

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D. C. 20544

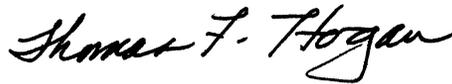
Date: 4/2/13

GUIDE TO JUDICIARY POLICY

TRANSMITTAL 07-006 VOLUME/PART 7A CHAPTER(S) 2-4, 6

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: Judge Thomas F. Hogan



RE: DEFENDER SERVICES

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

[Chapter 2 – Appointment and Payment of Counsel](#)

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

[Appendix 4A – Community Defender Organizations: Grants and Conditions](#)

[Chapter 6 – Federal Death Penalty and Capital Habeas Corpus Representations](#)

Engaging a Relative for Compensable Services under the CJA: Policy guidance approved by the Judicial Conference of the United States at its September 2012 session on engaging a relative for compensable service has been codified in §§ 220.18, 310.20.05, and 620.15. The new guidelines require appointed counsel: (1) prior to engaging any relative (as the term is defined for anti-nepotism purposes in 5 U.S.C. § 3110) to perform CJA compensable services, other than as associate counsel in the same law firm, to provide notification of the relationship and potential services to the presiding judicial authority; and (2) to notify the judge when it is learned that the judge intends to appoint or has appointed a relative of counsel as co-counsel on a representation. The notification requirement does not apply to using a relative as a service provider if the relative is working pro bono and will not be compensated with CJA funds. The notification requirement also does not apply to engaging relatives who are associates in the same law firm as appointed

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counsel. This is true for two reasons: (1) the use of associate counsel, at a reduced hourly rate, has long been recognized as an effective cost-containment measure (see CJA Guidelines (*Guide*, Volume 7A, §§ 230.53.10 and 620.10.10(c))); and (2) historically, relatives have joined together in private practice law firms and often have been utilized as associate counsel in each other's cases.

Grant and Conditions for Community Defender Organizations (CDOs): Technical updates have been made to the Grant and Conditions codified in Appendix 4A. The Grant and Conditions is the document memorializing agreement entered into between the Administrative Office and CDOs.

Attorney Compensation for Travel Time (§ 230.60): In 2009-10, as part of the *Guide to Judiciary Policy's* redesign, the phrasing of § 230.60 was altered in response to general publication style guidance. Although no change in the meaning or implementation of the guideline was intended, the Office of Defender Services received numerous calls from court units either misinterpreting the guideline or requesting an explanation of the revised wording. For this reason, the original language has now been restored. The policy on attorney compensation for travel time as approved by the Judicial Conference is as follows: "Compensation must be approved for time spent in necessary and reasonable travel."

Replacement of "Shall": Consistent with style requirements instituted by the Editorial Board of the *Guide to Judiciary Policy*, the term "shall" has been changed to "must" or "may" throughout these materials except when part of quoted text.

The significant changes are detailed 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

[Significant changes in Chapter 2 (Appointment and Payment of Counsel) follow:]

§ 220 Appointment of Counsel

[. . .]

§ 220.18 Notification of Relationship

Prior to appointment, counsel should notify the presiding judicial authority if counsel is aware that he or she is related (as the term is defined in 5 U.S.C. § 3110) to any attorney on the same representation, or any attorney being considered for appointment. If appointment of related counsel is made prior to notification, counsel should provide notification as soon as practicable.

§ 230 Compensation and Expenses of Appointed Counsel

[. . .]

§ 230.60 Attorney Compensation for Travel Time

- (a) Compensation must be approved for time spent in necessary and reasonable travel ~~is compensable.~~

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

[Significant changes in Chapter 3 (Authorization and Payment for Investigative, Expert, or Other Services) follow:]

§ 310 In General

[. . .]

§ 310.20 Limitations

§ 310.20.05 Engaging Relatives for Compensable Services

(a) Prior to engaging any relative (as the term is defined in 5 U.S.C. § 3110) to perform CJA compensable services, other than as associate counsel in the same law firm (see: Guide, Vol 7A, § 230.53.10), counsel should first provide notification of the relationship and potential services to the presiding judicial authority.

(b) The court may, in the interest of justice, and upon finding that timely procurement of necessary services could not await prior notification, approve payment for such services up to the dollar threshold for obtaining services without prior authorization under 18 U.S.C. § 3006A(e)(2) and the CJA Guidelines (Guide, Vol 7A, § 310.20.30).

[. . .]

[Significant changes in Appendix 4A (Community Defender Organizations: Grants and Conditions) follow:]

Appx 4A: Community Defender Organizations: Grants and Conditions

JUDICIAL CONFERENCE
OF THE UNITED STATES OF AMERICA
AND
COMMUNITY DEFENDER ORGANIZATION
FOR _____

FISCAL YEAR _____
GRANT AND CONDITIONS

[. . .]

Pursuant to the authority delegated to it by the Conference, the Judicial Conference Committee on Defender Services (Defender Services Committee) has approved, subject to the availability of appropriated funds, a grant of up to _____ for fiscal year _____, commencing on October 1, _____ and terminating on September 30, _____ as further detailed by budget categories contained in Attachment 4 your budget chart previously provided by the AO; and

[. . .]

Once executed, this agreement ~~shall~~must be returned to the AO Office of Defender Services together with a current list of the names, addresses, email addresses, and telephone numbers of all ~~officers and directors of the organization~~board members.

[. . .]

6. **ANNUAL REPORTS:** In compliance with subsection (g)(2)(B) of the CJA, the grantee must submit reports each year setting forth its activities and financial position and the anticipated caseload and expenses for the next fiscal year. The grantee ~~shall~~must also submit a report of operations for the prior year; ~~and a current roster of attorneys and other personnel employed by the grantee~~. Instructions for completing and submitting the annual reports will be provided to the grantee by the AO at least thirty (30) days prior to the submission date.

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

Appx 4A [cont'd]

14. TRAVEL, MEALS, AND LODGING: [. . .]

Grantee must follow the policies outlined in the attached memos of April 7 and June 23, 2009 Federal Defenders Operations Manual, Chapter 8, policy memoranda from the AO Office of Defender Services, and Volume 19, Chapter 4 of the Guide to Judiciary Policy, with regard to ~~administrative~~, travel inside and outside the district served by the Grantee.

[. . .]

15. PERSONNEL: [. . .]

No personnel vacancy ~~shall~~may be filled without prior notice to the AO. Such notice ~~shall~~must include all relevant data concerning the employee candidate, including his or her name, position, starting salary (including grade and step for graded employees), education, experience and compensation history and any annual leave credit for prior experience. Information regarding attorneys must indicate the month and year they received their law degree, the month and year they first became a member of a bar, and their prior relevant work experience.

[. . .]

22. CODE OF CONDUCT: The grantee must adopt the Model CDO Code of Conduct. The grantee may seek a variance of one or more of the provisions from the AO's Office of Defender Services.

A copy of the grantee's code of conduct and any subsequent revisions must be filed with the AO. The grantee must inform the AO of significant violations of the code of conduct and, upon request, must provide a written report to the AO.

223. CHANGES OR MODIFICATIONS: [. . .]

[Significant changes in Chapter 6 (Federal Death Penalty and Capital Habeas Corpus Representations) follow:]

§ 620 Appointment of Counsel in Capital Cases

[. . .]

§ 620.15 Notification of Relationship

Prior to appointment, counsel should notify the presiding judicial authority if counsel is aware that he or she is related (as the term is defined in 5 U.S.C. § 3110) to any attorney on the same representation, or any attorney being considered for appointment. If appointment of related counsel is made prior to notification, counsel should provide notification as soon as practicable.

§ 660 Authorization and Payment for Investigative, Expert, and Other Services in Capital Cases

[. . .]

§ 660.20 Limitations On Payment for Investigative, Expert, and Other Services

[. . .]

§ 660.20.15 Engaging Relatives for Compensable Services

- (a) Prior to engaging any relative (as the term is defined in 5 U.S.C. § 3110) to perform CJA compensable services, other than as associate counsel in the same law firm (see: Guide, Vol 7A, § 620.10.10(c)), counsel should first provide notification of the relationship and potential services to the presiding judicial authority.
- (b) The court may, in the interest of justice, and upon finding that timely procurement of necessary services could not await prior notification, approve payment for such services up to the dollar threshold for obtaining services without prior authorization under 18 U.S.C. § 3006A(e)(2) and the CJA Guidelines (Guide, Vol 7A, § 310.20.30).