

# **Court Orders Issued During the COVID-19 Pandemic on Criminal Justice Act Interim Voucher Payments**

by

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## Executive Summary

This report summarizes court orders (administrative, standing, or general) that the U.S. federal courts have issued regarding authorization of interim payments to Criminal Justice Act (CJA) panel attorneys.

CJA panel attorneys are appointed by the court to represent people who are financially unable to retain counsel for federal criminal proceedings.<sup>1</sup>

In April 2020, and July through August 2022, Federal Judicial Center staff reviewed the public websites of the ninety-four (94)<sup>2</sup> district and twelve (12) circuit courts to retrieve court orders and other information pertaining to their interim payment policy for CJA panel attorneys prior to and during the COVID-19 pandemic. Forty-three district court orders (thirty-seven COVID-19 era and six pre-COVID) were located during the two data collection periods: eighteen orders retrieved in April 2020 and twenty-five orders retrieved in July/August 2022.

### *Report Highlights: Court Orders Regarding Interim Payments to CJA Panel Attorneys*

- **District Court CJA Interim Payment Orders (Total):** Forty-three (43) of the ninety-four district courts (45.7%) adopted CJA interim payment orders for CJA counsel either before or during the pandemic. Forty-two<sup>3</sup> of these orders (44.7%) were still in effect as of September 2022.
  - **Pre-COVID-19 CJA Interim Payment Orders:** Six (6) of the ninety-four district courts (6.4%) have orders regarding interim payments for CJA counsel that predate the COVID-19 pandemic.<sup>4</sup>
  - **COVID-19-Era CJA Interim Payment Orders:** Thirty-seven (37) of the ninety-four district courts (39.4%) adopted interim payment CJA orders after the start of the COVID-19 pandemic.
    - **COVID-19-Era CJA Interim Payment Orders: Voucher Minimum Requirement:** Thirty-one (31) of the thirty-seven district court orders (83.8%) have minimum amount requirements for interim vouchers that can be submitted without a court's prior approval.

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1. Description from the "Criminal Justice Act Guidelines," <https://www.uscourts.gov/rules-policies/judiciary-policies/criminal-justice-act-cja-guidelines> (visited 8/2/2022).

2. All ninety-four district courts had CJA plans that addressed panel attorney compensation.

3. The District of Puerto Rico's COVID-19-era order was vacated as of 12/1/2020. See Table 5 in the report for links to the district courts' interim payment CJA orders.

4. One (Third Circuit) of the twelve circuits (8.3%) has such an order.

- **COVID-19-Era CJA Interim Payment Orders: Minimum Voucher Amount:** Thirty-one district (31) court orders require minimum voucher amounts of between \$250 and \$4,000 for vouchers submitted without prior court approval.
- **COVID-19-Era CJA Interim Payment Orders: Required Minimum Voucher Amount of \$4,000:** Eleven (11) of the thirty-seven district court orders (29.7%) require minimum voucher amounts of \$4,000 or more for vouchers submitted without prior court approval.
- **COVID-19-Era CJA Interim Payment Orders: Rescinded Court Orders:** As of September 2022, thirty-six (36) of the thirty-seven district court interim payment orders (97.3%) were adopted since the start of the pandemic have not been rescinded. The orders primarily use variations of “until further notice” to designate if or when their district court order will be vacated or suspended.

## **I. Introduction**

The [Cardone Report](#) noted the infrequency with which courts permitted use of interim vouchers for CJA voucher payments. When cases are deemed lengthy or complex, the presiding judge may allow attorneys to seek payment (submit interim vouchers) for services before the end of litigation. The report noted that Judicial Conference policy does not require allowing interim payments, adding, “in practice the ability to obtain approval to be paid throughout the course of a case varies by district and among judges within a district.”<sup>5</sup> The report cited several witnesses describing the challenges of seeking interim payment.

The Cardone Report described the variation in interim voucher processes (by court and judge) in detail. Some districts, such as Kansas, set dollar thresholds for vouchers, while others, such as California Northern, permitted interim vouchers when cases were budgeted. The benefits of interim vouchers are thought to be that 1) attorneys avoid financial hardship when taking complicated CJA appointments and 2) voucher review staff maintain a close watch on case costs.

Witnesses testifying before the Cardone Committee indicated that when courts did not routinely approve interim vouchers, some lawyers experienced financial difficulties<sup>6</sup> and had to implore the court about their need for money to cover litigation costs.<sup>7</sup> The Committee expressed concern that barriers to payment, such as a prohibition on interim vouchers, could inhibit CJA panel attorney recruitment and retention.<sup>8</sup>

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5. Cardone Report, p. 114 (2018).

6. Cardone Report, p. 115 (2018), n. 502.

7. Cardone Report, p. 115 (2018), n. 503.

8. Cardone Report, p. 116 (2018).

The COVID-19 pandemic may have exacerbated the ongoing financial struggles of panel attorneys. Due to courthouse and court building access restrictions, along with declines in filings and delays in case processing<sup>9</sup>, CJA panel attorney voucher submissions and payments were also delayed, and CJA panel appointments declined overall.<sup>10</sup> In response, some courts made changes to their interim payment policies to allow attorneys to submit vouchers for work already completed, even as cases were pending.

We gathered information on where courts made changes to their interim payment policies in response to the COVID-19 pandemic, what those changes looked like, and how long they lasted.

Court policies and practices for voucher review and submission will be discussed in the Center’s evaluation of the implementation of the Cardone recommendations. However, interim vouchers are not subject to a specific recommendation in the Cardone Report and thus are somewhat outside the scope of that analysis.

## **II. Interim Payments for CJA Panel Attorneys (Prior to COVID-19)**

### **A. District Courts**

Apart from addressing the voucher process in their CJA plans, district courts may issue separate orders regarding voucher submissions and payments.

Prior to the COVID-19 pandemic, six<sup>11</sup> district courts had administrative, standing, or general orders that addressed interim payments for CJA panel attorneys. (See Table 1.)

<b>Table 1</b>	<b>District Courts: Have Pre-COVID-19 CJA Interim Payment Order for CJA Panel Attorneys</b>
<b>Yes</b>	6.4% (n=6)
<b>No</b>	93.6% (n=88)

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9. [U.S. District Courts – Judicial Business 2020](#), reporting “terminations for civil cases and criminal defendants fell 14 percent” while “[t]he total number of pending civil cases and criminal defendants went up 43 percent.”

10. See [Criminal Justice Act—Judicial Business 2020](#), reporting, “A total of 190,225 representations by counsel under the CJA were opened, a decrease of 25 percent from 2019. The reduction in representations has been attributed mainly to the effects of the COVID-19 pandemic.”

11. A seventh district court, Iowa Northern, has a pre-COVID-19 [order](#) (2001) that addresses interim payment for CJA attorneys. However, the district’s order was not included in this report’s pre-COVID-19 data, since their court’s interim payment order applies *only* to CJA attorneys “who previously [were] appointed to represent a defendant in a criminal action and who [have] been allowed to withdraw” from their case.

Below are general order excerpts from those district courts with interim payment general orders predating COVID-19:

- **California Eastern** (2018): CJA attorneys are “required to submit interim reimbursement vouchers quarterly in all cases where \$5,000 or more of billable services have accrued.”<sup>12</sup>
- **California Northern** (2020): “Prior to the completion of the case, any attorney providing representation under the CJA may submit interim vouchers for payment of fees and reimbursement of allowable expenses Interim vouchers should be submitted every 60 days unless the voucher amount is less than \$1,400.”<sup>13</sup>
- **Kansas** (2014): “Counsel providing representation under the Criminal Justice Act (CJA) may submit interim CJA 20 vouchers for payment of fees and reimbursement of allowable expenses, in any case, without the necessity of filing a Motion for an Order Allowing Interim Payments. The initial interim voucher may be submitted no sooner than four months after the date of appointment. Subsequent interim vouchers may be submitted when the current interim voucher amount is greater than \$4,000 or at four months after the date of the previously submitted interim voucher.”<sup>14</sup>
- **New Jersey** (2019): Interim payments are authorized “[due to] the complexity of [such cases], the expected length of pretrial preparation, the length of the trial, and the anticipated hardship of counsel in undertaking representation full-time for such a period without compensation.”<sup>15</sup> The order has specific requirements for voucher submissions and reimbursable expenses such as 1) “counsel is required to provide a copy of a receipt for any individual expense item in excess of \$50” and 2) “extraordinary travel that may require air travel, overnight lodging, meals and incidental expenses are required to be authorized in advance in the e-Voucher system.”
- **Utah** (2018): “The submission of ‘interim’ vouchers for compensation without prior court approval is authorized. Panel Attorneys may submit an interim voucher in monthly intervals so long as the voucher exceeds \$1,000. In cases that exceed the statutory

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12. Amended Order Re CJA Voucher Requests Are Required Whenever More Than \$5,000 of Billable Services Have Been Accrued, General Order No. 594, California Eastern District Court, October 26, 2018 <https://www.caed.uscourts.gov/caednew/assets/File/GO%20594.pdf> (visited July 22, 2022).

13. Criminal Justice Act Procedures for Attorney Compensation and Funding for Needed Services, General Order No. 50, California Northern District Court, January 22, 2020, <https://www.cand.uscourts.gov/wp-content/uploads/general-orders/GO-50.pdf> (visited July 22, 2022).

14. Interim CJA Vouchers, General Order No. 14-3, Kansas District Court, July 1, 2014, <https://ksd.uscourts.gov/index.php/local-rule/no-14-3-interim-cja-vouchers/> (visited August 18, 2022).

15. Order for Interim Payment for Representation of Counsel Pursuant to the Criminal Justice Act 18:3006(A) CR. NO, New Jersey District Court, December 2019, <https://www.njd.uscourts.gov/sites/njd/files/forms/CJA-ORDER-Interim-Payments-Revised12-2019.pdf> (visited August 18, 2022).

maximum but do not require a mega budget, CJA Panel Attorneys must submit an interim voucher for payment within ninety (90) days from the date of the appointment and at intervals of no more than ninety (90) days for the duration of the appointment, unless the voucher is for less than \$1,000.”<sup>16</sup>

- **West Virginia Southern** (2018): This court’s pre-COVID-19 order regarding interim payments for CJA attorneys, like Utah District Court’s, is also comprehensive. CJA counsel “may submit interim CJA vouchers for payment of fees and expenses, in any case without the necessity of filing a Motion for an Order Allowing Interim Payments. The initial voucher may be submitted no sooner than four months after the date of appointment. Subsequent interim vouchers may be submitted when the current interim voucher amount is greater than \$4,000 or at four months after the date of the previously submitted interim voucher. Within 45 days of the conclusion of representation, counsel should submit a final voucher, without regard to the amount of the claim or the date of any previously submitted voucher.”<sup>17</sup>

The dates on which the six district courts issued their pre-COVID “CJA Interim Payment Orders” vary. Three of the six districts issued orders in 2018 (California Eastern, Utah, and West Virginia). The earliest district order went into effect in 2014 (Kansas), and the latest (California Northern) was in early 2020.

The pre-COVID-19 CJA interim payment orders for the Districts of Kansas, Utah, and West Virginia Southern are similar in format and text to the COVID-19-era CJA interim payment orders in including the following provisions:

- interim vouchers may be submitted without prior court approval or the need to file a motion for an order allowing interim payments without prior court approval
- interim vouchers can only be submitted within a set number of months after the previous voucher submission
- there is a designated minimum amount for interim voucher submissions.

Information about the structure and details included in the district courts’ COVID-19 era CJA interim payment orders is discussed in Part IV of the report.

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16. In the Matter of Criminal Justice Act Protocol, General Order 18-003, Utah District Court, June 27, 2018, <https://www.utd.uscourts.gov/sites/utd/files/General%20Order%2018-03.pdf> (visited July 29, 2022).

17. Criminal Justice Act Program Standing Order Regarding Interim CJA Vouchers, West Virginia Southern District, September 10, 2018, <https://www.wvsd.uscourts.gov/pdfs/CJA/StandingOrderRegardingInterimCJAVouchers.pdf> (visited August 18, 2022).

## B. Circuit Courts

Only one (Third Circuit) of the twelve federal circuit courts has a pre-COVID-19 CJA interim payment order. (See Table 2.)

Table 2	Circuit Courts: Have Pre-COVID-19 General Orders Re Interim Payments for CJA Panel Attorneys
Yes	8.3% (n=1)
No	91.7% (n=11)

The Third Circuit’s standing order (2016) allows “[c]ounsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A ... [may] request leave to submit interim vouchers for compensation pursuant to the Guide to Judiciary Policy.” Furthermore, the order provides “leave to submit interim vouchers for compensation for matters pending in the district court.” Further, such leave “rests solely with the presiding district or magistrate judge, and ... further review by the circuit of the request for leave to submit interim vouchers is not necessary.”<sup>18</sup>

## III. CJA Interim Payment Orders for CJA Panel Attorneys (COVID-19 Era)

The COVID-19 pandemic brought many challenges to the operation of the federal courts. Administrative decisions about court operations to address these challenges,<sup>19</sup> from restricting access to the courts, implementing quarantine guidelines to delaying court proceedings, also affected the pace of litigation. While necessary from a public health standpoint, these changes complicated the appointment of CJA panel attorneys and their ability to submit vouchers to receive payment for legal services. Prior to the pandemic, only six districts permitted interim payments for panel attorneys (See Part II, Section A), and many panel attorneys were unable to submit vouchers for payment for completed work when their representation or case(s) did not close.

Delays in case closures raised the possibility of panel attorneys providing legal counsel over an extended period without compensation. Several district courts addressed this problem by issuing general orders that authorized CJA panel attorneys to submit vouchers for interim payments to cover legal costs before the completion of their CJA services. These new CJA interim payment orders arose in districts across the country, primarily during the initial months of the pandemic.

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18. Standing Order, The United States Court of Appeals for the Third Circuit, August 9, 2016, <https://www.paed.uscourts.gov/documents/cja/Standing%20Order%20on%20Requests%20for%20Leave%20to%20Submit%20Interim%20Vouchers.pdf> (visited July 28, 2022).

19. Judiciary Preparedness for Coronavirus (COVID-19), <https://www.uscourts.gov/news/2020/03/12/judiciary-preparedness-coronavirus-covid-19> (visited October 13, 2022).



### A. Issuance of CJA Interim Payment Orders During the Pandemic

Between March 2020 and September 2022, over a third (39.4%) of the ninety-four district courts issued a COVID-19-era administrative, standing or general order that allowed CJA panel attorneys to submit vouchers for interim payment for their services and related costs. (See Table 3.) (Section B discusses the effective date in which the thirty-seven districts adopted orders that permit interim voucher payments.)

<b>Table 3</b>		<b>District Courts: COVID-19 Era CJA Interim Payment Orders Re CJA Panel Attorneys</b>					
<b>Yes</b>	39.4% (n=37)	<a href="#">AL-M</a> <sup>20</sup>	<a href="#">CA-S</a>	<a href="#">DE</a>	<a href="#">DC</a>	<a href="#">GA-N</a>	<a href="#">ID</a>
		<a href="#">IL-N</a>	<a href="#">LA-E</a>	<a href="#">LA-W</a>	<a href="#">MD</a>	<a href="#">MA</a>	<a href="#">MN</a>
		<a href="#">MO-E</a>	<a href="#">MT</a>	<a href="#">NH</a>	<a href="#">NY-E</a>	<a href="#">NY-N</a>	<a href="#">NY-S</a>
		<a href="#">NY-W</a>	<a href="#">NC-E</a>	<a href="#">NC-M</a>	<a href="#">OK-E</a>	<a href="#">OK-N</a>	<a href="#">OK-W</a>
		<a href="#">PA-E</a>	<a href="#">PA-M</a>	<a href="#">PA-W</a>	<a href="#">PR</a>	<a href="#">RI</a>	<a href="#">SC</a>
		<a href="#">TN-E</a>	<a href="#">TX-S</a>	<a href="#">VA-W</a>	<a href="#">WA-W</a>	<a href="#">WV-N</a>	<a href="#">WI-E</a>
		<a href="#">WI-W</a>					
<b>No</b>	60.6% (n=57)	AL-N	AL-S	AK	AZ	AR-E	AR-W
		CA-C	<a href="#">CA-E</a> <sup>21</sup>	<a href="#">CA-N</a> <sup>22</sup>	CO	CT	FL-M
		FL-N	FL-S	GA-M	GA-S	HI	IL-C
		IL-S	IN-N	IN-S	IA-N	IA-S	<a href="#">KS</a> <sup>23</sup>
		KY-E	KY-W	LA-M	ME	MI-E	MI-W
		MS-N	MS-S	MO-W	NE	NV	<a href="#">NJ</a> <sup>24</sup>
		NM	NC-W	ND	OH-N	OH-S	OR
		SD	TN-M	TN-W	TX-E	TX-N	TX-W
<a href="#">UT</a> <sup>25</sup>	VT	VA-E	WA-E	<a href="#">WV-S</a> <sup>26</sup>	WY		

20. Alabama Middle District Court’s General Order 3910-06, CIV. MISC. 2:20-MC-3910-ECM “In RE: Interim Payments for CJA Panel Attorneys” is not available online. The Federal Judicial Center obtained a copy of the order for review from the district’s clerk of court.

21. California Eastern District Court’s pre-COVID-19 interim payment CJA order, effective 10/16/2016, has not been superseded (as of September 2022).

22. California Northern District Court’s pre-COVID-19 interim payment CJA order, effective 1/22/2020, has not been superseded (as of September 2022).

23. Kansas District Court’s pre-COVID-19 interim payment CJA order, effective 7/1/2014, has not been superseded (as of September 2022).

24. New Jersey District Court’s pre-COVID-19 interim payment CJA order, effective March 2019, has not been superseded (as of September 2022).

25. Utah District Court’s pre-COVID-19 interim payment CJA order, effective 6/27/2019, has not been superseded (as of September 2022).

26. West Virginia Southern District Court’s pre-COVID-19 interim payment CJA order, effective 9/10/2018, has not been superseded (as of September 2022).

		GU	NMI	PR	VI		
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Note: The hyperlinks are to the district courts' most recent (as of September 2022) CJA interim payment orders available on the courts' public websites. The six highlighted courts are district courts with pre-COVID-19 CJA orders that permit CJA panel attorneys to submit interim vouchers.

None of the twelve circuit courts have issued a CJA interim payments order for CJA panel attorneys during the COVID-19 pandemic.

### B. Effective Dates of CJA Interim Payment Orders

Table 4 provides an overview of the effective dates for which the district courts issued pre-COVID-19 (six) and COVID-19-era (thirty-seven) CJA interim payment orders for CJA panel attorneys.

Table 4	District Courts: Effective Date of CJA Interim Payment Orders Re CJA Panel Attorneys					
<b>Pre-COVID Orders (6)</b>	CA-E	CA-N	KS	NJ	UT	WV-S
	10/16/2018	1/22/2020	7/1/2014	3/DD/2019 <sup>27</sup>	6/27/2018	9/10/2018
<b>COVID-19 Era Orders (37)</b>	AL-M	CA-S	DE	DC	GA-N	ID
	4/7/2020	3/23/2020	4/9/2020	3/23/2020	3/30/2020	3/18/2020
	IL-N	LA-E	LA-W	MD	MA	MN
	4/3/2020	5/21/2020	5/19/2020	3/25/2020	3/27/2020	4/10/2020
	MO-E	MT	NH	NY-E	NY-N	NY-S
	6/4/2020	3/24/2020	3/30/2020	4/21/2020	4/21/2020 <sup>28</sup>	1/7/2021
	NY-W	NC-E	NC-M	OK-E	OK-N	OK-W
12/14/2021	3/20/2020	3/24/2020	4/9/2020	4/8/2020	5/6/2021	
PA-E	PA-M	PA-W	PR	RI	SC	
4/13/2020	4/13/2020	3/31/2020	10/21/2020	3/27/2020	4/10/2020	
TN-E	TX-S	VA-W	WA-W	WV-N	WI-E	
3/25/2020	5/27/2020	3/30/2020	7/13/2022	3/20/2020	3/25/2020	
WI-W						
4/20/2020						
<b>N/A (57)</b>	---					

Code: N/A = Courts that do not have a COVID-19-era CJA interim payment order for CJA panel attorneys.

27. New Jersey District Court's COVID-19-era CJA interim payment order is dated as March 2019.

28. New York Northern District's COVID-19-era CJA interim payment order (4/21/2020) was revised on 12/4/2020.

Twenty-eight of the thirty-seven district courts (75.7%) issued their COVID-era CJA interim payment orders in March and April 2020, within two months of when COVID-19 was officially declared a pandemic (March 11, 2020). Thirty-three of the thirty-seven district court orders (89.2%) were issued in 2020 after declaration of the national emergency. The earliest order went into effect in Iowa Northern District Court on March 18, 2020, and the latest<sup>29</sup> was issued in Washington Western District Court on July 13, 2022.

Below is a list of when the district courts' COVID-19-era CJA interim payment orders were adopted.

- March 2020 (16 districts): CA-S, DC, GA-N, ID, MD, MA, MT, NH, NC-E, NC-M, PA-W, RI, TN-E, VA-W, WV-N and WI-E
- April 2020 (12 districts): AL-M, DE, IL-N, MN, NY-E, NY-N, OK-E, OK-N, PA-E, PA-M, SC, and WI-W
- May 2020 (3 districts): LA-E, LA-W, and TX-S
- June 2020 (1 district): MO-E
- October 2020 (1 district): PR
- 2020 YR (33 districts): AL-M, CA-S, DE, DC, GA-N, ID, IL-N, LA-E, LA-W, MD, MA, MN, MO-E, MT, NH, NY-E, NY-N, NC-E, NC-M, OK-E, OK-N, PA-E, PA-M, PA-W, PR, RI, SC, TN-E, TX-S, VA-W, WV-N, WI-E and WI-W
- 2021 YR (3 districts): NY-S, NY-W and OK-W
- 2022 YR (1 district): WA-W

#### **IV. Format and Content Re CJA Interim Payment Orders for CJA Panel Attorneys (COVID-19 Era)**

The structure and language of the thirty-seven COVID-19-era CJA district court orders are similar, with some variation. The orders typically include the following information:

- direct or indirect reference to the disruption of court operations caused by the COVID-19 pandemic
- ability of CJA panel attorneys to submit interim vouchers for payment of fees and expenses without having to file a motion for an order allowing interim payments

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29. As of September 2022, the conclusion of research for this report.

- purpose of the order (e.g., alleviate potential financial hardship on counsel for “undertaking representation for an extended period of time without compensation and to expedite the processing, review and payment of CJA vouchers”<sup>30</sup>)
- minimum amounts allowed per interim voucher submission (e.g., no less than \$500; greater than \$4,000)
- instructions for when interim vouchers can be submitted (e.g., intervals of a set number of months or days after submission of the previous interim voucher)
- general or specific expiration date or period for how long the order will be in effect

The following sections provide details about specific provisions in the thirty-seven COVID-19-era district court orders.

### A. Reference to District Court CJA Plan

Fourteen of the thirty-seven district courts (37.8%) that have COVID-19-era CJA interim payment general orders mention their court’s CJA plan in their interim payment general orders. (See Table 5.) The orders briefly reference their CJA Plan (e.g., “Under Section X of the District’s Criminal Justice Act Plan”) but do not include details, such as an overview of the court’s CJA Plan, quotes or citations from the plan, or a web link to the plan.

<b>Table 5</b>	<b>District Courts: CJA Interim Payment Orders Referencing District Court CJA Plans</b>
<b>Yes</b>	14.9% (n=14)
<b>No</b>	24.5% (n=23)
<b>N/A</b>	60.6% (n=57)

Code: N/A = Courts that do not have a COVID-19-era CJA interim payment order for CJA panel attorneys.

### B. Language Re Effect of COVID-19 on Court Operations

The “COVID-19 language” included in the district orders range from the pro forma, such as “the disruption of court operations due to COVID-19,” to the representational, such as “the recent outbreak of the Coronavirus Disease 2019 (COVID-19) in the United States, and specifically in the State of X and in the X District Court of X-State.”

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30. Regarding Interim CJA Vouchers During COVID-19, Standing Order 2020-08, Western District of Virginia, March 30, 2020, [http://www.vawd.uscourts.gov/media/31965172/interim\\_cja\\_vouchers\\_covid19.pdf](http://www.vawd.uscourts.gov/media/31965172/interim_cja_vouchers_covid19.pdf) (visited July 29, 2022).

Thirty of the thirty-seven district courts' CJA interim payment orders (81.1%) generally mention that COVID-19 had an impact on court operations. The seven orders that do not mention or reference COVID court operations *do* include statements such as “due to the impact of the COVID-19 Pandemic.”

<b>Table 6</b>	<b>District Courts: CJA Interim Payment Orders Referencing COVID-19 Court Operations</b>
<b>Yes</b>	31.9% (n=30)
<b>No</b>	7.4% (n=7)
<b>N/A</b>	60.6% (n=57)

Code: N/A = Courts that do not have a COVID-19 Era CJA interim payments order for CJA panel attorneys.

### C. “Death Penalty” and “Non-Death Penalty” Authorization

For the most part, the thirty-seven COVID-19-era CJA interim payment orders do *not* specify whether the order is for death penalty or non-death penalty cases. (See Table 7.) The orders appear to be inclusive, in that the courts accept interim voucher submissions from CJA panel attorneys handling either type of criminal case.

<b>Table 7</b>	<b>District Courts: CJA Interim Payment Orders that Mention “Non-Death Penalty” or “Death Penalty” Cases Re Voucher Submissions</b>
<b>Yes</b>	2.1% (n=2)
<b>No</b>	37.2% (n=35)
<b>N/A</b>	60.6% (n=57)

Code: N/A = Courts that do not have a COVID-19-era CJA interim payment order for CJA panel attorneys.

Two of the thirty-seven district courts (5.4%), Illinois Northern and Puerto Rico, have CJA interim payment orders that include language specific to non-death penalty cases (e.g., “authorizes CJA Panel Attorneys to submit interim vouchers for compensation in non-death penalty cases”<sup>31</sup>). The use of case budgeting in capital cases may allow for interim voucher payments, but the orders do not discuss the practice.

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31. In Re: CJA Panel Attorneys Interim Compensation During COVID-19 Pandemic, Amended General Order 20-0015, Illinois Northern District Court, April 5, 2020, <https://www.ilnd.uscourts.gov/assets/documents/forms/clerksoffice/rules/admin/pdf-orders/GO%20Number%2020-15.pdf> (visited August 17, 2022).

### D. Voucher Submission Time Periods

Thirty-one of the thirty-seven district courts' (83.8%) COVID-19-era CJA interim payment orders specify how often CJA panel attorneys can submit interim vouchers. (See Table 8.)

<b>Table 8</b>	<b>District Courts: CJA Interim Payment Orders Specifying Voucher Submission Periods</b>
<b>Yes</b>	33.0% (n=31)
<b>No</b>	6.4% (n=6)
<b>N/A</b>	60.6% (n=57)

Code: N/A = Courts that do not have a COVID-19 era CJA interim payment order for CJA panel attorneys.

The districts courts' requirements for when a CJA panel attorney can submit their initial voucher and subsequent vouchers vary in length and have set interval periods. (See Table 9.)

<b>Table 9</b>	<b>District Courts: Time Between CJA Interim Payment Voucher Submissions</b>						
<b>Within 1 month</b>	2.1% (n=2)	MN	PA-W				
<b>Within 2 months</b>	17.0 % (n=16)	AL-M	CA-S	DC <sup>32</sup>	GA-N <sup>33</sup>	ID	LA-E
		LA-W	MA	MT	NY-E	NY-N	PA-E
		TN-E	TX-S	WI-E	WI-W		
<b>Within 3 months</b>	2.1% (n=2)	NY-W	PA-W				
<b>Within 4 months</b>	11.7% (n=11)	DE	MD	NC-E	NC-M	OK-E	OK-N
		OK-W	PA-M	SC	VA-W	WV-N	
<b>No timeframe</b>	6.4% (n=6)	IL-N	MO-E	NH	NYS	RI	PR
<b>N/A</b>	60.6% (n=57)	---					

Code: N/A = Courts that do not have a COVID-19 Era CJA interim payment order for CJA panel attorneys.

32. District of Columbia Court's Standing Order allows for CJA panel attorneys to submit an interim voucher before the "within two months of the previous voucher" period if their voucher amount exceeds \$2,000. <https://www.dcd.uscourts.gov/sites/dcd/files/COVID-19%20Interim%20Voucher%20for%20CJA.pdf> (visited August 19, 2022).

33. Georgia Northern District Court's general order regarding CJA attorneys' interim voucher submissions: states, "An initial interim voucher may be submitted no sooner than six (6) months after the date of appointment and the amount of the interim voucher is greater than \$1,000. Subsequent interim vouchers may be submitted when the current interim voucher amount is greater than \$3,000 and no sooner than two (2) months after the date of the previously submitted interim voucher." [https://www.gand.uscourts.gov/system/files/NDGA\\_GenOrder20-05.pdf](https://www.gand.uscourts.gov/system/files/NDGA_GenOrder20-05.pdf) (visited August 19, 2022).

As shown in Table 9, twenty-seven of the thirty-seven districts (73%) required interim payment vouchers to be submitted at least two months apart or four months apart.

The remaining ten of the thirty-seven districts (27%) opted for a one-month, three-month or ‘no timeframe’ submission period.

The district court orders that do not have a timeframe or interval period for interim voucher submissions use language like New Hampshire District Court’s, which “authorizes attorneys and expert service providers to submit interim CJA vouchers in accordance with §230.73.10 and §310.60.10 of the Guidelines for the Administration of the Criminal Justice Act.”<sup>34</sup>

Twelve of the thirty-seven district court orders (32.4%) provide an option in which CJA panel attorneys can submit an interim voucher “within x-months of the previous voucher submission” *or* if their voucher exceeds x-amount. For example, Delaware District Court’s CJA interim payment order states that its “initial voucher may be submitted (no sooner than four months after the date of appointment/for services rendered to date). Subsequent interim vouchers may be submitted when the current interim voucher amount is greater than \$4,000 \*OR\* at intervals of four months after the date of the previously submitted interim voucher.”<sup>35</sup> [emphasis added]

In other words, a CJA attorney does not have to adhere to a court’s “x-months between prior interim voucher submission” requirement *if* their voucher amount is greater than x (as listed in the district’s court order). Below is a listing of the twelve district courts that permit interim voucher submissions for threshold dollar amounts within a set timeframe:

- exceeds \$2,000 *or* two months after prior voucher submission (1): DC
- exceeds \$3,000 *or* two months after prior voucher submission (1): GA-N
- exceeds \$4,000 *or* four months after prior voucher submission (10): DE, NC-E, NC-M, OK-E, OK-N, OK-W, PA-M, SC, VA-W and WV-N

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34. CJA Interim Vouchers Under the Exigent Circumstances Created By COVID-19, Administrative-1 Order 20-13, New Hampshire District Court, March 30, 2020, <https://www.nhd.uscourts.gov/pdf/ADM%201%2020-13.pdf> (visited August 19, 2022).

35. Interim CJA Vouchers Authorization Resulting from the Impact of the Coronavirus (COVID-19 Pandemic), Standing Order, Delaware District Court, April 9, 2020, <https://www.ded.uscourts.gov/sites/ded/files/news/ORDER%20INTERIM%20CJA%20VOUCHERS%204-9-2020.pdf> (visited August 1, 2022).

### E. Voucher Amount Minimums and Maximums

Thirty of the thirty-seven district court COVID-19-era CJA interim payment orders (81.1%) specify minimum amounts for interim voucher submissions. (See Table 10.) None of the orders specifies a maximum interim voucher amount that cannot be exceeded.

Seven of the CJA orders (18.9%) do not specify a minimum or maximum amount for interim payment voucher submissions. For example, Missouri Eastern District Court’s order “authorizes payments to CJA Panel Attorneys prior to completion of the attorney’s work on the case, without further need of the attorney to file a motion with the presiding judge in any specific case, subject to ordinary review and approval by the presiding judge.”<sup>36</sup>

<b>Table 10</b>	<b>District Courts: CJA Interim Payment Order Voucher Minimum Amount Requirements</b>
<b>Yes</b>	31.9% (n=30)
<b>No</b>	7.4% (n=7)
<b>N/A</b>	60.6% (n=57)

Code: N/A = Courts that do not have a COVID-19 Era CJA interim payment order for CJA panel attorneys.

Slightly more than half (19) of the 37 thirty-seven orders specify minimum voucher submission amounts of either \$500 (9 district courts) or \$4,000 (10 district courts). Eleven of the thirty-seven district courts’ minimum voucher submission amount requirements are between \$250 and \$3,000. As mentioned earlier, seven district orders do not have a minimum or maximum voucher requirement. (See Table 11.)

<b>Table 11</b>	<b>District Courts: CJA Interim Payment Order Voucher Submission Minimums</b>					
<b>Amount</b>	<b>District Courts</b>					<b>Number of Districts</b>
<b>\$250</b>	MA	NY-N	PA-E			3
<b>\$500</b>	AL-M	CA-S	ID	MT	NY-E	9
	TN-E	WI-E	WI-W			
<b>\$1,000</b>	GA-N <sup>37</sup>	MN	WA-W			3

36. In Re Early Payments to CJA Counsel Due to COVID-19 Response, General Order, Missouri Eastern District Court, June 4, 2020, <https://www.moed.uscourts.gov/sites/moed/files/documents/administrative-orders/arod-0035.pdf> (visited July 29, 2022).

37. Georgia Northern District Court’s CJA interim payment order has two minimum amounts: \$1,000 for the initial interim voucher submission and \$3,000 for subsequent interim vouchers. [https://www.gand.uscourts.gov/system/files/NDGA\\_GenOrder20-05.pdf](https://www.gand.uscourts.gov/system/files/NDGA_GenOrder20-05.pdf) (visited July 29, 2002).



\$1,500	LA-E	LA-W	TX-S				3
\$2,000	DC						1
\$3,000	NY-W						1
\$4,000	DE	NC-E	NC-M	OK-E	OK-N	OK-W	10
	PA-M	SC	VA-W	WV-N			
No minimum or maximum	IL-N	MD <sup>38</sup>	MO-E	NH	NY-S	RI	7
	PR						
N/A	---						57

Code: N/A = Courts that do not have a COVID-19 era CJA interim payment order for CJA panel attorneys.

### F. Voucher Submissions Without Prior Court Approval

Thirty-two of the thirty-seven COVID-19-era CJA interim payment orders (86.5%) do not require prior approval from the district court for CJA counsel to submit interim vouchers for payment of their legal representation. (See Table 12.)

Table 12	District Courts: CJA Interim Payment Orders that Allow Voucher Submissions Without Prior Approval
Yes	34.0% (n=32)
No	5.3% (n=5)
N/A	60.6% (n=57)

Code: N/A = Courts that do not have a COVID-19 Era CJA interim payment order for CJA panel attorneys.

For districts that do not require prior court approval, the language used in the orders generally fall into two categories:

- 1) general (e.g., that interim vouchers may (or can) be submitted without court approval) or
- 2) specific (e.g., instructing CJA counsel that they can submit interim vouchers without prior approval or having to file a motion for an order requesting approval to submit interim vouchers<sup>39</sup>)

38. Maryland District Court’s CJA interim payment order Misc. No. 20-146 does not have a required minimum voucher submission amount. Its order states that “The initial voucher may be submitted for services rendered to date. Subsequent interim vouchers totaling no more than \$25,000 in compensation.” <https://www.mdd.uscourts.gov/sites/mdd/files/COVID-19-Order-CJA.pdf> (visited July 27, 2022).

39. In Re CJA Panel Attorney Compensation, Misc. No. 2:20-mc-472-MRH, Administrative Order, Pennsylvania Western District, March 31, 2020, [https://www.pawd.uscourts.gov/sites/pawd/files/CJA\\_interim\\_payment\\_order.pdf](https://www.pawd.uscourts.gov/sites/pawd/files/CJA_interim_payment_order.pdf) (visited August 19, 2022).

As stated in Part IV Section E, some district court CJA orders have designated interim voucher amount minimums (see Table 11) for which their court would accept interim voucher submissions without prior approval.

### G. Withholding or Delaying Interim Payments to CJA Attorneys

Fourteen of the thirty-seven district courts' COVID-19-era CJA interim payment orders (37.8%) include information about the court having the right to withhold or delay payment for submitted interim vouchers. (See Table 13.)

<b>Table 13</b>	<b>District Courts: CJA Interim Payment Orders that Include Information About the Court Having the Right to Withhold Voucher Payments</b>						
<b>Yes</b>	14.9% (n=14)	AL-M	DE	DC	GA-N	LA-W	MD
		NY-S	NC-E	NC-M	OK-E	OK-N	OK-W
		PA-M	SC				
<b>No</b>	24.5% (n=23)	CA-S	ID	IL-N	LA-E	MA	MN
		MO-E	MT	NH	NY-E	NY-N	NY-W
		PA-E	PA-W	RI	TN-E	TX-S	VA-W
		WA-W	WV-N	WI-E	WI-W	PR	
<b>N/A</b>	60.6% (n=57)	---					

Code: N/A = Courts that do not have a COVID-19-era CJA interim payment order for CJA panel attorneys.

Each of the fourteen orders describes circumstances that justify the withholding or delaying of payment on submitted interim vouchers. For example, New York Southern District's order states that the court "reserves the right to review vouchers, to disallow payments deemed to be excessive, or to delay or withhold payment on any interim voucher."<sup>40</sup>

The orders use the same or very similar language regarding the possibility of withholding or delaying payment on interim voucher submissions, stating that the court "reserves the right to delay or withhold payment on any interim voucher."<sup>41</sup>

40. In Re Coronavirus/COVID-19 Pandemic, Order Relates to the Second Extension of Interim CJA Vouchers Authorization Standing Order, Second Extension of Standing Order, M 10-468 20-mc-198, New York Southern District, January 7, 2021, <https://www.nysd.uscourts.gov/sites/default/files/2021-03/Extension%20of%20Interim%20CJA%20Vocuhers%20Authorization%20%20MISC%20198-CM.pdf> (visited August 1, 2022).

41. E.g., In Re Interim Vouchers for Payment Under the Criminal Justice Act in Exigent Circumstances Created by the COViD-19 Pandemic, Standing Order No. 20-12 (BAH), District of Columbia District Court, May 23, 2020, <https://www.dcd.uscourts.gov/sites/dcd/files/COVID-19%20Interim%20Voucher%20for%20CJA.pdf> (visited August 1, 2022).

Of note, two (Kansas<sup>42</sup> and West Virginia Southern<sup>43</sup>) of the six district courts that have pre-COVID-19 CJA interim payment orders have similar “withhold voucher payment” language in their orders.

## H. Expiration of CJA Interim Payment Order

Twenty-two of the thirty-seven COVID-19-era district court orders (59.5%) *generally* reference when their court’s CJA interim payment order would expire or be vacated (see Table 14), using language such as “until further order of the Court,” “remain in place until further notice,” or “remain in effect until modified or abrogated by the Court.”

Two of the twenty-two district courts, Missouri Eastern and Puerto Rico, include a *specific* date or period in which their CJA interim payment order will expire (effective for x days, effective until x date).

The rest (15) of the 37 thirty-seven district courts’ interim payment CJA orders do not include an expiration date or general language pertaining to when their orders will expire.

Note: As stated earlier, thirty-six of the thirty-seven (excluding Puerto Rico<sup>44</sup>) district courts’ CJA interim payment orders were still in effect as of September 2022.

<b>Table 14</b>	<b>District Courts: CJA Interim Payment Orders that Have Expiration Periods</b>
<b>Yes</b>	23.4% (n=22)
<b>No</b>	16.0% (n=15)
<b>N/A</b>	60.6% (n=57)

Code: N/A = Courts that do not have a COVID-19-era CJA interim payment order for CJA panel attorneys.

Below is a list of the “order expiration” language used in the twenty-two district courts’ COVID-19 era CJA interim payment orders:

- AL-M and TN-E: “... remain in effect until modified or abrogated by the Court.”
- CA-S: “... expire when the restrictions put in place by Order of Chief Judge No. 18 are lifted.”

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42. Interim CJA Vouchers, General Order No. 14-3, Kansas District Court, July 1, 2014, <https://ksd.uscourts.gov/index.php/local-rule/no-14-3-interim-cja-vouchers/> (visited August 18, 2022).

43. Criminal Justice Act Program Standing Order Regarding Interim CJA Vouchers, West Virginia Southern District, September 10, 2018, <https://www.wvsc.uscourts.gov/pdfs/CJA/StandingOrderRegardingInterimCJAVouchers.pdf> (visited August 18, 2022).

44. Puerto Rico District Court’s 10/2/2020 CJA interim payment order was effective through November 30, 2020.

- GA-N: "... temporary only and shall remain in effect until further Order of the Court or vacating General Order 20-01, whichever is earlier."
- IL-N: "... remain in effect until further Order of the Court. The Court reserves the right to amend, modify or terminate this Order at any time."
- LA-E and LA-W: "With the resumption of typical court operations, this Order will expire...."
- MA, MN, NY-E and NY-N: "... remain in place as an emergency until further order of the Court." Note: NY-E uses the phrase "emergency measure" instead of "emergency."
- MO-E: "This Order remains in effect for ninety days after its entry, unless otherwise Ordered by this Court."
- NY-W: "... shall remain in effect unless otherwise ordered by the Court. The Court reserves the right to amend, modify or terminate this order at any time."
- OK-E and OK-N: "... entered on a temporary basis and will be rescinded when deemed appropriate by the Court."
- PA-E: "... remain in place until further notice."
- PA-W: "... remain in place unless modified, vacated or suspended by subsequent order."
- PR: "This order is effective through November 30, 2020."
- TX-S: "... expire at the earlier of when the pandemic is declared over or the court so orders."
- WA-W: "This General Order amends G.O. 05-20 to make its provisions permanent. Going forward, CJA Panel Attorneys may submit interim vouchers for compensation without seeking prior Court approval, provided that the interim vouchers exceed \$1,000 and are submitted no more than once a month."
- WI-E and WI-W: "... until further order of the court."

Notably, the Western District of Washington made the decision, effective July 13, 2022, to permanently allow CJA panel attorneys to submit interim vouchers for payment.

## **V: CONCLUSION**

Overall, this report found the following.

- Prior to March 11, 2020, the beginning of the COVID-19 pandemic, six of ninety-four<sup>45</sup> district courts (6.4%) had standing, general, or administrative orders that permitted interim vouchers for payment of services.

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<sup>45</sup> Ninety-four of ninety-six district courts (excluding the Court of International Trade and the Court of Federal Claims) have CJA plans that address panel attorney compensation.

- Thirty-seven of the ninety-four district courts (39.4%) issued an administrative, standing, or general order during the COVID-19 pandemic allowing CJA attorneys to submit interim vouchers for payment.
- The expiration dates for thirty-six of the thirty-seven district courts’ CJA interim payment orders (97.3%) are open-ended, in that there are no set dates for when the orders will expire.<sup>46</sup> The orders use various versions of “until further notice of the court” as to when their district’s order might be suspended or vacated.
- Fourteen (37.8%) of the thirty-seven CJA interim payment orders include language about the court reserving the right to delay or withhold payment on any interim voucher, while also stating that the purpose of the order is to alleviate financial hardship for CJA panel attorneys while they are providing legal services on behalf of criminal defendants who are unable to afford legal counsel.
- As of September 2022, Washington Western is the only district court that has made its COVID-era CJA interim payment order permanent.
- As of September 2022, forty-three of the ninety-four district courts had issued orders regarding CJA interim payments for CJA counsel. Forty-two<sup>47</sup> of those orders are still in effect. (See Table 15.)

Table 15	Federal Courts: Status of Pre-COVID-19 and ‘COVID-19 Era’ CJA Interim Payment Orders			
	District Courts (94)		Circuit Courts (12)	
	Adopted	Still In Effect	Adopted	Still In Effect
<b>Pre-COVID-19</b>	6	6	1	1
<b>COVID-19 Era</b>	37	36	0	--
<b>Total Orders</b>	43	42	1	1

Notes: Pre-COVID-19: eighty-eight (88) district courts and eleven (11) circuit courts did not adopt a CJA interim payment order for CJA panel attorneys. COVID-19 era: As of September 2022, fifty-seven (57) district courts and twelve (12) circuit courts had not issued a COVID-19-era CJA interim payments order for CJA panel attorneys.

As of September 2022, forty-three (45.7%) of the ninety-four district courts had adopted a CJA interim payment order, of which twenty-eight orders were issued during the first two months of the COVID-19 pandemic. This finding suggests that the COVID-19 pandemic had an impact on court practices regarding interim payments.

46. Puerto Rico District Court’s 10/2/2020 CJA interim payment order was effective through November 30, 2020.

47. The District of Puerto Rico’s COVID-era CJA interim payment order was vacated as of 12/1/2020. See Table 3 in the report to access the district courts, CJA interim payment orders.

Forty-three (45.74%) of the district courts have created CJA interim payment orders, of which forty-two are still in effect, with one of the newly issued orders resulting in a permanent change in court practice. Yet, by August 2022, fifty-one of the courts (54.3%), a slight majority, had not adopted an order (pre-COVID-19 or COVID-19 era) to allow CJA panel attorneys to submit vouchers for interim payment. The thirty-seven COVID-19-era CJA interim payment district orders may be rescinded when courts deem that the need for the order or the emergency that led to the adoption of the order is no longer in effect (e.g., “[this order will] expire at the earlier of when the pandemic is declared over or the court so orders”<sup>48</sup>).

Examining CJA interim payment orders raises the question of what impact these changes had on CJA panel attorneys. Our ongoing [evaluation of the implementation of the Cardone Report](#) recommendations includes a survey of panel attorneys regarding voucher review and payment in specific appointments and their thoughts on ways to improve payment processes generally. Additionally, the upcoming program survey of panel attorneys by the Defender Services Office<sup>49</sup> will include a section on voucher payments. Both surveys present opportunities to further explore how changes in voucher policies, and the COVID-19 pandemic, affected panel attorney payments, and more information will be provided in the future.

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48. In Re Criminal Justice Act Payments, General Order No. 2020-09, Texas Southern District Court, May 27, 2020, <https://www.txs.uscourts.gov/district/genord/2020-09-interim-criminal-justice-act-payment> (visited August 1, 2022).

49. The Defender Services Office is located within the Administrative Office of the U.S. Courts in Washington, D.C. Its stated mission is “to uphold the right to counsel guaranteed by the Sixth Amendment, the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, and other congressional mandates.” <https://www.fd.org/> (website visited September 22, 2022).