

ETHICAL CONSIDERATIONS IN CJA APPOINTMENTS AND BILLING



The following presentation contains the personal opinions of the presenter and does not reflect the policy or recommendations of the United States District Court.

Kim Schaefer
Attorney Advisor

Tammy Shipley
Administrative Services Specialist

U.S. District Court
Northern District of Texas
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Agenda

1. Ethical Foundations
2. Preparing Timesheets
 - Attorney CJA 20
 - Non-attorney CJA 21
 - Expenses
3. Excess Compensation



CJA 20 Form Instructions:

“Appointed counsel should review their vouchers to ensure that they do not contain errors, duplicate payment claims, or other improper charges. Appointed counsel should also review their billing practices to ensure that claims are appropriate.”

45-day deadline to submit vouchers, unless good cause is shown

Guide, Vol. 7A § 230.13(a))

All payments are subject to post-audit; maintain contemporaneous time and expense records for 3 years

Guide, Vol. 7A § 230.76

Overpayments are subject to debt collection, including deduction of amounts due from future vouchers

Voucher Affidavits

CJA 20 (attorney voucher):

19. CERTIFICATION OF ATTORNEY/PAYEE FOR THE PERIOD OF SERVICE FROM: _____ TO: _____	20. APPOINTMENT TERMINATION DATE IF OTHER THAN CASE COMPLETION	21. CASE DISPOSITION
22. CLAIM STATUS ☐ Final Payment ☐ Interim Payment Number _____ ☐ Supplemental Payment Have you previously applied to the court for compensation and/or reimbursement for this case? ☐ YES ☐ NO If yes, were you paid? ☐ YES ☐ NO Other than from the Court, have you, or to your knowledge has anyone else, received payment (<i>compensation or anything of value</i>) from any other source in connection with this representation? ☐ YES ☐ NO If yes, give details on additional sheets. I swear or affirm the truth or correctness of the above statements. Signature of Attorney _____ Date _____		

CJA 21 (non-attorney service providers)

18. CERTIFICATION OF ATTORNEY I hereby certify that the services were rendered for this case. Signature of Attorney _____ Date _____
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<https://www.uscourts.gov/sites/default/files/cja20.pdf>

Violations of Instructions or Oath might be based on criminal statutes

18 USC § 287: “false, fictitious or fraudulent” claims

18 USC § 1001: “false, fictitious, or fraudulent” statement to federal officers

18 USC § 1341, 1343: mail/wire fraud

Or civil statutes...

31 USC §§ 3729-3733 False Claims Act: *Qui tam* enforcement by private citizens for knowingly submitting false claim for payment to the U.S.

31 USC § 3716: Administrative offset permitted

Or TXND CJA Plan ([MiscOrder3Criminal.pdf](#))...

May not accept payment from another source without court approval. Plan XI(E)(2)

Will disclose non-privileged information re client's ability to pay for counsel. Plan XI(E)(3)

Any district judge may remove panel member for good cause. Plan IX(C)(4)

Suspension/Disbarment = mandatory removal. *Id.*

Failure to comply with training and legal education requirements may be grounds for removal. Plan XI(B)(3)

Or local rules for attorney discipline...

Local Criminal Rule 57.8(e) defines “unethical behavior” as conduct that violates the Texas Disciplinary Rules of Professional Conduct

Texas Disciplinary Rules of Professional Conduct

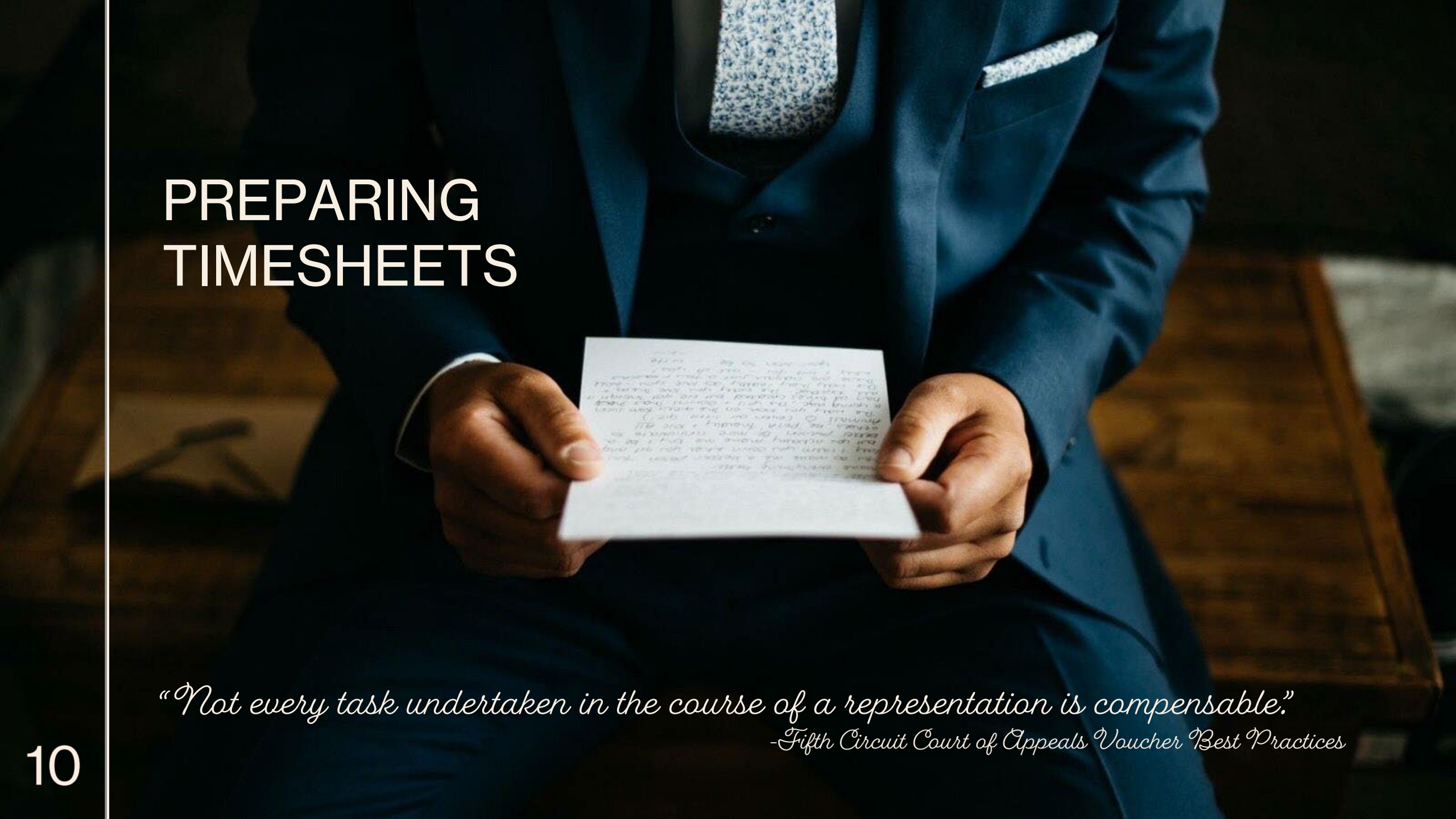


Rule 1.04(a): Prohibits unconscionable fees.

Rule 3.03(a)(1): Prohibits false statements of material fact or law to a tribunal.

Rule 6.01: turning down appointments requires good cause

Rule 8.03(a): obligation to report when another lawyer has committed a violation of the rules that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness

A man in a blue suit and patterned tie is holding a small white card with both hands. The card has text on it, which is mirrored (reversed) on the back side, creating a visual effect of text appearing on both sides. The background is dark and out of focus.

PREPARING TIMESHEETS

*"Not every task undertaken in the course of a representation is compensable."
-Fifth Circuit Court of Appeals Voucher Best Practices*

VOUCHER BEST PRACTICES

Compensability under the Criminal Justice Act (CJA) is governed by applicable statutes, the *Guide to Judiciary Policy, Vol. 7* (CJA Guidelines), and CJA Plans adopted by each court. Counsel are required to familiarize themselves with the governing statutes, policies and plans as well as preferences of presiding judges.

Not every task undertaken in the course of a representation is compensable. The following guidance is provided to assist appointed counsel and service providers with compensability questions. This addendum covers many common compensability situations but is not exhaustive. As a reminder, counsel and service providers are required to keep contemporaneous time records, which must be sufficiently detailed to allow for meaningful reasonableness review of the time claimed.

The following practices apply to appointed counsel and service providers including paralegals, investigators, and mitigation specialists.

Compensability

Administrative Tasks

Under CJA Guidelines § 230.66.10 and § 320.80.10, general office overhead, including clerical assistance, is incorporated into the authorized hourly rate for panel attorneys and service providers and is not separately reimbursable. Administrative or clerical tasks are not compensable under the Guidelines regardless of who performs them (*i.e.*, counsel, support staff, or service providers, including paralegals), except under extraordinary circumstances. § 230.66.10. Examples of tasks that generally are not compensable—no matter who performs the tasks—include, but are not limited to:

- creating a physical or electronic case file;
- viewing, accessing, downloading, opening, renaming, saving, printing, or forwarding electronic files (including notices of electronic filing in CM/ECF);
- entering calls, meetings, due dates, or court appearances in a calendar;
- rote or routine scheduling-related communications, including scheduling intra-team communications and communications with the court or opposing counsel;
- leaving non-substantive voicemail messages;
- filing or lodging electronic documents in CM/ECF;
- creating payment vouchers in eVoucher and entering or justifying billed time and expenses;
- emailing courtesy copies or proposed orders;
- copying, scanning, or printing;
- office filing;
- preparing documents for mailing; and
- and traveling to and wait time at a post office, copy center, or office supply store.

eVOUCHER BILLING TIPS*

U.S. District Court, Northern District of Texas
April 2024

Compensable Services Generally . . .

- are case-specific and serve a representational purpose or appropriate ancillary purpose
- require legal knowledge, professional judgment, or otherwise involve representational strategy
- can include attorney, investigative, or paralegal services, but *not* purely clerical services

Billing Standards

- Claimed out-of-court time must be "reasonably expended." See 18 U.S.C. § 3006A(d)(1).
- Vouchers must be sufficiently detailed to allow for meaningful reasonableness review of claimed out-of-court time.
- Each task should be billed separately under its own service category -- *except that* tasks that do not take 6 minutes should be combined with similar tasks so the time claimed overall does not exceed actual time spent (e.g., email exchanges or substantive review of CM/ECF filing notices).

Provide Supporting Details

- Include the name and CM/ECF docket number for all documents or hearings.
- Identify the tasks performed; avoid general terms like "sentencing prep" or "reviewed discovery."
- Interviews and Conferences should specify (1) the type of communication (email, phone, etc.), (2) with whom, and (3) the general topic, which should reflect a representational purpose.
- Discovery and Records Review should specify (1) the type of material, such as transcripts, reports, photos, audio, etc., and (2) the amount of material, such as number of pages, text searches run, number of relevant hits reviewed, length of audio/video, etc.
- Legal Research & Writing should identify issue researched or type of motion.

Don't Bill for Purely Clerical Tasks Such As . . .

- accessing, downloading, opening, renaming, saving, printing, or forwarding electronic files, including notices of electronic filing in CM/ECF (*except that* reviewing a document's substantive content is compensable)
- entering calls, meetings, due dates, or court appearances in a calendar
- rote or routine scheduling-related communications, including with the court
- leaving non-substantive voicemail messages
- e-filing, emailing courtesy copies to court, picking up/dropping off discovery drives
- time spent creating and submitting eVouchers (*except that* budgeting work is compensable)
- copying, scanning, printing, filing of office documents, preparing documents for mailing
- Exceptions may apply in extraordinary circumstances. See CJA Guidelines, Vol. 7A, § 320.70.30.

Good Habits

- Keep contemporaneous time and expense records or enter your time into eVoucher daily.
- Obtain prior authorization for air travel and hotel stays to avoid unanticipated denial of payment.
- Obtain prior authorization for non-attorney services over \$1,000.
- Review discovery with discipline and focus; call Nat'l Litigation Support Team (510-637-3500) for logistical advice on voluminous e-discovery.
- Submit voucher as soon as possible after the representation concludes but no later than 45 days.
- Pro-rate time spent in common with other clients (appointed or retained); don't double bill.

Billing for Out-of-Court Time



Description
should reflect
that the task
is
compensable



Description
should reflect
that the time
claimed is
reasonable

What does compensable mean?

A compensable task . . .

Is Case-Specific

- e.g., training events and PACER account set-up are not case-specific

Has a Representational Purpose

- Must serve the federal representation or be an “appropriate” ancillary matter. Guide, § 210.20.30

Is Not Purely Clerical

- Requires professional judgment or legal knowledge or representational strategy is otherwise involved.



Clerical Tasks

Creating a physical or electronic case file

Viewing, accessing, downloading, opening, renaming, saving, printing, forwarding NEFs

E-filing

Creating payment vouchers or justifying billed time and expenses

Delivering plea papers, USB drives to US Attorney's office

Preparing documents for mailing/courier; copying, scanning, printing

Entering calls, meetings, due dates, or court appearances on a calendar



Compensable Tasks

Checking for conflicts

Analyzing the actual document

Finalizing the motion; ensuring compliance with local rules

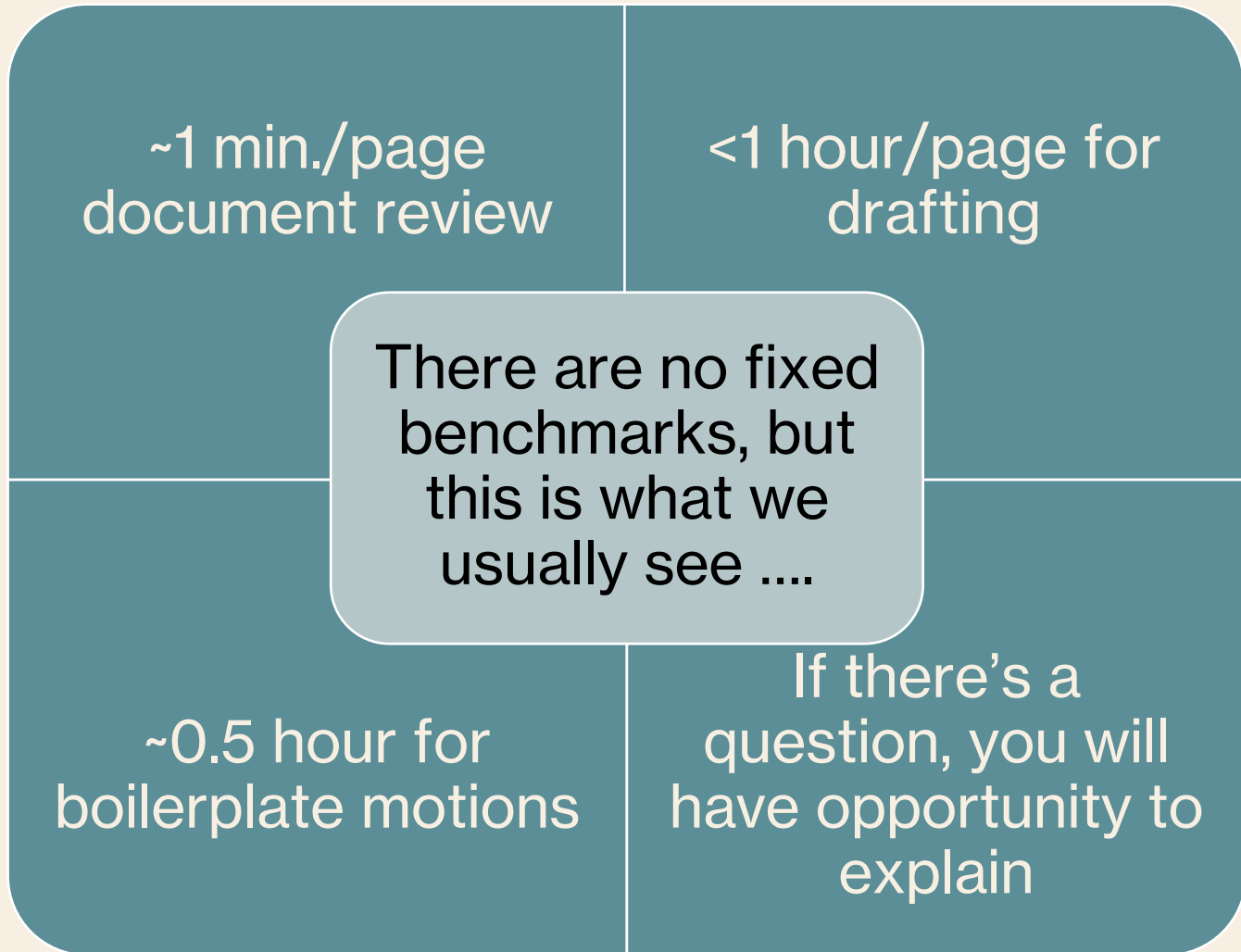
Creating budgets, certifying (not creating) vouchers from investigators & experts

Conferencing with AUSA while dropping off plea papers or USB drive; courier service

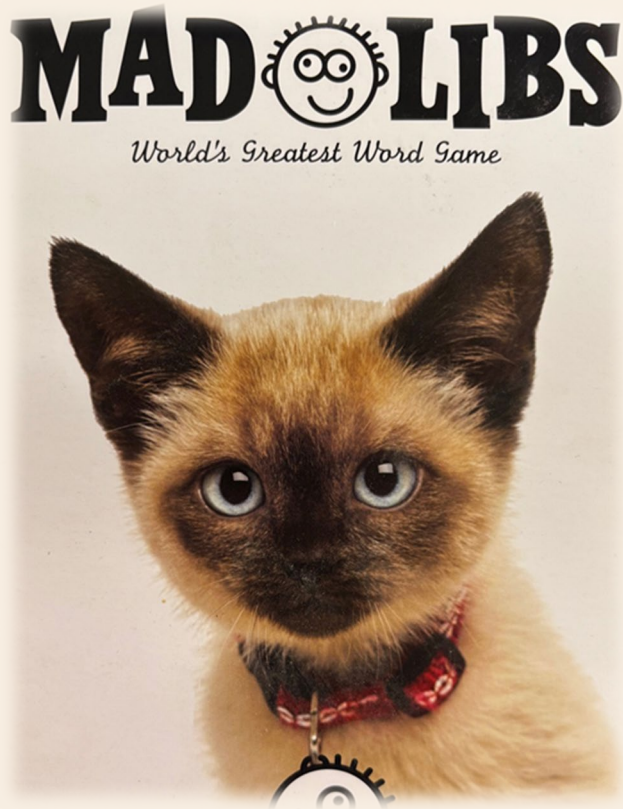
Ensuring accuracy of copies required by court; protecting attorney-client privilege in outgoing mail

Calculating deadlines

What does reasonable mean?



IT'S ALL IN THE DETAILS . . .



Interviews & Conferences:

- * Texted/called/emailed _____ about _____
- * Met with _____ about _____

Discovery and Records Review:

- * Analyzed ____ pages/hours of __[material]__, ECF# ____
- * Ran ____ searches on ____ GB of discovery

Legal Research & Writing:

- * Researched _____ issue for _____ motion, ECF# ____ (*or explain why pleading was not filed*)

Travel Time:

- * Round trip/one way drive from _____ to _____.
- * If time claimed is atypical, explain the cause

Red Flags

- “and filed” = automatic 0.1 reduction
- Using exact same descriptive language more than once
- Billing in even amounts, or the same amount for certain types of tasks (i.e., every phone call is 0.3 hour)
- Billing for every single CM/ECF notification (“billing the docket”)
- Blocks of time that exceed 3-4 hours (unless in trial)
- Billing related to state court work (must have federal representational purpose)
- Excess family contacts (must have representational purpose)



Use Professional Judgment . . .



Aggregating Tasks

- in billing for ECF notices that require no substantive response
- aggregate all tasks that don't take 6 minutes



Team Communication

- in billing to review emails and materials that don't pertain to your specific role on the defense team.



Learning Time

- in determining whether learning time is better characterized as non-compensable self-enrichment, training, or CLE. [CJA Plan XI\(B\)](#).

Voucher Reductions

“The court shall fix the compensation and reimbursement.”

18 U.S.C. § 3006A(d)(5)

AS A MATTER OF POLICY, THE GUIDE LIMITS VOUCHER CUTS TO:

Mathematical errors

Non-compensable work

Work not undertaken or completed

Hours billed that are clearly in excess of what is reasonably required to complete the task

RECOURSE?

Notice and an opportunity to be heard for cuts that exceed 1 hour *except for math errors or clearly clerical work*. [CJA Plan, XII\(B\)\(5\), p. 18.](#)

Request CJA Committee to make non-binding recommendation to judge. [CJA Plan, VIII\(B\)\(6\), p. 11.](#)

CJA 21 Non-Attorney Vouchers



- \$1,000 or more – get prior authorization from Judge
- Counsel is responsible for monitoring work and ensuring compliance with authorization.
- Don't exceed the authorization: file a supplemental request
- Voucher is CJA 21 not CJA 20
- If voucher exceeds \$1,000 or exceeds the authorized amount, you must show that timely procurement of services could not await prior authorization.

Review of Expenses

Receipt required for expenses >\$75.

Claim in-house copies @ 15¢/page

See [CJA Handbook, Ch. VII](#)

Not Reimbursable [Guide, Vol. 7A § 230.66](#)

- Overhead (personnel, rent, internet service, secretarial)
- Personal expenses (haircut, dry cleaning, meals)
- Filing, PHV, or PACER fees
- Fact witness fees

Reimbursable [Guide, Vol. 7A § 230.63](#)

- Transcripts
- Travel expenses (tolls, meals), mileage
- Videoconferencing (non-overhead), thumb drives

Overnight Stays or Air Travel

Motion for Authorization to Travel – in [CJA Handbook, Ch. VII\(C\)\(2\)](#) on website.

Travel Regulations: [Guide, Vol. 19, Ch. 4, § 455.15 - Judiciary Staff Travel Regs \(uscourts.gov\)](#)

Exercise same care as fiscally responsible person traveling at own expense. Excess costs, indirect routes, unnecessary services are not acceptable. [Guide, Vol. 19, § 410.40](#)

No commuting time or expenses

No alcohol

1 person per meal receipt

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Criminal Justice Act Travel Authorization

TRAVELER NAME: _____

TRAVEL DATES: _____

PURPOSE OF TRAVEL: _____

CASE NUMBER AND STYLE: _____

The above-named traveler (Traveler) is authorized to travel at government expense on the travel dates listed in connection with providing representation under the Criminal Justice Act (CJA). **Failure to comply with the terms of this authorization may result in the denial or reduction of a travel reimbursement request.**

LODGING

The Traveler [IS] or [IS NOT] authorized to incur lodging expenses. The Traveler should contact a hotel directly and request the federal government rate. Lodging must be charged to the Traveler's personal credit card and claimed as an expense on the Traveler's CJA 20 voucher. Non-conventional lodging (e.g., Airbnb and Vrbo) is not authorized unless the non-conventional lodging is less expensive than the federal government hotel lodging rate or is otherwise more advantageous to the government.

AIR TRAVEL

The Traveler [IS] or [IS NOT] authorized to travel by air. The Traveler should contact National Travel Service (NTS) at 1-800-445-0668 (available 24 hours a day, 7 days a week) to request government contracted airline reservations. The Traveler must inform NTS that airline tickets are to be charged to the CJA account for the U.S. District Court for the Northern District of Texas. NTS will email the travel itinerary to the Traveler on request.

OTHER TRAVEL EXPENSES

The Traveler may claim reimbursement for out-of-pocket travel expenses reasonably incurred. These expenses must be itemized and documented with receipts to support the charges. In determining whether actual expenses incurred are reasonable, the Traveler should be guided by Judiciary Staff Travel Regulations. See [Guide to Judiciary Policy, Vol. 19, § 455.15](#) (CJA Panel Attorneys and CJA Service Providers).

To obtain reimbursement for authorized travel expenses, the Traveler must attach to the CJA 20 voucher: 1) a copy of this signed Travel Authorization and 2) an *itemized* lodging invoice, air travel itinerary or receipt, and (3) receipts for any other claimed expenses, as applicable.

Authorized by: _____

Date: _____

United States District/Magistrate Judge

AREAS TO EXERCISE CAUTION



Witness Fees &
Expenses are paid by
USMS*

28 USC § 1825
Guide, § 230.66.50,
§320.40.10
CJA Handbook, Ch. VII(B)(1)



Competency Exams
are paid by DOJ

18 USC §§ 4241, 4247
Guide, Vol. 7A, § 320.20



Transportation to court
for non-custodial D is
paid by USMS

18 USC § 4285 (USMS)
possible authorization as
“other service necessary to
the defense,” § 3006A



Don't claim anyone's work
on voucher except yours +
authorized associate

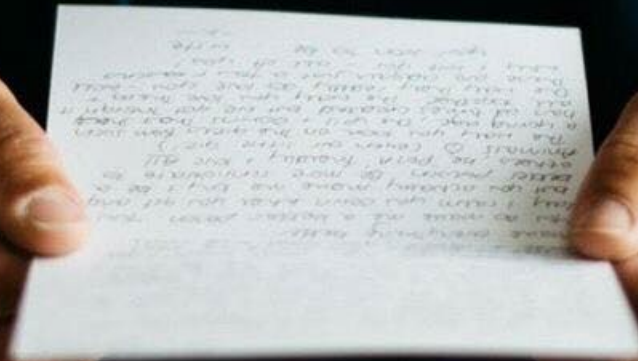
Judge may approve associate
work retroactively but be
careful. TXND CJA Plan,
XII(B)(2).



Use Audit Assist in
eVoucher

**Don't double bill for travel
time or mileage** spent in
common on more than one
client, [Guide § 230.50](#)(e), (f),
(g).

EXCESS COMPENSATION



Circuit approval required to exceed ...

Non-capital felony: \$13,800

Misdemeanor: \$3,900

Supervised Release: \$3,000

Material Witness: \$3,000

Capital Case: n/a



Excess Compensation

*Required
Paperwork*

1. CJA 26 Supplemental Form
2. Supporting Memorandum - [Guide, Vol. 7A](#)
[§ 230.30](#)

Excess Compensation

*Supporting
Memorandum
Should Address...*

1. Whether representation is Extended or Complex
2. Why payment is Fair Compensation-
[Guide, Vol. 7A §230.23.40\(c\)](#)

Excess Compensation

Fair Compensation Factors

Guide §230.23.40(c)

- Responsibilities involved
- Manner in which duties were performed
- Knowledge, skill, efficiency, professionalism, and judgment
- Any injury to counsel's practice
- Time pressure or other factors
- Other relevant and material circumstances

Identify **COST DRIVERS** for the case – trial prep, extreme discovery, difficult client, extreme travel, evolving case law, lots of defendants, e.g.

If the only reason you require Circuit approval is because you are substitute counsel, say that.

Case Budgets

Encouraged: 300 Attorney Hours or
Total Expenditures = \$54,000

Mandatory: capital cases

<https://eba.fd.org/>

[Meg Alverson](#), Case Budgeting
Attorney, 504-310-7799



Questions??



Ethical Foundations

Criminal Law
Civil Statutes
TXND CJA Plan
TX Disc. Rules of Prof. Conduct

Preparing Timesheets

CJA 20s:
-Compensability
-Reasonableness
-Mad Libs
-No Clerical Tasks
Non-Attorney CJA 21
Expenses

Excess Compensation

Circuit Approval
CJA 26 form
Supporting Memo
-Extended/Complex
-Cost Drivers
Budgeting

Thank you!

This slide deck is posted on
the Court's website under

[Attorneys/CJA Attorney
Information/Links & Resources](#)

CJA Help Desk:	214-753-2173
Tammy Shipley:	214-753-2209
Kim Schaefer:	214-753-2192

