



ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

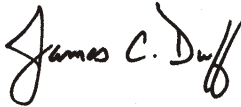
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WASHINGTON, D.C. 20544

September 12, 2008

MEMORANDUM

To: Chief Judges, United States Courts of Appeals  
Chief Judges, United States District Courts  
Circuit Executives  
Federal Public/Community Defenders  
District Court Executives  
Clerks, United States Courts of Appeals  
Clerks, United States District Courts

From: James C. Duff 

RE: AUDIT OF CRIMINAL JUSTICE ACT PAYMENTS MADE TO PANEL ATTORNEYS  
AND INTERPRETERS (**ACTION**)

This memorandum reports on the results of a 15-district financial audit of payments made to panel attorneys and interpreters under the Criminal Justice Act (CJA), 18 U.S.C. § 3006A.

The objective of the audit was to evaluate the systems for processing CJA panel attorney and interpreter payments to identify any overpayments and system deficiencies. The findings indicated deficiencies, both in the preparation and review of CJA vouchers and in CJA payment system design, which resulted in some overpayments. Each of the 15 courts was provided with an individual audit report. The attached report shares with all courts information about the common problems identified during the audits and actions that courts (and those federal defender organizations that assist in the voucher review process and/or in training CJA service providers in voucher preparation) should consider undertaking at this time to improve local CJA payment processes. Information also is provided about efforts at the national level to address the audit findings.

An expert panel, whose members include two clerks, a chief deputy clerk, a court interpreter, a federal defender, and a panel attorney, has been formed to assist the AO in strengthening CJA payment processes and procedures. Staff from the Offices of Audit, Court Administration, Defender Services, and Finance and Budget are working with the expert panel to respond to the audit findings. With the assistance of the expert panel, fact sheets have been developed for distribution to CJA panel attorneys and interpreters providing services under CJA. The two attached fact sheets, which can be modified, if necessary, to reflect specific court

policies, provide important information to attorneys and interpreters regarding preparation of CJA vouchers. CJA panel attorneys should be given both fact sheets; interpreters should be given the fact sheet applicable to them.

In addition, the AO, with input from court and federal defender staff, and CJA panel attorneys, is undertaking two major initiatives that will enhance the audit follow-up: (1) designing training programs for providers of CJA services and the personnel who review the vouchers, and (2) developing an electronic CJA vouchering system, which will incorporate audit components for use by courts and the AO. In the interim, the AO will be considering how automated tools, currently used by some courts to facilitate voucher processing, could be made available to all courts. The AO also will examine the CJA payment and the FAS<sub>4</sub>T accounting system to determine how they can provide courts with additional audit capability to help ensure proper payment of interpreters by the various Judiciary units. Finally, the Office of Audit will revise the sampling methodology, used by auditors during cyclical court audits and by courts during their annual internal control reviews, for examining vouchers submitted by attorneys and interpreters.

If you have any questions or comments about the suggested court actions or AO plans, please contact [Paul Denicoff/DCA/AO/USCOURTS](#) (for legal and policy matters) or [Diane Goldberg/DCA/AO/USCOURTS](#) (for information technology and CJA payment system matters), Office of Defender Services, at 202-502-3030. For questions regarding the audit methodology, please contact [Jeff Larioni/DCA/AO/USCOURTS](#) or [Pearlie Collier/DCA/AO/USCOURTS](#), Office of Audit, at 202-502-1000.

Attachments

cc: CJA Panel Attorney District Representatives

**15-DISTRICT AUDIT OF PANEL ATTORNEYS AND INTERPRETERS  
UNDER THE CRIMINAL JUSTICE ACT:**

**Findings, Suggestions for Court and Federal Defender Organization Actions  
and  
Administrative Office and Expert Panel Actions**

**Background for the Audit:** Because of indications of over-billings for Criminal Justice Act (CJA) services provided by certain panel attorneys and interpreters in a few districts, the Administrative Office (AO) initiated an audit, which was conducted from July 2006 through October 2007. The scope of the audit included a review of vouchers submitted for payment in fiscal year 2005 by at least five panel attorneys and five interpreters who were among the individuals receiving the highest amount of CJA payments in each of the 15 judicial districts visited. Payments were reviewed for a total of 85 panel attorneys and 85 interpreters. In general, the audit revealed the need to provide training and to enhance CJA payment processes and controls to address matters that resulted in overpayments to panel attorneys and interpreters. Specific findings applied in varying degrees in one or more of the 15 districts.

This document contains seven groups of findings, with suggested actions that courts and/or federal defender organizations (FDOs)<sup>1</sup> should consider undertaking to improve the CJA payment process and a description of actions taken by the AO and expert panel to follow up on them. Some of the suggested actions reflect processes that courts have adopted or recommended in response to the audit. The AO and expert panel are considering to what extent revisions to the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), Volume 7, *Guide to Judiciary Policies and Procedures*, and CJA forms and instructions should be recommended, with respect to the issues raised below, for Judicial Conference action.

In the interim, attached are two documents:

- an “Interpreter Fact Sheet: Information Regarding the Completion of Vouchers Submitted under the Criminal Justice Act – CJA Forms 21 and 31,” which should be distributed to interpreters working under the CJA and to panel attorneys; and
- a “Panel Attorney Fact Sheet: Information Regarding the Completion of Vouchers Submitted under the Criminal Justice Act – CJA Forms 20 and 30,” which should be distributed to panel attorneys only.

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<sup>1</sup> In the context of this document, “FDO” embraces those federal public and community defender organizations that currently assist in the voucher review process and/or in training CJA service providers in voucher preparation.

These materials are intended to complement and supplement the instructions to the CJA vouchers to address issues identified by the audit. The fact sheets, which include space in the title to permit the court to enter its name, may be modified by courts/FDOs to reflect court-specific practices.

### **Findings and Suggested Actions**

- (1) **Finding:** Some panel attorneys, interpreters, and voucher review personnel lack familiarity with administrative matters relating to CJA voucher preparation and review, including compensation and expense reimbursement policies. Policies pertaining to the processing and payment of CJA vouchers have been applied inconsistently. There sometimes has been a lack of training being provided to panel attorneys, interpreters, and voucher review personnel regarding CJA voucher preparation and review.

#### **Suggested Court/FDO Actions:**

- (a) Provide panel attorneys and interpreters with:
- the instructions for the applicable CJA payment form with each voucher and/or the location for the CJA payment form instructions on the federal courts web site at <http://www.uscourts.gov/forms/uscforms.cfm> or, if applicable, the court's/FDO's website; and
  - guidance on their responsibility to familiarize themselves with the relevant chapters of the CJA Guidelines, also available on the federal courts web site at [http://www.uscourts.gov/defenderservices/Section\\_A.cfm](http://www.uscourts.gov/defenderservices/Section_A.cfm), and with applicable court policies and procedures.
- (b) To the extent feasible, appropriate training in voucher preparation, which will help reduce the problems described in this document, should be provided to panel attorneys and interpreters. In addition, appropriate training in the review of vouchers should be given to applicable court/FDO personnel.

*The Administrative Office welcomes court/FDO input to its initiatives to develop materials and training programs to assist in voucher preparation and review, and requests that any manuals, checklists, fact sheets, instructions, and training materials that are currently in use be forwarded to [Diane Goldberg/DCA/AO/USCOURTS](#) in the Office of Defender Services.*

- (2) **Finding:** Some panel attorneys and interpreters did not submit and/or maintain adequate documentation to support and/or verify payment claims. The lack of supporting documentation impeded the ability of the auditor to substantiate payment claims.

### **Suggested Court/FDO Actions:**

(a) Panel attorneys and interpreters should be referred to the instructions to the CJA vouchers, which explain the supporting information that must be submitted. Additional information is included on the attached fact sheets.

(b) If a voucher is incomplete, courts may communicate with the panel attorney or interpreter to obtain the missing information, or return the voucher to him or her so the information can be added.

### **AO and Expert Panel Actions Taken:**

The Panel Attorney and Interpreter Fact Sheets advise these groups to maintain contemporaneous time and attendance and expense records for three years after approval of the final voucher, as generally required in government procurement and as required for panel attorneys by paragraph 2.31 of the CJA Guidelines (referenced in the introduction to the instructions of the [CJA Form 20](#) (Appointment and Authority to Pay Court-Appointed Counsel) and [CJA Form 30](#) (Death Penalty Proceedings: Appointment of and Authority to Pay Court-Appointed Counsel)).

- (3) **Finding:** When traveling to a detention facility to provide services for more than one CJA client, some panel attorneys and interpreters billed their entire travel time and expenses on more than one voucher. Because vouchers for representations may be submitted at different times, it is very difficult for a court/FDO to detect or prevent the submission of duplicate time on multiple vouchers. The CJA payment system does not currently have the capability to detect such duplicate billings.

### **Suggested FDO/Court Actions:**

As part of their normal internal control review programs, courts/FDOs should consider spot-auditing the vouchers of particular (high volume) panel attorneys and interpreters to detect if there are any duplicate payment claims. [Pearlie Collier/DCA/AO/USCOURTS](#), Office of Audit, may be contacted for guidance.

### **AO and Expert Panel Actions Taken:**

(a) The Panel Attorney and Interpreter Fact Sheets advise these groups that they should review their vouchers to ensure that there are not errors, duplicate payment claims, or other improper charges, and that panel attorneys and interpreters should review their billing practices to ensure that claims are appropriate. The fact sheets also explain that when services are provided for more than one CJA representation at the same time, the entire time may not be billed separately on multiple vouchers.

(b) The AO and expert panel are reviewing policies regarding how panel attorneys or interpreters (including those billing on a half- and full-day basis under the CJA) should bill time spent in common (and travel and other expenses) on more than one CJA representation (prorate among vouchers for each representation for which time was spent in common or bill the full amount on one voucher).

(c) The AO is examining the CJA payment and FAS<sub>4</sub>T accounting systems for possible reports or modifications that would be helpful in auditing vouchers; developing an electronic CJA vouchering and payment system, which will incorporate audit components for use by the courts and the AO; and examining tools currently used in courts to facilitate voucher processing that could potentially be recommended as interim measures.

- (4) **Finding:** Some interpreters billed for services provided to CJA panel attorneys for the same time that they were also being paid for a half or full day by the district court, probation/pretrial services, federal defender, or other panel attorneys in the same or a neighboring court, or additional clients of the same panel attorney. Some interpreters and their judiciary-funded users (i.e., the district court, probation/pretrial services, federal defender, and panel attorneys) were not aware of the prohibition against multiple billing. The CJA payment and FAS<sub>4</sub>T accounting systems are not currently designed to detect duplicate billings or to conduct cross-checks of claims between them.

**Suggested Court/FDO Actions:**

(a) Courts/FDOs may consider use of a tracking system to detect overlapping claims by interpreters for work performed during the same time period. The Clerk's Office for the Western District of Missouri ([Sharon Dover/MOWD/08/USCOURTS](#), Financial Administrator) and the Clerk's Office ([Melissa Erstad/MND/08/USCOURTS](#), Administrative Assistant) and Federal Public Defender Organization ([Sandy Arcand/MNF/08/FDO](#), Administrative Officer) for the District of Minnesota have developed processes that can be shared with voucher review staff from other courts/FDOs. Basically, personnel maintain a database that includes the name of the interpreter, the date and the time of day of the service provided, and the name of the CJA panel attorney or judiciary-funded entity (FDO, the court, and/or probation/pretrial services) for whom the interpreter is performing the service, and other identifying information. In the District of Minnesota, the Federal Public Defender Organization and Clerk's Office have set up a joint Internet database to reduce the data-entry workload on each. While maintaining this tracking system may not be feasible for some courts with a large number of interpreting events, those courts should make an effort to assess whether the matter of overlapping claims by interpreters for work performed during the same time period is a problem and, if so, whether an alternative approach could be developed.

Neighboring districts that frequently utilize many of the same interpreters could share their databases. The auditors found that some interpreters received excess payments by performing services for judiciary-funded users in two districts during the same period.

(b) See also Suggested Court/FDO Action under (3), above.

**AO and Expert Panel Actions Taken:**

(a) See (3) (a) - (c), above. In addition, the Interpreter Fact Sheet explains that an interpreter may not submit duplicate half- or full-day bills for work performed during the same time period. The fact sheet also advises that, for interpreting services provided on the same date, interpreters must identify in the supporting materials any other claim submitted to an appointed attorney or a federal court unit (names of attorney and defendant or name of federal court unit, and time of service) for that date.

- (5) **Finding:** Some panel attorneys have signed the CJA Forms 21 or 31 attorney certification that services have been rendered before the interpreter has entered the payment claim information; thus not sufficiently reviewing the payment claims of interpreters whom they utilized under the CJA.

**AO and Expert Panel Actions Taken:**

The Interpreter Fact Sheet explains that an attorney may not sign the certification (item 18 of the CJA Forms 21 and 31) until the claimant or payee has completed the required information.

- (6) **Finding:** Some panel attorneys and interpreters overstated mileage and travel time when compared to Internet mapping tools.

**Suggested Court/FDO Actions:**

Courts/FDOs could strengthen their voucher review procedures by referring to Internet mapping tools when there are concerns about mileage and travel time, and should have a general knowledge of the mileage and travel time from the courthouse area to detention facilities within driving distance. Panel attorneys and interpreters should be given an opportunity to address any concerns about claimed mileage and travel time prior to a reduction in a voucher.

**AO and Expert Panel Actions Taken:**

The Panel Attorney and Interpreter Fact Sheets explain that claims for mileage expense reimbursement must include the number of miles and the origination and destination of the travel.

- (7) **Finding:** Interpreter pay rates were inconsistent within some districts. Sometimes interpreters within a district were paid under the CJA (for services provided to a panel attorney and/or the federal defender) according to the half- and full-day rates established for in-court interpreting, while at other times payment was on an hourly basis. Similarly, rates for the translation of documents varied within individual districts. In districts without established interpreter rates, some panel attorneys did not understand their responsibility to negotiate a rate. There are not uniform judiciary guidelines regarding interpreter or translation payment rates under the CJA.

**Suggested Court Actions:**

A district court, or at least divisional court locations within a district, should establish consistent compensation policies (half- and full-day or hourly rates) for interpreters providing services to CJA panel attorneys. The court should take into account which method enables panel attorneys to obtain necessary interpreter services at the most reasonable rate, while also enabling the court to administer its interpreting program effectively.

**AO and Expert Panel Actions Taken:**

The AO and expert panel are reviewing interpreter and translator payment policies under the CJA.

Attachments

PANEL ATTORNEY FACT SHEET: \_\_\_\_\_ COURT \_\_\_\_\_

**Information Regarding the Completion of Vouchers Submitted  
under the Criminal Justice Act - CJA Forms 20 and 30  
August 2008**

*This document complements and supplements the instructions to the vouchers to address lessons learned from an audit of CJA panel attorneys and interpreters. The judiciary is reviewing the applicable CJA forms and instructions for possible revisions.*

**CJA FORMS AND INSTRUCTIONS** (available at <http://www.uscourts.gov/forms/uscforms.cfm>)

- **CJA Form 20** (<http://www.uscourts.gov/forms/CJA/CJA20.pdf>) – Appointment and Authority to Pay Court-Appointed Counsel, and corresponding **CJA Form 20 instructions** (<http://www.uscourts.gov/forms/cja20.html>).
- **CJA Form 30** (<http://www.uscourts.gov/forms/CJA/CJA30.pdf>) – Death Penalty Proceedings: Appointment of and Authority to Pay Court-Appointed Counsel, and corresponding **CJA Form 30 instructions** (<http://www.uscourts.gov/forms/cja30.html>)

To receive payment, CJA Form 20 or 30 must be completed properly. Please read the instructions to the forms carefully when submitting a voucher.

Attorneys must maintain contemporaneous time and attendance records for all work performed as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the panel attorney's final voucher for a case. **Any overpayments are subject to collection, including deduction of amounts due from future vouchers.**

**PANEL ATTORNEY PAYMENT VOUCHER GUIDANCE**

- Panel attorneys should review their vouchers to ensure that they do not contain errors, duplicate payment claims, or other improper charges. Attorneys should also review their billing practices to ensure that claims are appropriate.
- A panel attorney may not submit duplicate bills for time spent in common on more than one CJA representation. For example, if an attorney is traveling to provide services for more than one person under the CJA, he or she may not bill the entire travel time and expenses on each payment claim. (When claims are prorated among vouchers, the supporting materials must cross reference the cases. See paragraph 2.24 of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume 7, *Guide to Judiciary Policies and Procedures* ([http://www.uscourts.gov/defenderservices/Section\\_A.cfm](http://www.uscourts.gov/defenderservices/Section_A.cfm)), and the instructions for items 3-6 of CJA Forms 20 and 30 regarding when the proration of time is required.)

- With respect to mileage expenses, the number of miles and the origination and destination of the travel must be submitted as part of the supporting documentation (see instruction 17 to CJA Form 20 and instruction 16 to CJA Form 30 for other information and documentation that is required for travel expenses).

#### **REFERENCE MATERIALS**

**For additional information regarding payment for attorney fees and expenses, please see the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), Volume 7, *Guide to Judiciary Policies and Procedures*, which is available at [http://www.uscourts.gov/defenderservices/ Section A.cfm](http://www.uscourts.gov/defenderservices/Section_A.cfm).**

- Chapter 2 – Appointment and Payment of Counsel
- Chapter 6 – Representation in Federal Death Penalty Cases and in Federal Capital Habeas Corpus Proceedings

**Information Regarding the Completion of Vouchers Submitted  
under the Criminal Justice Act - CJA Forms 21 and 31  
August 2008**

*This document complements and supplements the instructions to the vouchers to address lessons learned from an audit of CJA panel attorneys and interpreters. The judiciary is reviewing the applicable CJA forms and instructions for possible revisions.*

**CJA FORMS AND INSTRUCTIONS** (available at <http://www.uscourts.gov/forms/uscfirms.cfm>)

- **CJA Form 21** (<http://www.uscourts.gov/forms/CJA/CJA21.pdf>) – Authorization and Voucher for Expert and Other Services, and corresponding **CJA Form 21 instructions** (<http://www.uscourts.gov/forms/cja21.html>)
- **CJA Form 31** (<http://www.uscourts.gov/forms/CJA/CJA31.pdf>) – Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher for Expert and Other Services, and corresponding **CJA Form 31 instructions** (<http://www.uscourts.gov/forms/cja31.html>)

To receive payment, CJA Form 21 or 31 must be completed properly. Please read the instructions to the forms carefully when submitting a voucher.

Interpreters must maintain contemporaneous time and attendance records for all work performed as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the interpreter's final voucher for a case. **Any overpayments are subject to collection, including deduction of amounts due from future vouchers.**

**INTERPRETER PAYMENT VOUCHER GUIDANCE**

- Interpreters should review their vouchers to ensure that they do not contain errors, duplicate payment claims, or other improper charges, and should also review their billing practices to ensure that claims are appropriate.
- Interpreters should determine whether the court has adopted a fee structure for interpreting services provided under the CJA (including travel expenses, if any) and bill accordingly.
- An interpreter billing on an hourly-rate basis may not submit duplicate bills for work performed on more than one CJA representation furnished by an appointed attorney (federal public or community defender, CJA panel attorney, other attorney or entity authorized to obtain services under the CJA or the Defender Services appropriation, or person proceeding *pro se*) during the same time period. For example, if an interpreter is traveling to provide services for more than one person under the CJA, the interpreter may

not bill the entire travel time on each payment claim. (When claims are prorated among vouchers, the supporting materials must cross-reference the cases. See the instructions for items 3-6 of CJA Forms 21 and 31 regarding when the proration of time on each voucher is required.)

- When an interpreter is paid under the CJA based on the rates set forth in the court interpreters services contract terms and conditions (half and full day), he or she may not bill appointed attorneys for services provided to them during the same time period (including the time period covered by a cancellation fee), except with respect to the proration of the claims. For example, if an interpreter furnishes services during the same half day for more than one person represented by an appointed attorney(s), the entire half day may not be billed on multiple vouchers. Proration of the claims is permissible, so if services were provided for two CJA defendants, the claim for a half day of compensation could be apportioned on two vouchers (one for each defendant, with a cross reference to the other case). **Regardless of the billing method under the CJA (hourly or half and full day), contract court interpreters may not charge any other federal court unit or appointed attorney for any services rendered during the same half or full day for which the interpreter is being compensated under the court interpreters services contract.**
- For interpreting services provided to one or more defendants represented by an appointed attorney(s) and a federal court unit on the same date, interpreters must identify in the supporting materials any other claim submitted to appointed counsel or a federal court unit (name of attorney or federal court unit and defendant, and time of service) for that date.
- Interpreters must fully itemize their services, including the time period (times of day) for the services (see instruction 16a to CJA Forms 21 and 31 for other information and documentation that must be submitted).
- With respect to mileage expenses, the number of miles and the origination and destination of the travel must be submitted as part of the supporting documentation (see instruction 16b to CJA Forms 21 and 31 for other information and documentation that is required for travel expenses).
- The attorney may not sign his or her certification, required by item 18 of CJA Forms 21 and 31, until (1) the interpreter has provided the services and has completed the information and certification required by items 16 and 17 of those forms, and (2) the attorney has reviewed the billing information.

## REFERENCE MATERIALS

**For additional information regarding authorization and payment for investigators, experts, and other services under the CJA, please see the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume 7, *Guide to Judiciary Policies and Procedures*, which is available at [http://www.uscourts.gov/defenderservices/ Section A.cfm](http://www.uscourts.gov/defenderservices/Section_A.cfm).**

- Chapter 3 – Authorization and Payment for Investigative, Expert or Other Services
- Chapter 6 – Representation in Federal Death Penalty Cases and in Federal Capital Habeas Corpus Proceedings