INSTRUCTIONS FOR CJA FORM 31

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DEATH PENALTY PROCEEDINGS: *EX PARTE* REQUEST FOR AUTHORIZATION AND VOUCHER FOR EXPERT AND OTHER SERVICES

The CJA Form 31 should be used to obtain investigative, expert, and other services in all death eligible cases through disposition of the case, regardless of whether the death penalty is authorized, not authorized, or de-authorized.

Read these instructions carefully before completing the form. Accuracy and thoroughness will aid in the prompt payment of the claim. Please type or print clearly in blue or black ink. If the form is generated from the automated system, Items 1-11 and 13 will be preprinted on the form. Attach an itemized statement of the services provided and expenses incurred. Give the date and the number of hours claimed for each service provided. Provide dates for, a description of, and the purpose for any expenses incurred. For additional guidance, refer to the Guidelines for Administering the CJA and Related Statues (CJA Guidelines), Volume 7A, *Guide to Judiciary Policy*, which is available at www.uscourts.gov.

All payments made pursuant to this claim are subject to post-audit; overpayments are subject to collection, including deduction of amounts due from future vouchers. Contemporaneous time and attendance records, as well as expense records, must be retained for three years after approval of the final voucher in a representation (CJA Guidelines § 320.90).

Service providers should review their vouchers to ensure that they do not contain errors, duplicate payment claims, or other improper charges. They should also review their billing practices to ensure that claims are appropriate.

Refer to 18 U.S.C. § 3559(f) and §§ 660 and 310.20 of the CJA Guidelines concerning the conditions for making *ex parte* requests.

NOTE: Prior authorization from the presiding judicial officer must be secured for all investigative, expert, or other services where the total combined costs (excluding reimbursement for reasonable expenses) will exceed the limitations set forth in § 310.20.30 of the CJA Guidelines. Amounts for services obtained with prior authorization are not included in the § 310.20.30 limitation. Failure to obtain prior authorization will result in the disallowance of any amount claimed for compensation in excess of the § 310.20.30 limitation, unless the presiding judicial officer finds that, in the interest of justice, timely procurement of necessary services could not await prior authorization. See CJA Guidelines § 660 and 310.20.

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. See CJA Guidelines § 310.65.40.

If prior authorization is obtained for an investigative, expert or other service and later it is determined that the cost of the service will exceed the initial estimate by a significant amount, you should seek, from the presiding judicial offering, further prior authorization for the addition amount.

The presiding judicial officer's approval of payment in Item 28 may require additional approval by the chief judge of the court of appeals (or active circuit judge to whom the chief judge has delegated excess compensation approval authority) consistent with the statutory amount set forth in 18 U.S.C. § 3599(g)(2) and CJA Guidelines, § 660.20.20. Pursuant to that provision, if the aggregate amount of compensation and expenses for all investigative, expert, and other services exceeds that statutory amount in any case, payment in the excess of that amount must be certified by the presiding judicial officer as necessary to provide fair compensation for service of an unusual character or duration, and the amount of the excess payment must be approved by the chief judge of the court of appeals (or delegate).

Item 1.	**CIR./DIST./DIV. CODE**: This four-character location code is the circuit or district, and divisional office codes for the court where the proceedings for the person represented are held. These codes are entered automatically by the payment system or manually by court staff.
Item 2.	**PERSON REPRESENTED**: Give the full name of the person whom you were appointed to represent.
Items 3-6.	**DOCKET NUMBERS**:Provide the case number assigned by the court. Enter the number using the last two digits of the calendar year (YY), the sequential number assigned by the court (NNNNNN), and the defendant number (DDD) as shown on the indictment or charging document. The format of the docket number is YY-NNNNNN-DDD. **Note:** See item 16a instructions with respect to options for claiming compensation when time is spent in common for more than one CJA representation.
Item 7.	**IN CASE/MATTER OF (CASE NAME):** In criminal cases, enter *U.S. vs. Defendant's Name*. If it is a multiple defendant case, give the case cite on the indictment (e.g., *U.S. vs. Lead Defendant's Name*, *et al*). If this is a habeas corpus proceeding, enter the *Name of the Petitioner vs. the Name of the Respondent* and include the respondent's title.
Item 8.	**TYPE PERSON REPRESENTED**: Check the box that defines the legal status of the person represented.
Item 9.	**REPRESENTATION TYPE**: Use the CJA Form 31 only if this is a death penalty representation. Check one of the following types of representation: **D1** Habeas corpus (capital) petition pursuant to 28 U.S.C. § 2254, seeking to vacate or set aside a

state death sentence and appeals;
D2 Federal capital prosecution, either trial or direct appeal;
D3 Habeas corpus (capital) petition pursuant to 28 U.S.C. § 2255 seeking to vacate or set aside a federal death sentence and appeals;
D4 Death penalty prosecution in federal court under a state statute or any authority other than the United States Code and appeals;
D5 (no longer applies)
D6 (no longer applies)
D7 State clemency (capital) sought from a capital conviction originating in a state court-- the appointing judge should issue a separate state clemency voucher at the time of the §2254 capital habeas corpus appointment (D1);
D8 Federal clemency (capital) sought from a capital conviction in a federal prosecution (D2)-- the appointing judge should issue a separate federal clemency voucher at the time of the §2255 capital habeas corpus appointment (D3); or
DM Death Penalty Malpractice representation.

Item 10. **OFFENSE(S) CHARGED:** If the case is a capital prosecution in federal court, cite the U.S. Code (title and section) or other code citation of all charges, up to five. List all death-eligible offenses first. If this is a direct appeal of a federal prosecution, list all offenses for which the defendant was convicted.

Item 11. **ATTORNEY'S STATEMENT, NAME AND MAILING ADDRESS:** Check the appropriate box to indicate whether the request is for authorization to obtain services, or approval of services already provided. Include, for the services described in Item 12, the total estimated dollar amount for compensation and expenses. Estimate the cost of the services (including expenses) requested, and show the amount where required on the form. Note the basis for compensation (e.g., number of hours of work at hourly rate, number of days at daily rate, or a fixed dollar fee). This statement must be signed and dated by counsel for the person represented (or by the person proceeding pro se). Check the appropriate box to designate the attorney status as an attorney from a legal organization (bar association, legal aid agency, or community defender organization not receiving a periodic sustaining grant under the CJA, a CJA panel attorney, a retained attorney whose client is unable to afford the cost of the service requested, or a person who qualifies for representation under the CJA but has chosen to proceed *pro se.*

Give the complete legal name, mailing address, and telephone number of the attorney appointed to represent the person whose name is shown in Item 2. Provide the mailing address and telephone number of the attorney.

All totals for compensation and expenses authorized for investigative, expert, and other services will be included as a part of the statutory maximum. (Payments to counsel for representation is not a part of the statutory maximum.) The court may use this information to help determine whether advance approval should be obtained from the chief judge of the court of appeals (or delegate) in anticipation that the statutory amount for compensation and expense for investigative, expert, and other services will be exceeded. If the estimated amount has been authorized already, in whole or in part, through a case budgeting process by the court (and by the chief judge of the court of appeals (or delegate) if applicable), attach the appropriate documentation to the first payment voucher submitted. See CJA Guidelines § 660.20.

Item 12. **PROCEDURES FOR REQUESTING PSYCHIATRIC AND PSYCHOLOGICAL SERVICES:** If this is a request for an examination by a psychiatrist or psychologist, state whether the purpose of the examination is to determine: (1) the current mental state of the person represented, or (2) the mental state at the time of the person's alleged offense. Counsel may request authorization to obtain necessary psychiatric and related services when the purpose of an examination is to assist the defense and counsel wishes to control disclosure of the examination report (i.e., keep it confidential from the court and the prosecution) as well as to select the expert conducting the examination. If the examination is ordered pursuant to a statute, cite the statute (U.S. Code, title and section). See CJA Guidelines § 320.20.

In habeas corpus proceedings, payment of fees and expenses of psychiatric examinations for purposes other than representation of the petitioner is not paid from Defender Services funds, but is determined by the rules governing 28 U.S.C. § 2254 cases in the United States district courts and rules governing 28 U.S.C. § 2255 cases in the United States courts. In order to avoid confusion and possible delays in payment, the order authorizing the services to be obtained should specify the statutory authority and the agency responsible for payment.

DESCRIPTION OF AND JUSTIFICATION FOR SERVICES: Briefly, describe the nature of the services requested and the reason services are necessary to provide adequate representation.

Item 13. **TYPE OF SERVICE PROVIDER:** Check the box which identifies the type of service provider requested. If you check the box "Other," be sure to specify the type of service provider. If computer assisted legal research (CALR) is to be checked, refer to § 320.60 of the CJA Guidelines for an explanation of the criteria and procedures for approval of CALR as a necessary service under the CJA. If Computer (Hardware/Software/Systems) or Litigation Support Services is to be checked, refer to § 320.70.40 of the CJA Guidelines. Litigation support services are those from vendors who provide hosting, document

and evidence review and organization, and other similar document management services, as distinct from "computer forensics experts," who serve as consulting and/or testifying experts on issues related to the substantive defense of a case.

Item 14.

COURT ORDER: This court order must be signed and dated by the presiding judicial officer. An additional court order is not necessary except for certain psychiatric and psychological examinations as explained in the instruction for Item 12, or to authorize payment for services exceeding the limitation set for at § 310.20.30 of the CJA Guidelines when prior authorization was not obtained (see Item 23). Indicate whether full or partial repayment was ordered by the court from the person represented by check "Yes" or "No."

Item 15.

STAGE OF PROCEEDING: Check the box that corresponds to the stage of proceeding for services claimed in Item 16 even if it is anticipated that the work will be used in connection with a later stage of the proceeding. CHECK ONLY ONE BOX. Submit a separate voucher for each stage of proceeding. **NOTES:** (1) The stage noted as "State Court Appearance" under "Habeas Corpus" should be used for federal counsel work associated with a state court appearance originating from a federal capital habeas corpus petition brought pursuant to 28 U.S.C. §2254, when authorized by the presiding federal judge; and (2) the stage noted as "Other" under "Other Proceeding" should be used only for a proceeding that does not fit within the other described categories.

Item 16.

CLAIM FOR SERVICES AND EXPENSES:

COMPENSATION (Item 16a): Enter the total amount claimed for professional services rendered. On an attachment to the voucher, describe in detail the services provided, including dates of service and the amount of time spent (in hours and tenths of hours). State the basis for the fee claimed (e.g., hourly rate, daily rate, fixed fee).

CJA Guidelines § 310.65 provides information regarding the proration of claims.

Time Spent in Common with Other CJA Representations

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: (a) prorating the service time among the representations on separate vouchers; or (b) billing the entire service time on a voucher pertaining to one of the representations. (See Items 16b and 16c for procedure that expenses incurred in common must be billed to one of the representations.) Time "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 to more than one representation). See CJA Guidelines § 310.65.10(a) and (b).

(A "CJA representation" is one in which the attorney is (a) a federal public or community defender providing representation under the CJA or related statutes, or (b) 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" includes invoices submitted to a federal public or community defender organization for work performed for that entity. See CJA Guidelines § 310.65.10(c).

Proration of time among CJA representations must not result in a service provider billing a larger amount than would have been billed had the service provider assigned all of the time to one voucher. See CJA Guidelines § 310.65.30. For example, a service provider who spends a tenth of an hour (currently the lowest unit of time) in common with more than one CJA representation should assign the one-tenth hour to one of the vouchers. Thus, proration could result in time not being billed for each representation for which time was spent in common.

Cross-Referencing Representations for Time Spent in Common

Whenever a service provider submits a voucher that includes time spent in common and prorates that time, 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. See CJA Guidelines §§ 310.65.10(a) and 310.65.20 (a).

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. See CJA Guidelines § 310.65.20(b).

Time Spent in Common with Non-CJA Representations

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 to the court and explain the rationale for invoicing all or part of the time under the CJA as provided by § 310.65.50 of the CJA Guidelines 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 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 CJA Guidelines § 320.15.30.

Additional Instructions for Interpreters

CJA Guidelines § 320.15 provides specific information with respect to the billing of interpreter services. Interpreters are responsible for understanding the compensation structure for interpreting services provided for a CJA representation (including travel time and expenses, if any) in each district or court location and for billing accordingly.

Contract court interpreters must not bill or receive funds from any other federal court unit, federal public or 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, hourly period, or other unit of time for which the contract court interpreter is being compensated pursuant to the court interpreter services contract. See Guide to Judiciary Policy, 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. See CJA Guidelines § 320.15.30(a).

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. 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 CJA Guidelines § 320.15.30(b).

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. See CJA Guidelines § 320.15.30(c).

Interpreters must submit the following information with each voucher: (a) the times of day for which services are being billed; and (b) the number of other vouchers or claims submitted, or to be submitted, for interpreting services provided on the same date for a CJA representation or for a federal court unit, and times of service applicable to the other vouchers or claims.

TRAVEL EXPENSES (Item 16b): Travel related expenses that are incidental to providing services (e.g., transportation, lodging, meals, car rental, parking, etc.) must be itemized on a separate sheet, indicating dates the expense was incurred. Attach supporting documentation (receipts, canceled checks, etc.) for travel expenses. Travel expenses by privately owned automobile, motorcycle or aircraft, should be claimed at the rate in effect for federal employees at the time of travel. Claims for mileage reimbursement must include the starting location, the destination, and the number of miles traveled. For overnight travel, reasonable expenses for lodging and meals will be reimbursed on an actual expense basis; per diem is not allowed. Service providers are limited to the travel and subsistence expenses of federal employees. The clerk of court can advise you of applicable rates and federal government travel regulations. See CJA Guidelines §§ 230.46, 230.60, and 230.63.40.

When a service provider travels in connection with more than one CJA representation, the travel expenses must be billed to one representation. See CJA Guidelines § 310.65.10(b).

See Item 16a instructions with respect to cross-referencing the representations.

See Item 16a instructions regarding the billing of travel expenses incurred in common for a purpose other than a CJA representation.

OTHER EXPENSES (Item 16c): Itemize all reimbursable out-of-pocket expenses incurred incidental to services provided. Enter the total claimed where required on the form. Submit supporting documentation (receipts, canceled checks, paid invoices, etc.) for all single item expenses in excess of $50. Do not include general office overhead (e.g., rent, telephone services, secretarial services) as reimbursable expenses. Fees and expenses for consultants in death penalty cases should be claimed on this form.

When a service provider incurs expenses in connection with more than one CJA representation, the expenses must be billed to one representation. See CJA Guidelines § 310.65.10(b).

See Item 16a instructions with respect to cross-referencing the representations

See Item 16a instructions regarding the billing of expenses incurred in common for a purpose other than a CJA representation.

The columns under "**FOR COURT USE ONLY**" will reflect any mathematical and technical adjustments to the claim during the judicial approval process or changes during a required additional review of the chief judge of the court of appeals (or delegate).

Item 17

PAYEE'S NAME AND MAILING ADDRESS, CLAIMANT'S CERTIFICATION OF SERVICE PERIOD AND CLAIM STATUS: Provide the complete name and address of the payee (claimant). The claimant must certify the dates covered by indicating the date range for services rendered. Check the box to indicate whether this is (1) a final payment for services, (2) an interim payment, or (3) a supplemental payment (an additional claim submitted after a final payment). If this is an interim payment, indicate the interim payment number. The claimant or payee must sign and date the payment certification statement prior to submitting the claim to the attorney for certification that the services were rendered and received. Provide the Taxpayer Identification Number (TIN) to report these earnings to the Internal Revenue Service (IRS).

Item 18.

CERTIFICATION OF ATTORNEY: This section must be completed bythe attorney appointed to provide representation, a retained attorney whoseclient is unable to afford cost of the services requested, or by a personproceeding *pro se* under the CJA.

Items 19-22.

APPROVED FOR PAYMENT -- COURT'S USE ONLY: The presiding judicial officer must review for reasonableness and compliance with the CJA Guidelines every claim for compensation and any reimbursement for expenses incurred. After review, the judicial officer will indicate the amount approved for payment in each of the payment categories. These amounts will reflect any mathematical and technical adjustments made to the claim.

The "**TOTAL AMOUNT APPROVED/CERTIFIED**" (Item 22) is the amount approved for payment of the claim, less any amounts withheld in accordance with an interim payment order. If the amount exceeds the statutory threshold, including expenses, the presiding judicial officer certifies the excess compensation for payment approval of the chief judge of the court of appeals (or delegate), by circling the word "certified" and indicating the amount approved in Item 22. See CJA Guidelines § 660.20.

Item 23.

SIGNATURE OF THE PRESIDING JUDICIAL OFFICER: The presiding judicial officer must check the appropriate box to indicate: (1) either the cost, excluding expenses, does not exceed the limitation set forth at § 310.20.30 of the CJA Guidelines, or prior authorization was obtained; or (2) in the interest of justice, the court finds that timely procurement of the services could not await prior authorization, even though the cost, excluding expenses, exceeds the § 310.20.30 limit. The presiding judicial officer will sign and date Item 23, indicating approval/certification of the amount in Item 22. The court will provide the **JUDGE CODE**.

Items 24-27.

APPROVED FOR PAYMENT: The chief judge of the court of appeals (or delegate) will indicate the amount approved for payment in each of the payment categories (Items 24-26). This amount will reflect any adjustments of the claim resulting from the additional review of claims by the chief judge (or delegate) for amounts that exceed the statutory maximum for the payment category of the case. The chief judge (or delegate) will sign and date Item 28 for the total amount approved and entered in Item 27. The JUDGE CODE of the chief judge (or delegate) approving the excess compensation will be provided by the court staff.

Item 28.

FOR CASES COMMENCED, AND APPELLATE PROCEEDINGS FOR WHICH AN APPEAL IS PERFECTED, ON OR AFTER APRIL 24, 1996. The presiding judicial officer should sign and date Item 28, indicating, in paragraph A of Item 28, the total amount paid for compensation and expenses for investigative, expert and other service providers on behalf of the person represented in this case, and that payment in excess of the statutory maximum is approved.

Complete Item 28 only for cases commenced, and appellate proceedings for which an appeal is perfected, on or after April 24, 1996. If the amount approved for compensation and expenses for investigative, expert, and other services on behalf of the person represented in a case is less than or equal to the limitation set forth at § 660.20.20 of the CJA Guidelines, the claim will be forwarded to the clerk of court for processing for payment. Upon preliminary approval of a claim in excess of the § 660.20.20 limit (including other claims for investigative, expert, and other services on behalf of the person represented), the presiding judicial officer will: (1) signify approval of the excess amount under 18 U.S.C. § 3599(g)(2) by circling "Certification" in Item 22. If the chief judge (or delegate) approves the excess amount, the judge will enter the amount approved for payment in Item 27, and sign and date Item 28. If approval is not granted, the claim will be returned to the presiding judicial offer for appropriate action.