

GUIDANCE TO ATTORNEYS IN DRAFTING THE MEMORANDUM REQUIRED FOR A COMPENSATION CLAIM IN EXCESS OF THE CASE COMPENSATION MAXIMUM: COURT OF APPEALS

Paragraph 2.22C(2) of the *Guidelines for the Administration of the Criminal Justice Act (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, provides:

In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel shall submit with the voucher a detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation.

Paragraph 2.22B(3) of the *CJA Guidelines* states that a case is complex if the "legal or factual issues. . . are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case," and that a case is extended if "more time is reasonably required for total processing than the average case". Paragraph 2.22B(3) lists the following criteria as useful in determining fair compensation in extended or complex cases: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and injury thereto; any extraordinary pressure of time or other factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

To assist counsel in writing a "detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation," the following topics are provided for counsel's consideration. Some of these issues may not apply to a particular case or may not be noteworthy for this memorandum. Counsel, of course, may address topics other than those listed below.

Whether appeal is from a guilty plea, trial disposition, habeas petition, or other matter.

Offense(s) and number of counts on which client convicted; length of sentence; and number of co-defendants (pre-judgment and convicted.)

Size of transcript; number of trial days, if applicable; and description and length of other materials reviewed.

Whether appointed counsel represented the client at the district court level, and, if applicable, whether counsel represented the defendant at the trial. Hours claimed for obtaining and reviewing records.

Length of appellant's brief and number of sentencing and other issues; length of appellee's brief and number of issues; length of appellant's reply brief and number of issues; hours claimed for legal research and writing principal brief; and hours claimed for legal research and writing reply brief.

Whether there was a disposition before briefing, submission on the briefs, or oral argument. If applicable, hours claimed preparing for oral argument on principal brief.

Whether a petition for rehearing or a suggestion for rehearing in banc was filed by either party; the number of pages, the number of issues raised, the length of the response in opposition; hours claimed for legal research and writing petition for rehearing/suggestion for rehearing in banc or response in opposition; and, if applicable, hours claimed preparing for oral argument.

Whether a petition for a writ of certiorari was filed by either party; number of pages and issues raised; number of pages of a brief in opposition; number of pages of a reply brief; and hours claimed for legal research and writing petition/reply brief or brief in opposition. Attach counsel's documents.

Whether any of the following factors apply and their impact on the number of hours claimed: complex legal issues, novel legal issues, complex fact pattern, and legal issues researched but not written.

Whether any of the issues were briefed at the district court. The additional work required if any of the issues were briefed at the district court.

Any expense (see Items 17 and 18 of the CJA 20 voucher) greater than \$500.

Any other noteworthy circumstances regarding the case and the representation provided to support this compensation request. Include, if applicable: responsibilities involved measured by the magnitude and importance of the case, including, if applicable, precedential value; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and hardship or injury resulting from the representation; any extraordinary pressure of time or other factors under which services were rendered.