

**Provisions of the Criminal Justice Act
as amended by
the Omnibus Appropriations Act, Fiscal Year 2005
Pub. L. No. 108-447**

[New language in *bold italics*; deletions in strikeout.]

3006A. Adequate representation of defendants

* * *

(d) Payment for representation.—

* * *

- (2) Maximum amounts.**—For representation of a defendant before the United States magistrate judge or the district court, or both, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed ~~\$5,200~~ ***\$7,000*** for each attorney in a case in which one or more felonies are charged, and ~~\$1,500~~ ***\$2,000*** for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed ~~\$3,700~~ ***\$5,000*** for each attorney in each court. For representation of a petitioner in a non-capital habeas corpus proceeding, the compensation for each attorney shall not exceed the amount applicable to a felony in this paragraph for representation of a defendant before a judicial officer of the district court. For representation of such petitioner in an appellate court, the compensation for each attorney shall not exceed the amount applicable for representation of a defendant in an appellate court. For representation of an offender before the United States Parole Commission in a proceeding under section 4106A of this title, the compensation shall not exceed ~~\$1,200~~ ***\$1,500*** for each attorney in each proceeding; for representation of an offender in an appeal from a determination of such Commission under such section the compensation shall not exceed ~~\$3,900~~ ***\$5,000*** for each attorney in each court. For any other representation required or authorized by this section, the compensation shall not exceed ~~\$1,200~~ ***\$1,500*** for each attorney in each proceeding.

- (3) **Waiving maximum amounts.**—Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for extended or complex representation whenever the court in which the representation was rendered, or the United States magistrate judge if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active circuit judge.

* * *

- (e) **Services other than counsel.**—

* * *

- (2) **Without prior request.**—

(A) Counsel appointed under this section may obtain, subject to later review, investigative, expert, and other services without prior authorization if necessary for adequate representation. Except as provided in subparagraph (B) of this paragraph, the total cost of services obtained without prior authorization may not exceed ~~\$300~~ **\$500** and expenses reasonably incurred.

(B) The court, or the United States magistrate judge (if the services were rendered in a case disposed of entirely before the United States magistrate judge), may, in the interest of justice, and upon the finding that timely procurement of necessary services could not await prior authorization, approve payment for such services after they have been obtained, even if the cost of such services exceeds ~~\$300~~ **\$500**.

- (3) **Maximum amounts.**—Compensation to be paid to a person for services rendered by him to a person under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed ~~\$1,000~~ **\$1,600**, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, or by the United States magistrate judge if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active circuit judge.

* * *

**Instructions to Determine the Appropriate Case Compensation Maximums for
Panel Attorneys and Providers of Investigative, Expert, and Other Services
Under the Amendments to the Criminal Justice Act
in the Omnibus Appropriations Act, Fiscal Year 2005
Pub. L. No. 108-447**

With the enactment of increased case compensation maximums for panel attorneys and providers of investigative, expert, and other services under subparagraphs (d)(2) and (e)(2) and (3) of the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, respectively, effective December 8, 2004, courts must determine whether compensation claims submitted on a CJA Form 20 (Appointment and Authority to Pay Court Appointed Counsel) and CJA Form 21 (Authorization and Voucher for Expert and Other Services) are governed by the new maximums or by the former maximums. In addition, for death penalty cases, only the increase from \$300 to \$500 under subsection (e)(2) of the CJA applies, where a provider of investigative, expert, or other services (CJA Form 31 - Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher Expert and Other Services) performs work without counsel having obtained prior authorization from the court to obtain the service and without the court making a finding that procurement of the service could not await prior authorization.¹

The key rules are:

The new maximums apply to appointed counsel or a provider of investigative, expert, or other services for a representation if that person furnished any CJA-compensable work on or after December 8, 2004.

The former case compensation maximums apply to appointed counsel or a provider of investigative, expert, or other services for a representation if that person's work was completed before December 8, 2004.

The person responsible for reviewing, processing, or approving claims should look at Item 19 ("Certification of Attorney/Payee for the Period of Service") of the CJA Form 20 and Item 17 ("Claimant's Certification for Period of Service") of the CJA Forms 21 and 31 to determine whether the attorney or provider of investigative, expert, and other services furnished any CJA-compensable work on or after December 8, 2004. If so, the new case compensation maximums apply to that person's voucher on the representation: (a) for appointed attorneys - felony \$7,000, misdemeanor \$2,000, appeal \$5,000, 18 U.S.C. § 4106A parole proceeding \$1,500/appeal \$5,000, and other representations \$1,500; and (b) for service providers - \$500

¹ The case maximum of \$7,500 for total payments to providers of investigative, expert, and other services in a death penalty case, contained in 21 U.S.C. § 848(q)(10)(B), was not increased by the legislation.

without prior authorization (only this case maximum revision possibly applies to a death penalty case) and \$1,600 with prior authorization.

If, on the other hand, all services were performed before December 8, 2004, the former case compensation maximums apply: (a) for appointed attorneys - felony \$5,200, misdemeanor \$1,500, appeal \$3,700, 18 U.S.C. § 4106A parole proceeding \$1,200/appeal \$3,900, and other representations \$1,200; and (b) for service providers - \$300 without prior authorization and \$1,000 with prior authorization. (PLEASE NOTE: If the voucher is entered into the CJA payment system after December 8, 2004, the warning message indicating that circuit approval is required will not activate at the former case maximum levels, even when they apply. The warning messages are only being generated based on the new case compensation maximums.)