

**United States District Court
Southern District of New York**

INSTRUCTIONS FOR CJA FORM 31

INSTRUCTIONS FOR CJA 31 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 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. Use a typewriter if possible to complete the form; otherwise, write legibly with a ball point pen (preferably black or dark blue ink). If the form is generated by the automated system, Items 1 through 10 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 the service requested. Provide the dates for and a description of expenses incurred. For additional guidance, refer to the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, which is available for reference in the Clerk's office.

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.

Refer to 21 u.s.c. 848(q)(9) and 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 cost (excluding reimbursement for reasonable expenses) will exceed \$500. Failure to obtain prior authorization will result in the disallowance of any amount claimed for compensation in excess of \$500, unless the presiding judicial officer finds that, in the interest of justice, timely procurement of necessary services could not await prior authorization.

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 officer, further prior authorization for the additional amount.

for cases commenced, and appellate proceedings for which an appeal is perfected, on or after April 24, 1996, 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 \$7,500 statutory amount set forth in 21 U.S.C. § 848(q)(10)(B). Pursuant to that provision, if the aggregate amount of compensation and expenses for all investigative, expert, and other services exceeds \$7,500 in any case, payment in excess of that amount must be certified by the presiding judicial officer as necessary to provide fair compensation for services 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.

- 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 in the indictment or charging document. Thus, the format of the docket numbers is YY-NNNNNN-DDD. If two or more cases are heard or tried together for the person represented, complete a separate voucher for each case in which services are provided (i.e., for each docket number listed). Prorate the total time among the cases. On the supporting documentation, cross reference all related claims for which costs are prorated.
- 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; or
 - D4 Death penalty prosecution in federal court under a state statute or any authority other than the United States Code and appeals.
- 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 Criminal Justice Act (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.
- For cases commenced, and appellate proceedings for which an appeal is perfected, on or after April 24, 1996, all totals for compensation and expenses

authorized for investigative, expert, and other services will be included as a part of the statutory threshold. (Payments to counsel for representation is not a part of the statutory threshold.) 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 \$7,500 amount for compensation and expenses 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.

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 paragraph 3.11 of the *CJA Guidelines* and accompanying chart, "Responsibility for Payment of Psychiatric and Related Expert Services."

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 section 2254 cases in the united states district courts and rules governing 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 that identifies the type of service provider requested. If you check the box "Other," be sure to specify the type of service or service provider. If computer assisted legal research (CALR) is checked, refer to paragraph 3.15 of the *CJA Guidelines* for an explanation of the criteria and procedures for approval of CALR as a necessary service under CJA.

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 instructions for Item 12, or to authorize payment for services exceeding \$500 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 checking "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. The stage noted as "Other" under "Other Proceeding" should be used only for a petition for presidential pardon or clemency, or other proceeding that does not relate to 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).

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. 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.

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.

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 by the attorney appointed to provide representation, a retained attorney whose client is unable to afford cost of the services requested, or by a person proceeding *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).

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 \$500, 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 \$500. 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. **PAYMENT APPROVED IN EXCESS OF THE STATUTORY THRESHOLD:** 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 your claim resulting from the additional review of claims by the chief judge (or delegate) for amounts that exceed the statutory threshold 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 threshold 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 \$7,500, the claim will be forwarded to the clerk of court for processing for payment. Upon preliminary approval of a claim in excess of \$7,500 (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 21 U.S.C. § 848(q)(10)(B) 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, sign and date Item 28. If approval is not granted, the claim will be returned to the presiding judicial officer for appropriate action.

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