

Judicial Council of the Ninth Circuit
Amended CJA Capital Habeas Costs Policy
October 2009

1. Case Budgeting

As a cost-containment mechanism, up-front budgeting is required for all capital habeas cases in the Ninth Circuit's district courts. Petitioner's counsel will submit a proposed budget to be reviewed by the court. The court and counsel will reach an agreement on the proposed budget and the court-approved budget will be submitted to and reviewed by the Capital Case Committee. The Capital Case Committee will then make a recommendation to the Judicial Council of the Ninth Circuit. Courts shall require that budgets be submitted using the electronic Excel budgeting system, developed specifically for budgeting cases in the Ninth Circuit. A significant modification, defined as the lesser of a ten percent increase in the total amount of the budget or \$15,000, also will be subject to the Ninth Circuit budget-approval process.

2. Local Resources

Whenever possible, the court shall appoint counsel from within the district. In cases where one attorney is appointed from within a district and another attorney is appointed from outside of the district, the counsel nearest the client should conduct most of the client visits. Every effort should be made to retain experts, investigators, and other service providers who maintain offices in the geographic area in which work is to be performed.

3. Compensation of Counsel

The hourly reimbursement rates for CJA-appointed attorneys will be tiered. Attorney compensation rates are listed in Appendix 1. The maximum rate is reserved for lead counsel who have substantial experience and skill in federal capital habeas corpus proceedings. The intermediate rate shall be applied to those with less than substantial experience handling capital habeas corpus proceedings but who have other comparable experience, such as substantial experience with state capital cases or with non-capital federal habeas corpus proceedings. All other lead counsel shall be compensated at a rate within the "other" lead counsel range, taking into account the attorney's experience and skill. Second counsel shall be compensated at the second counsel rate, taking into account the attorney's experience and skill. Two lead counsel may be appointed. Generally, counsel should not be doing duplicative work.

4. Document Review

For budgeting purposes, the rate of review for the state record and other documents is 60 pages an hour. A district judge should authorize all appointed counsel to read the core materials (the trial transcript from opening to verdict, substantial motions, state appellate briefs and decisions, and state post conviction pleadings, exhibits, transcripts, and decisions). To reduce extraordinary expenses associated with record review of cases with voluminous documents, a two-stage approach may be employed for materials other than the core record. The first stage would entail approval of a modest amount (*e.g.*, 40-60 hours) for a preliminary review to assess the materials available and determine what materials need to be reviewed more thoroughly. Use

of a paralegal, as appropriate is encouraged. The second stage would involve approval of a budget to permit a reasonable in-depth review of the material.

5. Compensation of Associates, Law Clerks, Paralegals, and Investigators

Appointed counsel should utilize associates, law clerks, paralegals, investigators, and other cost effective service providers to minimize costs where the appointed attorneys' expertise is not required. All such time must be requested and approved in the budget. Budget requests must detail the projected number of hours, the hourly rate, and the total anticipated expenditure. Compensation for independent contractor and in-house service providers may not exceed the maximum rates listed in Appendix 1. Appointed counsel are responsible for communicating with service providers to ensure that services comply with specific terms of the budget order. Attorneys and law firms utilizing in-house service providers are not permitted to make a profit on these positions. General overhead costs may not be included in the calculation of hourly rates. Payments to service providers should be authorized at the appropriate rate for the type of task performed.

6. Compensation of Experts

Funding authorization for experts shall be clearly explained and justified in appointed counsels' budget request, including the type of service to be provided, the projected number of hours, the hourly rate (*see Appendix 1*), and the total anticipated expenditure. Appointed counsel are responsible for communicating with experts to ensure that services comply with specific terms of the budget order.

7. Internal Staff Division of Labor

There should be a reasonable division of labor between counsel and other staff to avoid duplication of effort. The time claimed for conferences, memoranda, and coordination of the litigation team should be carefully scrutinized. Initial fact-gathering interviews generally should be conducted by an investigator or mitigation specialist. After key witnesses are identified, usually only one attorney along with an investigator or mitigation specialist should conduct interviews.

8. Attendance by Multiple Staff at Court Hearings

With the exception of evidentiary hearings, only one counsel will be compensated for attendance at court hearings unless otherwise approved by the court. Generally, support staff, including law clerks, paralegals, and investigators, will not be compensated for attendance at court hearings.

9. Preliminary Juror Misconduct Investigation

A judge may approve a maximum of 40 hours for a preliminary investigation into juror misconduct.

10. Resolving Discovery Issues

Counsel shall attempt to resolve discovery issues informally through conferences with opposing counsel. Except as to third-party discovery, counsel should not file formal discovery motions without first consulting with the court and attempting to meet and confer with opposing

counsel. Discovery conducted pursuant Rule 6 of the Rules Governing § 2254 Cases requires leave of court.

11. Certificates of Appealability

Consistent with Rule 11 of the Rules Governing § 2254 Cases (effective Dec. 1, 2009), courts must issue or deny a Certificate of Appealability (COA) when entering a final order adverse to the petitioner. Briefing on entitlement to a COA should be authorized only if a court concludes that it cannot rule without additional argument from the parties. Courts should rule on whether a COA will be granted when ruling on the merits of a specific claim and then include in the final dispositive order whether a COA is granted or denied.

12. Voucher Submission

In order to assist the court in reviewing vouchers, each time entry shall describe individual tasks. Information should be provided in detail sufficient to permit meaningful review. Counsel should consult with the court regarding the level of specificity required in the supporting documentation. Courts should ensure that counsel abide by the expense policies set forth in Appendix 2.

Appendix 1

Per Hour Reimbursement Rates

Attorney Rates

Maximum Lead Counsel	\$175
Intermediate Lead Counsel	\$160
Other Lead Counsel	\$139 - \$155
Second Counsel (other than co-lead)	\$113 - \$139
Associate Counsel	\$ 71 - \$ 92

Paralegal up to \$ 45

Investigator up to \$75 (\$55 for record collection)

Expert Rates

Mitigation Specialist (non-testifying)	up to \$100 (\$55 for record collection)
<i>Strickland</i> expert	\$175 (same as max. lead counsel)
Psychiatrists, Neurologists, and medically licensed experts	\$275
Forensic experts	\$200
Psychologists (with Ph.D.)	\$200

Appendix 2

Expense Policies

- The use of couriers, messengers and other premium delivery services such as Express Mail, Federal Express, and United Parcel Service, is discouraged unless there is a genuine necessity for this service. Receipts for all such services are required.
- In-house copying is reimbursable at a rate not to exceed \$.10 per page.
- General office overhead expenses are not reimbursable, including flat-fee computerized research plans, cellular telephone maintenance fees, books and publications, office supplies and equipment, and all costs related to educational seminars.