



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JAMES C. DUFF
Director

WASHINGTON, D.C. 20544

May 28, 2010

MEMORANDUM

To: Judges, United States Courts of Appeals
Judges, United States District Courts
United States Magistrate Judges
Circuit Executives
Federal Public/Community Defenders
District Court Executives
Clerks, United States Courts of Appeals
Clerks, United States District Courts
Senior Staff Attorneys
Chief Preargument/Conference Attorneys

From:

James C. Duff

A handwritten signature in black ink that reads "James C. Duff".

RE:

INCREASES TO CASE COMPENSATION MAXIMUMS FOR CRIMINAL JUSTICE ACT
SERVICE PROVIDERS **(IMPORTANT INFORMATION)**

A provision in the “Federal Judiciary Administrative Improvements Act of 2010,” Pub. L. No. 111-174, enacted on May 27, 2010, amends the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, to raise the waivable case compensation maximum amounts applicable to providers of investigative, expert, and other services. It also provides a formula for increasing these threshold amounts in future years to account for the effects of employment costs without the need for further legislation.

The new law increases the following waivable compensation maximum amounts for investigative, expert, and other service providers:

- (1) The case compensation maximum amount of \$500, excluding expenses, which applies if prior judicial authorization for a type of service was not obtained (absent a showing that timely procurement could not await prior authorization), is raised to \$800 (subsection (e)(2) of the CJA). See [§ 310.20.10](#) of the *Guide to Judiciary Policy*, Volume 7A, Guidelines for Administering the Criminal Justice Act and Related Statutes (CJA Guidelines).

- (2) The case compensation maximum amount of \$1,600, excluding expenses, which applies to each service provider in a representation when there has been prior authorization for a type of service (a compensation claim above this threshold requires the approval of the chief judge of the court of appeals, or his or her delegate circuit judge), is raised to \$2,400 (subsection (e)(3) of the CJA). See CJA Guidelines [§ 310.20.20](#).

In death penalty cases (federal capital prosecutions and capital post-conviction proceedings), the case compensation maximum amount without prior authorization in subsection (e)(2) of the CJA applies (paragraph (1), above), but the case maximum with prior authorization (paragraph (2), above) is governed by a separate statute, 18 U.S.C. § 3599(g)(2). Under that statute, the waivable case maximum amount of \$7,500 (payment claims above this threshold require the approval of the chief judge of the court of appeals or his or her delegate circuit judge) includes the total cost (fees and expenses) of all investigative, expert, and other services combined in a representation. See [CJA Guidelines § 660.20.20](#).

The CJA amendments apply to cases pending on or after the date of enactment, which is the effective date of the legislation. Specifically, the new case compensation amounts apply to a voucher submitted by a provider of investigative, expert, or other services if that provider furnished any CJA-compensable work in the representation **on or after May 27, 2010**. The former case compensation maximums apply if the provider's work on the representation was completed **before May 27, 2010**.

The legislation also includes a provision to increase these new compensation amounts simultaneously with any subsequent, cumulative adjustments under section 5303 of title 5 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.

Additional instructions for determining the applicability of the new case compensation maximum amounts are attached. Questions may be directed to the Office of Defender Services, Legal and Policy Branch Duty Attorney, at (202) 502-3030 or via email to ods_lpb@ao.uscourts.gov.

Attachment

cc: CJA Panel Attorney District Representatives
CJA Supervising/Circuit Case-Budgeting Attorneys

Instructions to Determine the Appropriate Case Compensation Maximum Amounts for Providers of Investigative, Expert, and Other Services Under the Amendments to the Criminal Justice Act in the Federal Judiciary Administrative Improvements Act of 2010, Pub. L. No. 111-174

With the enactment of increased waivable case compensation maximum amounts for providers of investigative, expert, and other services under subsections (e)(2) (increased from \$500, excluding expenses, to \$800) and (e)(3) (increased from \$1,600, excluding expenses, to \$2,400) of the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, courts must determine whether compensation claims submitted on a CJA Form 21 (Authorization and Voucher for Expert and Other Services) are governed by the new or former threshold amounts.

In addition, in death penalty cases (CJA Form 31 – Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher Expert and Other Services), the compensation maximum amount when there is not prior authorization under subsection (e)(2) of the CJA applies (the increase from \$500, excluding expenses, to \$800). The case maximum with prior authorization is governed by 18 U.S.C. § 3599(g)(2), however, which provides an amount of \$7,500 for the fees and expenses of all investigative, expert, and other service providers combined rather than an amount for each individual service provider. The CJA case maximum per individual service provider (the \$1,600 amount increased to \$2,400) when there has been prior authorization does not apply in a death penalty representation.

The new waivable case compensation maximum amounts are effective as follows:

The new case compensation maximum amounts apply to a provider of investigative, expert, or other services for a representation if that provider furnished any CJA-compensable work on or after May 27, 2010.

The former case compensation maximum amounts apply to a provider of investigative, expert, or other services for a representation if that provider's work was completed before May 27, 2010.

The appropriate person responsible for reviewing, processing, or approving claims should look at Item 17 (“Claimant’s Certification for Period of Service”) of the CJA Forms 21 and 31 to determine whether the provider of investigative, expert, and other services furnished any CJA-compensable work on or after May 27, 2010. If so, the new case compensation maximum amounts apply to that service provider’s voucher on the representation: \$800, excluding expenses, without prior authorization, and \$2,400, excluding expenses, with prior authorization (as stated above, in death penalty cases, this second threshold is governed by 18 U.S.C. § 3599(g)(2)). If, on the other hand, all services were performed before May 27, 2010, the former case compensation maximum amounts apply: \$500, excluding expenses, without prior authorization, and \$1,600, excluding expenses, with prior authorization.

NOTE: If a CJA 21 voucher is entered into the CJA payment system after May 27, 2010:

(1) For courts operating in the CJA 3.2.01 System, the warning message indicating that circuit approval is required will not activate at the former case compensation maximum level with prior authorization (\$1,600), even when it applies. The warning message only generates based on the new compensation maximum amount of \$2,400. Thus, the dates of service should be reviewed to determine the appropriate case maximum.

(2) For courts that have transitioned to the CJA 6.1.5 Upgrade, the warning message indicating that circuit approval is required will be governed by the date of service(s) entered. Thus, if the date of service was completed before May 27, 2010, the warning message will reflect the \$1,600 level, and if after that date the warning message will reflect the \$2,400 amount.