is invoicing two separate half-days for different CJA representations, then the first half-day should be billed at the half-day rate and the second at the difference between the half-day and full-day rates, unless otherwise negotiated.
- (d) It is permissible to prorate compensation among more than one CJA representation (but expenses must be invoiced to one CJA representation) or to apportion compensation, including expenses, between a CJA representation and a non-CJA purpose (not including a federal court unit).
See: [§ 310.65](#).

§ 320.20 Psychiatrists, Psychologists

§ 320.20.10 Type of Examinations

[Chapter 313 of Title 18](#), as amended by the Insanity Defense Reform Act of 1984 (Chapter IV of the Comprehensive Crime Control Act of 1984), provides for **court-directed** psychiatric or psychological examination of individuals in connection with the various proceedings to determine mental condition authorized under that chapter. The functions of these separate proceedings are to determine:

- (a) the mental competency of a defendant to stand trial ([18 U.S.C. § 4241](#));
- (b) insanity at the time of the offense ([18 U.S.C. § 4242](#));
- (c) the mental condition of an acquitted person hospitalized following a finding of not guilty only by reason of insanity ([18 U.S.C. § 4243](#));
- (d) the present mental condition of a convicted defendant ([18 U.S.C. § 4244](#));
- (e) the present mental condition of an imprisoned person who objects to transfer to a treatment facility ([18 U.S.C. § 4245](#)); and
- (f) the present mental condition of a hospitalized person due for release ([18 U.S.C. § 4246](#)).

In addition, mental condition examinations may be conducted for purposes other than those specified in [18 U.S.C. chapter 313](#), e.g., to aid the defendant in preparing a defense.

§ 320.20.20 Source of Payment

- (a) CJA funds are used to pay for psychiatric and related services obtained in accordance with [18 U.S.C. § 3006A\(e\)](#) upon a determination that the services are “necessary for an adequate defense.” These are “defense” services, where the defendant selects the expert and controls the disclosure of the expert’s report.
- (b) It is important to note that psychiatrists and related experts may be used in many circumstances in which payment is made from a source **other** than the CJA appropriation. In these situations the court or the government selects the expert and persons other than the defendant also have access to the expert’s report. The Department of Justice (DOJ) generally pays for these “non-defense” services. The chart in [§ 320.20.60](#) summarizes payment responsibility for the various circumstances in which psychiatric and related services are utilized.

§ 320.20.30 Limitation of Amount

The limitations contained in [§ 310.20](#) apply to compensation claims submitted by “defense” psychiatrists and related experts, to be paid out of the CJA appropriation. For information regarding “dual purpose” examinations, **see:** [§ 320.20.50](#).

§ 320.20.40 Procedures for Payment

- (a) CJA Appropriation – Defense Services
 - (1) [Form CJA 21 \(Authorization and Voucher for Expert and Other Services\)](#) should be used for all payments for “defense” services in non-capital cases.
 - (2) [Form CJA 31 \(Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher for Expert and Other Services\)](#) should be used for all payments for “defense” services in death penalty cases.
 - (3) The form CJA 21 or CJA 31 should clearly describe the purpose of the expert’s service.
 - (4) If separate vouchers are submitted for examination and testimony, they should be cross-referenced by voucher number.

(b) DOJ

Compensation claims for psychiatric and related services to be paid for by the DOJ should be referred to the U.S. attorney or assistant U.S. attorney.

§ 320.20.50 Dual Purpose Examinations

- (a) On occasion, a psychiatrist or related expert will be asked to examine an individual for both a “defense” purpose and a “non-defense” purpose. In these cases, the defense has waived the confidentiality of the “defense” portion of the examination. In such dual purpose examinations, for the convenience of the expert providing the service, the entire compensation claim may be submitted on [Form CJA 21](#), or, in a death penalty proceeding, [Form CJA 31](#). The CJA will pay the expert the total amount approved and obtain reimbursement to the CJA appropriation from the DOJ for one-half of the cost. As a result of the AO’s need to seek reimbursement from the DOJ, claims submitted for dual purpose examinations must be accompanied by separate court orders that indicate:
- who requested the examination;
 - the specific purpose(s) of the examination;
 - to whom the examination is directed; and
 - to whom copies of the report are to be given.
- (b) The limitation in [§ 320.20.30](#) applies to 50 percent of the claim for a dual purpose examination in which a portion of the examination is for “defense” purposes.
- (c) In some “dual purpose” examinations both portions of the examination are chargeable to the same payment source. For instance, if the examination included evaluation of competency to stand trial under [18 U.S.C. § 4241](#) and evaluation of sanity at the time of the offense under [18 U.S.C. § 4242](#), the DOJ would be responsible for both portions of the examination and the entire compensation claim should be submitted to the U.S. attorney or assistant U.S. attorney.

§ 320.20.60 Summary Chart: Responsibility for Payment of Psychiatric and Related Expert Services		
Type of Service	CJA	DOJ
(a) To determine mental competency to stand trial, under 18 U.S.C. § 4241		

§ 320.20.60 Summary Chart: Responsibility for Payment of Psychiatric and Related Expert Services		
Type of Service	CJA	DOJ
(1) Examination costs		Yes, regardless of which party requests, including examination on court's own motion
(2) Testimony costs for examiner if called at hearing		Yes, regardless of which party calls
(3) Testimony costs for examiner if called at trial	If witness appears on behalf of defense	If witness appears on behalf of government
(b) To determine existence of insanity at time of offense, under 18 U.S.C. § 4242		
(1) Examination costs		Yes
(2) Testimony costs for examiner if called at trial		Yes, regardless of which party calls
(c) To determine existence of insanity at time of offense, under CJA subsection (e)		
(1) Examination costs	Yes	
(2) Testimony costs for examiner if called at trial	Yes	
(d) To determine mental condition of hospitalized person found not guilty only by reason of insanity, under 18 U.S.C. § 4243		
(1) Examination costs		Yes
(2) Testimony costs for examiner if called at hearing		Yes, regardless of which party calls
(e) To determine mental condition of convicted person suffering from mental disease or defect, under 18 U.S.C. § 4244		
(1) Examination costs		Yes
(2) Testimony costs for examiner if called at hearing		Yes, regardless of which party calls
(f) To determine mental condition of imprisoned person, under 18 U.S.C. § 4245		

§ 320.20.60 Summary Chart: Responsibility for Payment of Psychiatric and Related Expert Services		
Type of Service	CJA	DOJ
(1) Examination costs		Yes, including costs of additional examiner selected by imprisoned person in accordance with 18 U.S.C. § 4247(b)
(2) Testimony costs for examiner if called at hearing		Yes, regardless of which party calls, including additional examiner selected by imprisoned person in accordance with 18 U.S.C. § 4247(b)
(g) To determine mental condition of hospitalized person due for release, under 18 U.S.C. § 4246		
(1) Examination costs		Yes, including costs of additional examiner selected by hospitalized person in accordance with 18 U.S.C. § 4247(b)
(2) Testimony costs for examiner if called at hearing		Yes, regardless of which party calls, including additional examiner selected by hospitalized person in accordance with 18 U.S.C. § 4247(b)
(h) Examination of a person in custody as a material witness		Yes, under all circumstances
(i) Examination and testimony costs for expert witnesses not appointed under 18 U.S.C. §§ 4241, 4242, 4243, 4244, 4245, 4246	If requested by the defense	If requested by the government, or if appointed as an independent expert on court's own motion under Fed. R. Evid. 706

§ 320.30 Transcripts

§ 320.30.10 Authorization and Payment

- (a) For panel attorneys, the preferred method for payment of transcripts authorized by the court is for the court reporter or reporting service to claim compensation directly on a [Form CJA 24 \(Authorization and](#)

[Voucher for Payment of Transcript](#)). Alternatively, the panel attorney may pay for the court-authorized transcript and obtain reimbursement as an “out-of-pocket expense,” using Form CJA 24. **See:** [Guide, Vol. 7A, § 230.63.20](#). Regardless of which method is used, the limitations set forth in [§ 310.20](#) and the \$7,500 limitation set forth in [Guide, Vol. 7A, Ch. 6](#) are inapplicable with regard to the cost of transcripts.

- (b) In a direct appeal in a case in which counsel is assigned under the CJA, neither the CJA nor [28 U.S.C. § 753\(f\)](#) requires the signing of a pauper’s oath or certification by the court that the appeal is not frivolous in order to obtain a transcript.
- (c) For procedures regarding federal defender organization transcript payments, **see:** [Guide, Vol. 7A, § 430.10](#).

§ 320.30.20 Accelerated Transcript Costs

Routine apportionment of **accelerated** transcript costs among parties in CJA cases is prohibited. The following resolution was adopted by the Judicial Conference in March 1980, and modified in September 1986:

That the furnishing of accelerated transcript services in criminal proceedings should be discouraged; however, recognizing that there are some circumstances in which such transcript services are necessary and required by either the prosecution or the defense, or both, accelerated transcript services may be provided.

That in those cases where accelerated transcript services are provided, the party from whom the request or order emanates shall pay for the original, and if the requesting or ordering party is other than defense counsel appointed under the Criminal Justice Act, the CJA counsel shall be entitled to a copy at the copy rate.

That the present practice, in some districts, of routinely apportioning the total cost of accelerated transcript services equally among the parties should be abandoned.

See: [JCUS-SEP 86](#), p. 90.

§ 320.30.30 Commercial Duplication in Multi-Defendant Cases

- (a) In multi-defendant cases involving CJA defendants, no more than one transcript should be purchased from the court reporter on behalf of CJA defendants. One of the appointed counsel or the clerk of court should arrange for the duplication, at commercially competitive rates, of enough copies of the transcript for each of the CJA defendants for whom a transcript has been approved. The cost of such duplication will be

charged to the CJA appropriation. This policy would not preclude the furnishing of duplication services by the court reporter at the commercially competitive rate.

- (b) In individual cases involving requests for **accelerated** transcripts, the court may grant an exception to the policy set forth in (a) of this subsection based upon a finding that application of the policy will unreasonably impede the delivery of accelerated transcripts to persons proceeding under the CJA. Such finding should be reflected on the transcript voucher.

§ 320.30.40 Standards for Transcripts of Other than Federal Court Proceedings

In negotiating agreements and contracts for providing transcripts of other than federal court proceedings, including, for example, transcription or translation of wiretap recordings, it is recommended that the standards for the size and format of a page be the same as those used for transcripts of federal court proceedings.

§ 320.40 Fact Witnesses and Depositions

§ 320.40.10 Fees and Expenses of Fact Witnesses

- (a) Generally speaking, fees and expenses of fact witnesses for defendants proceeding under the CJA are paid by the DOJ. **See:** [Fed. R. Crim. P., Rule 17\(b\)](#); [28 U.S.C. § 1825](#).
- (b) Section 1825 of 28 U.S.C. specifically provides for the payment of witness fees by the DOJ in all federal criminal proceedings, and in proceedings for a writ of habeas corpus or in proceedings under section 2255 of that title upon certification of a federal public defender or assistant federal public defender, or clerk of court upon the affidavit of other counsel appointed under the CJA.
- (c) If advance witness travel funds are required, the court should issue the subpoena order, so stating, to authorize the travel advance by the marshal. These expenses will not be paid from CJA funds.

§ 320.40.20 Depositions

Depositions are covered by [Fed. R. Crim. P., Rule 15](#), rather than 18 U.S.C. § 3503 (repealed).

- (a) Expenses incurred in the taking of fact witness depositions (notarial fees, interpreters, transcripts, etc.) are paid by the DOJ, regardless of which party requested the deposition.

- (b) The costs of attendance of fact witnesses for either party at the deposition are paid by the DOJ under Rule 17 (b).
- (c) The costs of attendance of expert witnesses for the defense at the deposition are paid under the CJA.
- (d) Reasonable travel and subsistence expenses incident to attendance of counsel and the defendant at the deposition are paid by the DOJ (1) if the government is the requesting party, or (2) if the defendant is the requesting party and is unable to bear the deposition expenses, based on resources that would be used to determine financial eligibility for appointed counsel. However, it should be noted that the presence of the defendant is not essential to defense depositions since the confrontation clause only requires the defendant's presence if the depositions are intended to be used against the defendant.

§ 320.40.30 Travel Expenses, Subsistence, and Fees of Counsel in Habeas Corpus Cases

In habeas corpus and [28 U.S.C. § 2255](#) cases, the court may order the state or the government to pay the “expenses of travel and subsistence and fees of counsel” to attend the taking of a deposition at the request of the state or government. **See:** [Rules Governing §§ 2254 and 2255 Cases in U.S. District Courts, Rule 6](#).

§ 320.50 Guardian Ad Litem

§ 320.50.10 Proceedings Involving Juveniles

A guardian ad litem appointed under [18 U.S.C. § 5034](#) is not eligible for compensation under the CJA or any other authority. Any person who is appointed as both counsel and guardian ad litem in one case under § 5034 should prorate time spent fulfilling the duties of these two offices. Only time spent as counsel on a case is compensable and should be reflected on the CJA claim.

§ 320.50.20 Prisoner Transfer Proceedings

A guardian ad litem appointed in proceedings to verify consent of a minor or incompetent prisoner to transfer from the United States to a foreign country is eligible for compensation under the CJA under [18 U.S.C. § 4109\(b\)](#). **See:** [Guide, Vol. 7A, § 230.23.20\(d\)](#) on compensation limits and [Guide, Vol. 7B \(International Prisoner Transfer Proceedings\)](#).

§ 320.60 Commercial Computer-Assisted Legal Research Services

- (a) The court may authorize counsel to obtain computer-assisted legal research services, where the research is performed by employees of a commercial legal research firm or organization rather than by appointed counsel, provided that the total amount charged for computer-assisted

legal research services is reasonable. Requests by counsel for authority to obtain such computer-assisted legal research services should include: a brief explanation of the need for the research services; and an estimate of the charges.

- (b) Claims for compensation for such services should be submitted on [Form CJA 21 \(Authorization and Voucher for Expert and Other Services\)](#), or, in a death penalty proceeding, [Form CJA 31 \(Death Penalty Proceeding: Ex Parte Request for Authorization and Voucher for Expert and Other Services\)](#). For information concerning reimbursement for the cost of direct use, by appointed counsel, of computer-assisted legal research services, see: [Guide, Vol. 7A, § 230.63.30](#).

§ 320.70 Other Services and Computer Hardware and Software

§ 320.70.10 Other Services

In addition to investigators, psychiatrists, psychologists, and reporters, services other than counsel may include, but are not necessarily limited to:

- interpreters;
- computer systems and automation litigation support personnel and experts;
- paralegals and legal assistants, including law students;
- neurologists and other medical experts; and
- laboratory experts in such areas as ballistics, fingerprinting, and handwriting.

§ 320.70.20 Notarial and Stenographic Expenses

The use of CJA funds is authorized to pay expenses of eligible defendants for stenographic and notarial expenses required to perpetuate and authenticate testimony of expert witnesses for such defendants.

§ 320.70.30 Extraordinary Office Expenses

- (a) CJA attorneys are expected to use their own office resources, including secretarial help, for work on CJA cases. See: [Guide, Vol. 7A, § 230.66.10](#).
- (b) However, unusual or extraordinary expenses of these types may be considered “other services necessary for an adequate defense” and may be paid from CJA funds under [18 U.S.C. § 3006A\(e\)](#).

- (c) In determining whether the expense is unusual or extraordinary, consideration should be given to whether the circumstances from which the need arose would normally result in an additional charge to a fee-paying client over and above that charged for overhead expenses. **See:** [Decision of the Comptroller General, B-139703, Feb. 28, 1974, 53 Comp. Gen. 638.](#)

§ 320.70.40 Computer Hardware, Software, or Litigation Support Services

(a) Overview

- (1) Providing an adequate defense may require CJA panel attorneys to utilize computer hardware, software, or litigation support services not typically available in a law office. In such cases, following the standards in [§ 320.70.30](#), counsel may apply to the court for authorization of CJA funds for the acquisition of such property or services.
- (2) Before seeking court approval for any computer hardware or software with a cost exceeding the limitations in [§ 310.20.30\(a\)](#), or for the utilization of computer systems, litigation support products, services, personnel, or experts with an expected combined cost exceeding \$10,000, appointed counsel must consult the National Litigation Support Team in the Defender Services Office, Administrative Office of the United States Courts (phone number: 510-637-3500) for guidance. Counsel must inform the court in writing of the Defender Services Office's advice and recommendation regarding counsel's proposed expenditure. **See also:** [Appx. 3D \(Sample Order Authorizing the Acquisition of Computer \[Hardware and/or Software\] under the CJA\).](#)

(b) Acquisition of Computer Hardware and/or Software

- (1) The request for acquisition of the computer hardware and/or software, or for the procurement of litigation support services should be submitted on a [Form CJA 21 \(Authorization and Voucher for Expert and Other Services\)](#), or, in a death penalty proceeding, [Form CJA 31 \(Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher for Expert and Other Services\)](#).
- (2) Property purchased with CJA funds is the property of the United States and remains so after the case is completed.
- (3) When property is purchased, counsel must provide the Defender Services Office with a copy of the following documents to ensure the property is properly accounted for: a copy of the court's order

approving the request; a copy of the completed [Form CJA 21](#) (or [Form CJA 31](#)); the purchase order from the vendor and any receiving documents, such as a copy of the packing slip or the company's invoice.

- (4) Because computer hardware or storage devices being used by counsel may contain confidential or privileged information, all case-related materials must be removed before the hardware is returned as described below. Unless otherwise required by the court or by law, counsel should retain copies, electronic or otherwise, of the case-related materials for the client's file.

Note: When large amounts of electronic information are placed on drives or storage devices purchased with CJA funds, counsel may apply to the court to retain the drive or an alternative drive as the most cost-effective and efficient method for preserving the data.

- (5) Upon the completion of the case, counsel must contact the National Litigation Support Team in the Office of Defender Services at (510) 637-3500 for instructions on returning any software, and directions for deleting case-related material from any hardware and returning it to the National Litigation Support Team for the permanent removal of case-related material. If appointed counsel has acquired software, then counsel should provide all accounting information for the software, including any serial numbers, activation codes, or other identifying information, and remove the software from his or her machines. If appointed counsel acquired computer hardware, it must be returned in good condition.

§ 320.70.50 Paralegals, Legal Assistants, and Other Non-Secretarial Support

- (a) For services of paralegals, legal assistants, and other non-secretarial professional support personnel employed by appointed counsel, the court will determine a reasonable hourly compensation rate that may not exceed the lesser of the rate paid to counsel under the CJA or the rate typically charged by counsel to a fee-paying client for such services.
- (b) Authorizing compensation at such rates should result in greater efficiency and lower costs for the CJA program than would occur if counsel performed and charged for these services.

§ 320.80 Reimbursement of Expenses

§ 320.80.10 Determination of Reasonableness

In determining the reasonableness of expenses of persons furnishing investigative, expert, or other services, claimants and the court should be guided by the provisions of

these Guidelines regarding reimbursement of expenses of counsel. **See:** [Guide, Vol. 7A, § 230.63](#) and [§ 230.66](#). Gross receipts or other taxes levied on fees for expert services rendered under the CJA are not reimbursable expenses.

§ 320.80.20 Government Travel Rates

Government travel rates at substantial reductions from ordinary commercial rates may be available from common carriers for travel authorized by the court in connection with representation under the CJA. To obtain such rates, investigators and other service providers must contact the clerk of court and obtain prior approval from the presiding judicial officer.

§ 320.90 Record Keeping

- (a) Investigative, expert, and other service providers must maintain contemporaneous time and attendance records for all work billed by them, as well as expense records.
- (b) Such records are subject to audit and must be retained for three years after approval of the appointed counsel's or the service provider's final voucher, whichever is later, for a representation.

18 U.S. Code § 3006A - Adequate representation of defendants

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§ 3006A.

Adequate representation of defendants

(e) Services Other Than Counsel.—

(1) Upon Request.— 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, or the United States magistrate judge if the services are required in connection with a matter over which he has jurisdiction, shall authorize counsel to obtain the services.

(2) Without Prior Request.—

(A) Counsel appointed under this section may obtain, subject to later review, investigative, expert, and other services without prior authorization if necessary for adequate representation. Except as provided in subparagraph (B) of this paragraph, the total cost of services obtained without prior authorization may not exceed \$800 and expenses reasonably incurred.

(B) The court, or the United States magistrate judge (if the services were rendered in a case disposed of entirely before the United States magistrate judge), may, in the interest of justice, and upon the finding that timely procurement of necessary services could not await prior authorization, approve payment for such services after they have been obtained, even if the cost of such services exceeds \$800.

(3) Maximum Amounts.— Compensation to be paid to a person for services rendered by him to a person under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed \$2,400, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, or by the United States magistrate judge if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active or senior circuit judge.

(4) Disclosure of fees.— The amounts paid under this subsection for services in any case shall be made available to the public.

(5) The dollar amounts provided in paragraphs (2) and (3) shall be adjusted simultaneously by an amount, rounded to the nearest multiple of \$100, equal to the percentage of the cumulative adjustments taking effect under [section 5303 of title 5](#) in the rates of pay under the General Schedule since the date the dollar amounts provided in paragraphs (2) and (3), respectively, were last enacted or adjusted by statute.

18 U.S. Code § 3599 - Counsel for financially unable defendants

§ 3599.

(g) (2) Fees and expenses paid for investigative, expert, and other reasonably necessary services authorized under subsection (f) shall not exceed \$7,500 in any case, unless payment in excess of that limit is certified by the court, or by the United States magistrate judge, if the services were rendered in connection with the case disposed of entirely before such magistrate judge, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active or senior circuit judge.

IN THE UNITED STATES DISTRICT COURT
FOR THE [REDACTED]

UNITED STATES OF AMERICA,

v.

Criminal No.: [REDACTED]

[REDACTED],

Defendant.

EX PARTE MOTION TO APPOINT AND COMPENSATE A PARALEGAL

NOW COMES the Defendant [REDACTED] (the “Defendant”), and moves the Court, pursuant to 18 U.S.C. § 3006A(e)(1), to appoint a paralegal to provide services to the Defendant in the preparation of his case and also moves the Court to approve funds to compensate the paralegal. In support of his motion, the Defendant states as follows:

1. The United States filed an indictment charging the Defendant and four co-defendants with one or more of the following offenses: Conspiracy to Distribute and Possess with Intent to Distribute Methamphetamine, in violation of 21 U.S.C. § 846; Distribution of Methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C); Maintaining Drug-Involved Premises, in violation of 21 U.S.C. § 856(a)(1); Using the United States Mail to Cause, Commit and Facilitate a Felony Violation of the Controlled Substances Act, in violation of 21 U.S.C. § 843(b); and a Forfeiture Allegation, in violation of 18 U.S.C. § 942(d), 21 U.S.C. § 853.
2. The Defendant is one of five defendants (collectively the “Defendants”) named in the Indictment, which contains twenty-seven (27) counts.
3. The Defendant appeared for his arraignment for the Indictment on March 23, 2016 at 2:00 p.m.

[REDACTED]

4. The Government has produced three (3) DVDs of discovery material to date, including co-defendant interviews, voluminous postal records, voluminous financial records, evidence relating to three search warrants in addition to photograph, images and text messages from co-defendant [REDACTED] cellular phone. Additionally, the Government produced a flash drive of 64GB of data this week, which contains voluminous text messages, images, photographs and videos extracted from the Defendant's cellular phone.

5. Accordingly, the Defendant, by counsel, moves the Court for approval of paralegal support to assist defense counsel in reviewing the voluminous bank and postal records provided by the United States in addition to the evidence extracted from the Defendant's cellular phone. Without the assistance of a paralegal, counsel will have to review all of the records at a much higher hourly rate.

6. The Defendant is indigent and he does not have the financial means to retain a paralegal to assist in his defense. Therefore, counsel for the Defendant respectfully requests that the Court enter an order, pursuant to 18 U.S.C. § 3006A(e)(1), authorizing counsel to retain a paralegal to assist the Defendant in preparing for trial.

7. Defense Counsel seeks to hire [REDACTED], to assist the Defendant in preparing his case. Ms. [REDACTED] has an Associate's Degree in Criminal Justice, a Bachelor's Degree in Criminal Justice and is currently pursuing her Master's Degree in Criminal Justice; accordingly, she is qualified to provide the services required by counsel. Ms. [REDACTED] has previously been appointed as a paralegal by this Court in [REDACTED], and she is providing services in another case currently pending before the Honorable [REDACTED]. The Defendant respectfully requests authority to retain Ms. [REDACTED] to provide

reasonable and necessary paralegal services to the Defendant. A copy of Ms. [REDACTED] resume is attached hereto as **Exhibit A**.

8. Ms. [REDACTED] hourly rate is \$40.00 per hour, in addition to reimbursement for mileage and other travel expenses. It is estimated that Ms. [REDACTED] will need approximately fifty (50) hours to complete her review of the records that are material to the Defendant; therefore, the Defendant, by counsel, respectfully requests approval to hire Ms. [REDACTED] and requests funding in the amount of \$2,000.00, in addition to mileage and other travel reimbursements.

9. Upon a review of the marketplace for similar services, it would appear that the compensation set forth herein is consistent with the prevailing rates in the [REDACTED] [REDACTED] for an experienced paralegal with similar experience and knowledge.

10. Due to the fact that the foregoing motion reveals the trial strategies of defense counsel, which are privileged, the instant motion has been filed *ex parte*.

11. A proposed order is attached hereto as **Exhibit B**.

WHEREFORE, pursuant to 18 U.S.C. §3006A(e)(1), *Ake v. Oklahoma*, 470 U.S. 68 (1984), and the *United States v. Boone*, 245 F.3d 352 (4th Cir. 2001), the Defendant, by counsel, respectfully requests that the Court enter an order approving the appointment of Ms. [REDACTED] as a paralegal and also enter an order approving the sum of \$2,000.00 as compensation for [REDACTED], plus reimbursement for mileage and other travel expenses, for the purpose of rendering investigative services that are reasonable and necessary for the preparation of the Defendant's case.

[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Counsel for the Defendant

Sample Engagement Letter: Contents of Financial Arrangements

Case name: _____

Case number: _____

The engagement of your services for this case is subject to the following:

- (1) You will be compensated at a rate of \$ _____ per hour [or specify other fee arrangement], and [\$ _____ per hour for long-distance travel-related time that will be explained in correspondence to you]. The maximum payment amount authorized by the court as of this date for your services in \$ _____, which includes any expenses incurred by you.
- (2) You will submit your voucher(s) (CJA Form 21 in a non-capital representation and CJA Form 31 in a capital representation) to me, and it is my responsibility as counsel to certify to the court that the services were rendered. Payment for your services is subject to approval by the presiding judge and, in certain circumstances, the chief judge of the court of appeals. Approved payments are made by the Department of the Treasury out of the federal judiciary's Defender Services account, not by me or my law firm.
- (3) The presiding judge (and the circuit chief judge, if applicable) has discretion to reduce a voucher. Specific reasons include: (a) a mathematical error; (b) non-compliance with the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), *Guide to Judiciary Policy*, Volume 7, Part A, or court policies; and (c) a determination that the services claimed are reasonable either in terms of the work performed or the amount of time and expenses submitted. Accordingly, this Engagement Letter is not a guarantee of payment for all services rendered or expenses incurred.
- (4) **Do not perform services or incur expenses that would result in an invoice in excess of the maximum payment amount authorized by the court** (as set forth in paragraph (1)). Doing so creates a risk that the court will not authorize the payment for the work done or expenses incurred in excess of the maximum authorized amount, even if the services performed or expenses incurred are necessary. You must advise me **before** you exceed the court's maximum authorized payment amount, and if I determine such additional work and/or expenses are necessary for the representation, I will seek approval from the court for a new maximum authorization level, before such work is performed or expenses incurred.
- (5) Travel expenses will be reimbursed on the basis of actual expenses incurred. Please consult with me regarding the maximum reimbursement amounts for travel expenses. Airline travel must be authorized by the court by my application. If airline travel is authorized, I will provide guidance to you regarding the purchase of a ticket.

- (6) Record Keeping – Consistent with Guidelines § 320.90, you are required to maintain contemporaneous time and attendance records for all work/services billed, including work performed by associates, partners, and support staff, as well as expense records. These records should be submitted with your CJA voucher for payment and must be retained for three years after approval of the appointed counsel’s or the service provider’s final voucher, whichever is later.

- (7) Unless otherwise authorized by the court, a voucher for services performed and expenses incurred for the representation will be submitted at the conclusion of your services. While the court attempts to process invoices as quickly as possible, there may be delays in payment due to workload and other factors.

- (8) Scope of Work – You are authorized to do the following work:

Accepted by: _____

Date: _____