

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

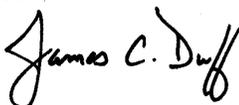
WASHINGTON, D. C. 20544

Date: 2/24/11

GUIDE TO JUDICIARY POLICY

TRANSMITTAL **07-003** VOLUME/PART **7A** CHAPTER(S) **3**

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
Chief Probation Officers
Chief Pretrial Services Officers
Senior Staff Attorneys
Chief Preargument/Conference Attorneys
Circuit Librarians

FROM: James C. Duff 

RE: DEFENDER SERVICES

This transmittal provides notice of a new appendix in the *Guide to Judiciary Policy*, Vol. 7 (Defender Services), Pt. A (Guidelines for Administering the CJA and Related Statutes):

[Chapter 3 – Authorization and Payment for Investigative, Expert, or Other Services](#)

[Appendix 3D – Sample Order Authorizing the Acquisition of Computer \[Hardware and/or Software\] Under the CJA](#)

The Judicial Conference of the United States has approved new language on the acquisition of computer hardware/software, along with revisions to the corresponding appendix. These changes make the policy consistent with current practices. The significant changes are indicated in the Redline Comparison below.

Questions regarding this transmittal may be directed to the AO Office of Defender Services, Legal and Policy Branch Duty Day Attorney, at 202-502-3030.

REDLINE COMPARISON REFLECTING CHANGES

§ 320 Authorization of Investigative, Expert, and Other Services

[. . .]

§ 320.70 Other Services and Computer Hardware and Software

[. . .]

§ 320.70.40 Computer Hardware ~~or~~ Software, or Litigation Support Services

(a) Overview

- (1) Providing an adequate defense may require CJA panel attorneys to utilize computer hardware ~~or~~ software, or litigation support services not typically available in a law office. In such cases, following the standards in [§ 320.70.30](#), counsel may apply to the court for authorization of CJA funds for the acquisition of such property or services.
- (2) Before seeking court approval for any computer hardware or software with a cost exceeding ~~\$500~~ the limitations in § 310.20.30(a), or for the utilization of computer systems ~~or automation~~ , litigation support products, services, personnel, or experts with an expected combined cost exceeding \$10,000, appointed counsel must consult the National Litigation Support Team in the Office of Defender Services of the Administrative Office of the United States Courts (510-637-3500) for guidance ~~and~~ Counsel must inform the court in writing of the Office of Defender Services' advice and recommendation regarding counsel's proposed expenditure. **See also:** [Appx 3D \(Sample Order Authorizing the Acquisition of Computer \(\[Hardware and/or Software\]\) under the Criminal Justice Act/CJA\)](#).

(b) Acquisition of Computer Hardware and/or Software

- (1) The request for acquisition of the computer hardware and/or software, ~~with CJA funds, will be made by a federal defender organization designated by the Office of Defender Services, or by the Office of Defender Services itself.~~
- ~~(2) —~~ The computer hardware or software remains or for the procurement of litigation support services should be submitted on a Form CJA 21 (Authorization and Voucher for Expert and Other Services), or, in a death penalty proceeding, Form CJA 31 (Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher for Expert and Other Services).
- (2) Property purchased with CJA funds is the property of the United States:
- ~~(3) —~~ While computer hardware or software is being used by counsel, information contained on the hardware or software may be confidential work-product and may also be protected by attorney-client privilege.
- ~~(4) —~~ Upon the completion of the case, the computer hardware and software must be returned in good condition, after all case-related materials have been removed, to a federal defender organization designated by remains so after the case is completed.
- (3) When property is purchased, counsel must provide the Office of Defender Services with a copy of the following documents to ensure the property is properly accounted for: a copy of the court's order approving the request; a copy of the completed Form CJA 21 (or Form CJA 31); the purchase order from the vendor and any receiving documents, such as a copy of the packing slip or the company's invoice.

REDLINE COMPARISON REFLECTING CHANGES

§ 320.70.40 [cont'd]

(4) Because computer hardware or storage devices being used by counsel may contain confidential or privileged information, all case-related materials must be removed before the hardware is returned as described below. Unless otherwise required by the court or by law, counsel should retain copies, electronic or otherwise, of the case-related materials for the client's file.

Note: When large amounts of electronic information are placed on drives or storage devices purchased with CJA funds, counsel may apply to the court to retain the drive or an alternative drive as the most cost-effective and efficient method for preserving the data.

(5) Upon the completion of the case, counsel must contact the National Litigation Support Team in the Office of Defender Services at (510) 637-3500 for instructions on returning any software, and directions for deleting case-related material from any hardware and returning it to the National Litigation Support Team for the permanent removal of case-related material. If appointed counsel has acquired software, then counsel should provide all accounting information for the software, including any serial numbers, activation codes, or other identifying information, and remove the software from his or her machines. If appointed counsel acquired computer hardware, it must be returned in good condition.

Appx 3D: Sample Order Authorizing the Acquisition of Computer [Hardware and/or Software] Under the CJA [. . .]

The above-named defendants,¹ having been found to be eligible for services under the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, have submitted an *ex parte*² application for the approval of CJA funds to purchase computer [hardware and/or software³], litigation support products and/or obtain litigation support services, personnel or experts as authorized by subsection (e) of the CJA.

The Court finds, after inquiry and counsel's consultation with the Office of Defender Services of the Administrative Office of the United States Courts (AO),⁴ that the ~~[hardware and/or software]~~ detailed in items [1 through . . .] item(s) and service(s) listed below is [are] necessary for an adequate defense and constitute unusual or extraordinary expenses.⁵

The Court, therefore, approves the acquisition of the following ~~items~~:

- [1.]
- [2.]
- [3.]
- [4.]

in the amounts listed for each item and a total expenditure not to exceed [the sum of all items approved].

It is further ordered that ~~the federal defender organization for the District of [_____],⁷ as designated by the Office of Defender Services, counsel~~ must acquire the approved items utilizing the CJA appropriation, in conformance with the Guide to Judiciary Policy, Volume 7A, Chapter 3, § 320.70. Both the acquisition of the computer software and/or hardware and the procurement of litigation support services, should be submitted on Form CJA 21 (Authorization and Voucher for Expert and Other Services) or, in a death penalty proceeding, Form CJA 31 (Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher for Expert and Other Services). Upon actual purchase, counsel shall provide the Office of Defender Services

REDLINE COMPARISON REFLECTING CHANGES

Appx 3D: Sample Order Authorizing the Acquisition of Computer [Hardware and/or Software] Under the CJA [cont'd]

with a copy of the court's order approving the request, a copy of the completed Form CJA 21 (or Form CJA 31), the purchase order from the vendor and any receiving documents. These documents should be sent to: National Litigation Support Team, Federal Public Defender Organization, 555 12th Street, Suite 650, Oakland, CA 94607-3627.

[. . .]

Unless otherwise ordered by the Court, within 30 days after final judgment is entered as to a defendant, appointed counsel for that defendant is directed to ~~return all items acquired under authorization of this Order to a federal defender organization designated by the Office of Defender Services, for assignment by~~contact the National Litigation Support Team in the Office of Defender Services ~~for any other appropriate use under the CJA.~~

~~Counsel for the defendant[s] is [are] further instructed to remove and delete all case-related data and software at (510) 637-3500 for instructions on returning any software, and directions for deleting case-related material from any hardware before delivering the equipment to the federal defender organization.⁶—Software should be returned with all original disks and manuals and returning it to the National Litigation Support Team for the permanent removal of case-related material. If appointed counsel has acquired software, then counsel should provide all accounting information for the software, including any serial numbers, activation codes, or other identifying information, and remove the software from his or her machines. If appointed counsel acquired computer hardware, it must be returned in good condition.~~ Counsel should retain copies, electronic or otherwise, of the deleted information for the client's file.

[Appendix footnotes:]

⁴ ~~In all cases~~ When computer hardware or software costs exceed the limitations in the *Guide to Judiciary Policy*, Volume 7A, § 310.20.30(a) or when the combined cost of computer systems fees, litigation support products, services, personnel, or experts is expected to exceed \$10,000, applicants must consult with the National Litigation Support Administrator and the National Litigation Support Team in the Office of Defender Services of the Administrative Office of the United States Courts, 202-502-3030(510) 637-3500, before submitting an application for funds to the Court. The Office of Defender Services will provide technical advice to counsel to ensure the items requested are necessary, appropriate, and compatible with systems incurrently being use ~~within the federal defender system~~ by counsel. Counsel is required to include, in writing, the advice and recommendation of the Office of Defender Services in the application to the Court. ~~See: *Guide to Judiciary Policy*, Volume 7A, § 320.70.~~ The presiding judicial officer or the clerk also may wish to seek advice from the Office of Defender Services.

⁵ Under § 320.70 of the *Guide to Judiciary Policy*, Volume 7A, ~~§ 320.70~~, approval for “unusual or extraordinary expenses” is authorized when “the circumstances from which the need arose would normally result in an additional charge to a fee-paying client over and above that charged for overhead expenses.” The Court has discretion to determine when that condition is met. Circumstances of extraordinary expense may include, but are not limited to: massive documentary discovery; voluminous electronically stored information (ESI); numerous hours of wiretap tapes; complex financial transactions; and national security concerns requiring disclosure, but no copying, of discovery. In all cases, the decision to approve expenses for hardware or software is a matter for the presiding judge (and if above the case compensation maximum, for the chief judge of the court of appeals, or designee of the chief judge).

⁶ The Court may wish to authorize acquisition of each specific item and a total cost ceiling, but allow ~~the Office of Defender Services or~~ the designated purchaser some leeway to negotiate prices for individual items.