

**Judicial Conference of the United States
Committee on Defender Services**

Chair

Raymond J. Lohier, Jr

Telephone: (212) 857-2170

Fax: (212) 857-2179

Members

Micaela Alvarez
Max O. Cogburn
Ketanji Brown Jackson
Roberto A. Lange
Judith Ellen Levy
Jane E. Magnus Stinson
Landy McCafferty
Shirley Padmore Mensah
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December 10, 2019

MEMORANDUM

To: Judges, United States Courts of Appeals
Judges, United States District Courts
United States Magistrate Judges
Circuit Executives
Federal Public and Community Defenders
District Court Executives
Clerks, United States Courts of Appeals
Clerks, United States District Courts
Senior Staff Attorneys
Circuit CJA Case-Budgeting Attorneys
CJA Supervising Attorneys

From: Honorable Raymond J. Lohier, Jr. 
Chair, Judicial Conference Committee on Defender Services
Honorable Jane E. Magnus-Stinson 
Chair, Committee on Defender Services Budget Subcommittee

RE: REVISED EXPERIENCE-BASED HOURLY RATE RANGES FOR EXPERTS AND SERVICE PROVIDERS IN CJA MEGA CASES (**IMPORTANT INFORMATION**)

The purpose of this memorandum is to provide notice that the Judicial Conference Committee on Defender Services (Committee), at its June 2019 meeting, approved a recommendation to update the experience-based hourly rate ranges for certain experts and other service providers (collectively “service providers”) in Criminal Justice Act (CJA) “mega cases.”¹

¹ CJA panel attorney mega cases are representations that qualify for case budgeting under the CJA Guidelines. They include all capital representations and non-capital representations that appear likely to become, or have become, extraordinary in terms of potential cost—i.e., attorney hours are expected to exceed 300, or total expenditures (for appointed counsel and services other than counsel) are expected to exceed an amount equal to 300 times the prevailing CJA panel attorney non-capital hourly rate, rounded

The Committee adopted the original rate ranges as a cost-containment measure in December 2013 and implemented them in 2014. *See* “Cost-Containment Initiatives Regarding CJA Service Providers,” February 26, 2014, *available at* <http://jnet.ao.dcn/court-services/cja-panel-attorneys-and-defenders/cost-containment-initiatives-regarding-cja-service-providers>.

The initial experience-based ranges were developed in 2013 to serve as national, presumptively reasonable hourly-rate ranges for five categories of service providers commonly used in CJA mega cases: (1) law students, (2) investigators, (3) paralegals, (4) mitigation specialists, and (5) jury consultants. The ranges apply in both CJA panel attorney mega cases and federal defender organization (FDO) mega cases (*see supra* note 1) and were devised with extensive input from an expert panel of Defender Services program stakeholders and working and advisory group members.

In light of the severe budgetary constraints that the judiciary experienced from FY 2012 through FY 2014, the Committee adopted these presumptive experience-based ranges in an effort to reduce service provider costs in potentially high-cost CJA representations. The Committee’s February 26, 2014 memorandum announcing the ranges urged courts to require adherence to them in CJA mega cases and also provided guidance on applying them. The memorandum emphasized that while the ranges were devised to achieve cost-efficiencies, they would also help ensure the continued provision of high-quality representation under the CJA.

In 2018, a reassessment of the 2013 experience-based ranges was undertaken after reports from Defender Services program stakeholders indicated that the 2013 ranges could no longer ensure a level of CJA representation consistent with the best practices of the legal profession. As with the development of the initial 2013 ranges, this reassessment was accomplished with significant input from stakeholders and constituents. Specifically, there was a six-month, national survey of several groups (including federal defenders, CJA panel attorneys, CJA service providers, and circuit CJA case-budgeting attorneys), culminating in recommendations from the Defender Services working and advisory groups that the Committee: (1) reemphasize the need for flexibility in applying the experience-based ranges (as some courts have misinterpreted them to reflect absolute ceilings); (2) establish a practice of regularly reviewing the ranges to ensure that they continue to permit retention of qualified service providers; and (3) increase the hourly rate ranges for paralegals, investigators, and mitigation specialists, as the survey revealed that the 2013 ranges currently often impede retention of these types of service providers for CJA panel attorney mega cases.

up to the nearest thousand. Federal defender organization (FDO) mega cases are representations whose anticipated costs cannot be subsumed within an FDO’s existing budget and whose funding requirements exceed authority that the Committee has delegated to DSO to increase an FDO’s budget. Because FDOs are funded through budgets approved by the Committee, service provider funding requests in FDO mega cases are reviewed by the Committee’s Budget Subcommittee rather than by presiding judges, as is done in CJA panel attorney mega cases.

At its June 2019 meeting, the Committee approved these recommendations and adopted the following adjusted ranges: (1) paralegals, \$75-\$125 (increased from \$25-\$55), with the higher end of the range available for paralegals with specialized skills, such as IT competencies to perform complex litigation support; (2) investigators, \$75-\$125 (increased from \$55-\$100), with the higher end of the range available for investigators with specialized skills, such as foreign-language fluency or mastery of one or more relevant areas of forensic science; and (3) mitigation specialists, \$125-\$175 (increased from \$75-\$100), with the higher end of the range available for mitigation specialists with specialized skills, such as foreign-language fluency, particular mental health expertise, or mastery of important legal developments, including in capital cases. The higher end of the ranges is also available to address relative scarcity of necessary experts and service providers. Because the reassessment indicated that there currently is no need to increase the ranges for jury consultants and law students, the Committee did not increase the ranges for those two groups of service providers. The Committee did, however, emphasize the need for flexibility in applying the ranges and the importance of reviewing the ranges every two to three years, or even sooner if necessary.

The Committee recognizes that these updated ranges for paralegals, investigators, and mitigation specialists reflect significant increases above the 2013 experience-based ranges. The Committee adopted the increases for several reasons, including:

- the 2013 ranges were based on rates that had been in effect for several years prior to 2013 and have remained unchanged (in contrast to CJA panel attorney rates, which have risen steadily) even as the duties, skills, and knowledge required of service providers within these groups have grown more complex;²
- paralegals, investigators, and mitigation specialists with specialized skills are often critical for CJA mega cases and, in recognition of their importance, some federal districts and circuits already authorize hourly rates higher than the 2013 experience-based ranges for these service providers;
- the revised ranges reflect the full spectrum of services that might be needed of paralegals, investigators, and mitigation specialists—from routine to highly specialized—and thus encompass rates appropriate for tasks and levels of specialization from across the entire spectrum; and
- there are not enough private practitioners within these three categories of service providers, and the revised ranges are designed to expand the pool of qualified private practice service providers, thereby enhance the ability of CJA panel attorneys to identify and hire them, and ultimately reduce or even eliminate the disparity between panel attorneys and FDOs in the provision of representation in mega cases.

² For example, paralegal functions have expanded to include IT skills necessary to perform complex litigation support. Similarly, investigators with specialized expertise, such as foreign-language fluency or mastery of one or more areas of forensic science (e.g., forensic psychology, digital forensics), are increasingly necessary in CJA mega cases. Mitigation specialists are required to have expert knowledge of continually shifting medical, mental health, sociological, and legal concepts; participate in ongoing, exhaustive investigations; and develop and present evidence at multiple stages of long-running cases.

Judges retain the authority to approve rates outside the revised ranges for good cause and are not precluded from authorizing higher or lower rates — e.g., reduced rates for less-experienced staff performing work under the direction of more experienced professionals. Indeed, the Committee anticipates that most service providers will be compensated at the low end of the revised rates, and that compensation above the base amount will be rare and reserved for providers with extraordinary skills or to address unusual difficulties with provider availability. The Committee’s original guidance on applying the experience-based ranges thus remains unchanged: Presiding judges retain the discretion to approve rates outside the experience-based ranges where justified by case-specific circumstances, such as the necessity for unique qualifications of service providers or relative scarcity of service providers, and the Committee encourages all judicial officers to interpret and apply the ranges flexibly based on the individual circumstances of each case.

A chart of the revised experience-based ranges and accompanying guidance is attached. These are effective for work performed on or after the date of this memo. If you have any questions or concerns, please feel free to contact the Defender Services Office Legal and Policy Division at (202) 502-3030 or DSO_LPD@ao.uscourts.gov.

Attachment

cc: CJA Panel Attorney District Representatives

Experience-Based Hourly-Rate Ranges for Service Providers in CJA Mega Cases

Courts should consider the use in CJA mega cases¹ of the experience-based (presumptively reasonable) hourly rate ranges in the chart below and, if used, require permission of the presiding judicial officer to exceed the ranges. The ranges do not constitute ceilings.

Given the increases adopted through these updated ranges, it is anticipated that most service providers will be compensated at the low end of the revised rates. Compensation above that base amount should be reserved for providers with extraordinary skills or to address unusual difficulties with service provider availability. The chart includes explanatory language to help guide application of the ranges for paralegals, investigators, and mitigation specialists. Rates outside these experience-based ranges are permissible where justified by case-specific circumstances or the unique qualifications of service providers. Judicial officers are strongly encouraged to apply the ranges flexibly based on the circumstances of individual cases.

Category	Experience-Based Hourly Ranges
Law Students	\$15 - \$25
Paralegals	\$75 - \$125 - higher end of range for paralegals with specialized skills, such as IT competencies to perform complex litigation support
Investigators	\$75 - \$125 - higher end of the range for investigators with specialized skills, such as foreign-language fluency or mastery of one or more relevant areas of forensic science
Mitigation Specialists	\$125 - \$175 - higher end of the range for mitigation specialists with specialized skills, such as foreign-language fluency; mental health expertise; or mastery of relevant legal standards
Jury Consultants	\$150 - \$225

¹ CJA panel attorney mega cases are representations that qualify for case budgeting under the CJA Guidelines, which include all capital representations and non-capital representations that appear likely to become, or have become, extraordinary in terms of potential cost—i.e., attorney hours are expected to exceed 300 or total expenditures (for appointed counsel and services other than counsel) are expected to exceed an amount equal to 300 times the prevailing CJA panel attorney non-capital hourly rate, rounded up to the nearest thousand. Federal defender organization (FDO) mega cases are representations whose anticipated costs cannot be subsumed within an FDO's existing budget and whose funding requirements exceed authority that the Defender Services Committee has delegated to DSO to increase an FDO's budget. Because FDOs are funded through budgets approved by the Committee, service provider funding requests in FDO mega cases are reviewed by the Committee's Budget Subcommittee rather than by presiding judges, as is done in CJA panel attorney mega cases.

The experience-based hourly rate ranges in the chart above reflect increases in the rates for paralegals, investigators, and mitigation specialists approved by the Committee at its June 2019 meeting. As with the 2013 experience-based ranges (originally published in February 2014 and replaced by this announcement), the Committee received extensive input in developing these revisions from key Defender Service program stakeholders and working and advisory groups.

A critical component of establishing national, experience-based hourly rate ranges is that the presiding judge has the authority to approve rates outside of the recommended ranges for demonstrated good cause. Factors that a court may wish to consider in determining the appropriateness of an experience-based range include:

- the uniqueness of the service or the service provider;
- the education, training, reputation, or specialization of the service provider;
- the availability, or lack of availability, of this or similar service providers;
- the seriousness of the case;
- any time limitations on the case that may affect how quickly the service needs to be completed;
- the particular needs of a case or client; and
- any other factors relevant to the circuit or district.

The Committee has focused on five categories of commonly used service providers, listed in the chart above, that account for more than half of CJA service provider usage each year. It also recognizes that hourly rate ranges have been established by many circuit and district courts, working with their circuit CJA case budgeting attorneys and CJA supervising attorneys, for several other categories of service providers and experts beyond the five categories listed in the chart. The Committee understands that there are regional and geographic differences that may especially influence the rates and availability of qualified service providers in those categories not reflected in the chart. The Committee therefore decided that national ranges for these categories could not adequately reflect the numerous regional variances that exist. As a result, a district or circuit may choose to use ranges it has already developed based on the rates and availability of qualified service providers in its particular geographic area. The national ranges listed in the chart should be used where no current experience-based district or circuit ranges exist, or can serve as a basis for reevaluating existing district or circuit ranges. The national ranges could also be used to develop new district- or circuit-specific ranges.

The Committee is committed to reevaluating the national experience-based ranges every two to three years because of the continuing changes in the knowledge and skill sets required within these service provider categories.