

NOTICE TO CJA PANEL ATTORNEYS REGARDING AVAILABILITY OF INVESTIGATIVE, EXPERT AND OTHER SERVICES

All attorneys appointed to provide representation under the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, may request, under subsection (e) of the Act, authorization to obtain investigative, expert, and other services necessary for adequate representation to be paid from funds appropriated for the administration of the CJA. In death penalty cases (federal capital prosecutions and capital post-conviction proceedings), 18 U.S.C. § 3599 provides additional statutory authority to appoint counsel (also see 18 U.S.C. § 3005) and authorize investigative, expert, and other services (referred to as “subsection (e) services,” below).

In addition to investigators, psychiatrists, psychologists, and reporters, services other than counsel may include, but not necessarily be limited to, interpreters, computer systems and automation litigation support personnel and experts, paralegals and legal assistants, including law students, neurologists, and laboratory experts in the areas of ballistics, fingerprinting, and handwriting.

Requests for authority to obtain subsection (e) services should be made to the presiding judge or magistrate judge (see cautionary note below). In order to prevent the possibility that an open hearing concerning a request for subsection (e) services may cause a defendant to reveal his or her defense, these requests should be made by *ex parte* application. The Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), Volume 7A, *Guide to Judiciary Policy*, provide that the *ex parte* applications must be heard *in camera* and must not be revealed without the consent of the defendant. The CJA Guidelines further state that such applications must be placed under seal until the final disposition of the case in the trial court, subject to final order of the court. In death penalty cases, 18 U.S.C. § 3599 provides that counsel must make a proper showing concerning the need for confidentiality.

CAUTIONARY NOTE

There are, however, limitations that apply to the obtaining of these services. **PRIOR AUTHORIZATION SHOULD BE SECURED** from the presiding judicial officer for all subsection (e) services, in a non-death or death penalty representation, where the total cost (exclusive of reimbursement for expenses) of all services combined will exceed \$900. In addition to prior authorization, once the services have been provided, the claims for compensation must be approved by the presiding judicial officer. The limitation of \$900 may be waived if the presiding judicial officer, in the interest of justice, finds that timely procurement of necessary services could not await prior authorization.

In addition, in non-death penalty proceedings, claims for compensation by a service provider in a representation in excess of \$2,600 (excluding reimbursement for expenses) may be paid when the presiding judicial officer certifies that payment in excess of the amount is 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 (or the active or senior circuit judge to whom the chief judge has delegated excess compensation approval authority). In death penalty cases, there is a different waivable limit of \$7,500 (the \$2,600 amount does not apply). The \$7,500 limit applies to the total payments (including expenses) for all investigative, expert, and other services combined in a representation, not to each type of service or service provider individually. For payments in excess of \$7,500, the presiding judicial officer must certify the payments as necessary to provide fair compensation for services of an unusual character or duration.

Payment for subsection (e) services should be claimed directly by the service provider on the CJA Form 21, “Authorization and Voucher for Expert and Other Services,” or, in death penalty proceedings, on the CJA Form 31, “Death Penalty Proceedings: *Ex Parte* Request for Authorization and Voucher for Expert and Other Services.”

Counsel should review both the Criminal Justice Act and the CJA Guidelines, which are accessible through www.uscourts.gov.