

**UNITED STATES DISTRICT COURT
Southern District of Georgia**

INSTRUCTIONS FOR ATTORNEYS APPOINTED UNDER CJA

The following information is provided as guidance for privately practicing attorneys appointed to represent indigent defendants pursuant to the Criminal Justice Act (18 U.S.C. 3006A).

I. Duties of Appointed Counsel

(<http://www.uscourts.gov/rules-policies/judiciary-policies/criminal-justice-act-cja-guidelines>)

- Counsel named in the Order of Appointment Form CJA 20 must personally appear at all proceedings. Counsel shall not delegate his or her responsibility to other counsel (except for emergencies with approval of the court and consent of defendant). Counsel who are unable to personally fulfill his or her obligation to a defendant because of health or other good reason should immediately so notify the court in writing.
- Counsel is required to secure the appearance of the defendant at all pretrial conferences and at all other proceedings requiring the appearance of the defendant.
- Counsel shall fulfill his or her professional responsibility as an officer of the court, and the limited amount of compensation accruing in no respect diminishes such responsibility.
- Counsel appointed by the U. S. District Court shall continue to serve until his or her representation is terminated by the provisions of the plan of the court, adopted pursuant to the Criminal Justice Act of 1964, as amended by Public Law 91-447, or by court order.
- Counsel shall report, to the court, any change in the financial status of the person he or she was appointed to represent which indicates the ability of the person to finance all or part of the representation.

II. Duration of Representation

Representation shall continue through all trial court proceedings and any appeal. Immediately after any sentencing, defense counsel shall advise the defendant of the right to an appeal and right to counsel on appeal in accordance with the enclosed "Notice of Counsel's Post-Conviction Obligations."

III. Compensation

Counsel shall be compensated at a rate not exceeding \$172.00 per hour for time expended in court and for time reasonably expended out of court, and shall be reimbursed for expenses reasonably incurred. All time should be reported in one-tenth increments.

Compensation Rates		
Effective Dates	In-Court	Out-Of-Court
1/1/24	\$172	\$172
1/1/23	\$164	\$164
1/1/22	\$158	\$158
1/1/21	\$155	\$155

Death Penalty Cases Effective 1/1/24: \$220.00

The maximum allowance permitted by 18 U.S.C. 3006A for representation of a person before the United States District Court, is:

Felony Case (including pre-trial diversion, but excluding federal capital prosecutions)	\$13,400.00
Misdemeanor Case (including pre-trial diversion and petty offenses as set forth in 18 U.S.C. § 3006A(a)(2)(A))	\$3,800.00
Proceeding under 18 USC §4106A	\$2,900.00
Proceeding under 18 USC §4107 or 4108 (for each verification proceeding)	\$3,800.00
Proceeding under 18 USC §983	\$13,400.00
Post-conviction proceeding under 18 USC §2241, 2254, or 2255	\$13,400.00
Proceeding under 28 USC §1875	\$13,400.00
Appeal (from felony, misdemeanor, proceeding under 18 USC §4106A, 18 USC §983, post-conviction proceeding under 18 USC §2241, 2254, or 2255 and 28 USC §1875)	\$9,600.00
Other representation required or authorized by the CJA (including, but not limited to probation, supervised release, material witness, grand jury witness)	\$2,900.00
Appeal of other representation	\$2,900.00

- A. The maximum allowance, permitted by 18 U.S.C. 3006A, for representation of a person in an appellate court is \$9,600.00.
- B. Payment in excess of the above listed maximum amount may be made for extended or complex representation whenever the presiding judge certifies that the excess amount is necessary to provide fair compensation and the payment is approved by the Chief Judge of the 11th Circuit or his delegate. (CJA26A GUIDANCE TO ATTORNEY and CJA 26 SUPPLEMENT STATEMENT for a compensation claim in excess of the case compensation maximum)

IV. Actual Expenses Other than for Expert or Other Services

- A. Counsel shall be reimbursed for reasonable actual expenses incurred in the representation of a defendant. In determining whether actual expenses incurred are "reasonable," counsel shall be guided by the prevailing limits placed upon travel and subsistence of federal judiciary employees. Therefore, reimbursement for counsel appointed to represent a defendant in the United States District Court for the Southern District of Georgia shall be limited as follows:
 - 1. Actual subsistence, not to exceed the maximum daily allowance for the particular area for employees of the judiciary as fixed by the Director of the Administrative Office of the U. S. Courts. Lodging, meals, and all other allowable items of expense shall be itemized, and furnished with the Form CJA 20. (*Contact the Clerk for per diem rate if needed*)
 - 2. Round-trip taxi or public transit fare from office to airport, train station, or from airport to courthouse.

3. Actual travel expenses shall not exceed:
 - a. Round-trip coach air fare. **(REQUIRES SEPARATE TRAVEL AUTHORIZATION)**. Counsel should contact the Court CJA Liaison before making air travel arrangement.
 - b. Round-trip taxi or public transit fare from office to airport, train station, or bus depot, and from airport to courthouse.
 - c. Private automobile mileage at the rate allowed for employees of the judiciary as fixed by the Director of the Administrative Office of the United States Courts, not to exceed the amount of round-trip coach air fare.

Mileage Rates	
Effective Dates:	Rate:
1/1/2024	\$0.67
1/1/2023	\$0.655
7/1/2022	\$0.625
1/1/2022	\$0.585

V. Paralegal and Computer Assisted Legal Research

- A. Claims for paralegal research should be paid at the employee’s hourly wage, not the firm’s billing rate, and should be submitted via eVoucher on Form CJA 21.
- B. Enter a description of the issues researched with an estimate of the number of attorney hours required to do the research. Contact the District Court CJA Liaison (Attachment A) for information regarding PACER fee waiver for court appointed attorneys if needed.

VI. Out-of-Pocket Expenses

ALLOWABLE: Necessary phone calls, supplies, postage, parking fees, photo copying (in house actual cost up to 15 cents per page, commercial copying: actual costs up to 25 cents per page and expense worksheet should include itemization of number of pages copied and cost per page.

RECEIPTS, CANCELLED CHECKS OR INVOICES must accompany claims for commercial copying, airfare, hotels, meals, computer assisted legal research, long distance telephone expenses, and any miscellaneous expense EXCEEDING \$50.

VII. Authorization for Obtaining Expert or Other Services
(See attached CJA25 Memo)

- A. The maximum allowance for the case, permitted by 18 U.S.C. 3006A, where prior authorization is not obtained, is \$1,000. If the amount will exceed the \$1,000 waivable case compensation maximum for expert or other services, counsel must submit a request for authorization (see section B). This limitation may be waived if the presiding or magistrate judge finds that timely procurement of necessary services could not await prior authorization. The maximum allowance, permitted by 18 U.S.C. 3006A, without approval by the 11th Circuit is \$3,000.00.
- B. The request for prior authorization to obtain investigative, expert, or other services shall be made by motion in the case. If the motion is granted, counsel shall submit an "AUTH" in eVoucher prior to obtaining the services. Once eVoucher AUTH is approved, and services are rendered, counsel shall submit a CJA 21 via eVoucher for final payment.

III. Preparation and Submission of Voucher for Services

All claims for services and expenses must be made through eVoucher. Please visit the Court's website for eVoucher information and training opportunities: <https://www.gasd.uscourts.gov/cja-information-2>
To obtain an eVoucher log-in and password, please contact James Burrell 912-650-4032.

For additional guidance on the completion of CJA forms, see the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), Vol. VII, Guide to Judiciary Policies and Procedures: <http://www.uscourts.gov/rules-policies/judiciary-policies/criminal-justice-act-cja-guidelines>

- A. When completing Form CJA 20 Appointment of and Authority to Pay Court Appointed Counsel, all necessary supporting documentation must be uploaded in eVoucher during submission for payment (including receipts for expenses over \$50.00). **All time should be reported in one-tenth increments**, which can easily be converted to percentages (i.e., .1, .3, .5). (See attached *CJA19 NOTICE TO COURT APPOINTED COUNSEL OF PUBLIC DISCLOSURE OF ATTORNEY FEE INFORMATION*.)
- B. A claim for more than the maximum provided in 18 U.S.C. 3006A will delay the processing of the claim as it will require approval of the Circuit as well as the District Court Judge. (See CJA26A attached, for guidance in drafting the memorandum required for a compensation claim in excess of the case compensation maximum.)

CJA 20 VOUCHER ITEM INSTRUCTIONS

Item 15. IN-COURT SERVICES: Enter the total number of hours claimed (in hours and tenths of an hour) for each applicable in-court service type and include a description.

Item 16. OUT-OF-COURT SERVICES: Complete according to the instructions above for in court time, using the applicable out-of-court hourly rate of compensation.

Item 17. TRAVEL EXPENSES: Travel related expenses that are incidental to the representation (e.g., transportation, lodging, meals, car rental, parking, bridge, road and tunnel tolls, etc.) must be itemized under the "expenses" tab. Upload supporting documentation (receipts, canceled checks, etc.) for all travel expenses. Travel expenses by privately owned automobile, motorcycle, or aircraft should be claimed at the rate in effect for federal employees at the time of travel. For overnight travel, reasonable expenses for lodging and meals will be reimbursed on an actual expense basis; per diem is not allowed. Counsel should be guided by prevailing limitations for travel and subsistence expenses of federal employees. The clerk of court can advise you of applicable rates and federal government travel regulations.

Item 18. OTHER EXPENSES: Itemize all reimbursable out-of-pocket expenses incidental to representation. Provide dates and a brief description of the expense. Enter the total claimed where required in eVoucher. Upload supporting documentation (receipts, canceled checks, etc.) for single item expenses in excess of \$50. Reimbursable expenses may include, in some circumstances, payments to law students or law clerks for legal research and assistance and the cost of computer assisted legal research (CALR) when conducted by counsel. See paragraphs 2.31 and 3.15 of the *CJA Guidelines* for an explanation.

The following are not reimbursable expenses, and should not be claimed:

1. General office overhead, such as rent, telephone services, and secretarial services.
2. Expenses for items of a personal nature for the client (e.g., clothes, haircuts).
3. The cost of printing briefs. However, the cost of photocopying or similar copying service is reimbursable.
4. Fact witness fees, witness travel costs, and expenses for service of subpoenas. These expenses are not paid out of the CJA appropriation, but instead are paid by the Department of Justice pursuant to Fed. R. Crim. P. 17, and 28 U.S.C. § 1825. See enclosed memo regarding witness subpoenas. Contact the United States Marshal for payment procedures. See paragraph 3.13 of the *CJA Guidelines* for guidance on payment of witness fees.
5. Filing fees. These fees are waived for persons proceeding under the CJA.
6. The cost of allowable investigative, expert, or other services (See Chapter III of the *CJA Guidelines*). Such services should be requested using a CJA Form 21. See memo CJA 25, attached.
7. Compensation taxes. Taxes paid on attorney compensation, whether based on income, sales or gross receipts are not

reimbursable expenses.

Item 19. CERTIFICATION OF ATTORNEY/PAYEE FOR PERIOD OF SERVICE: The person appointed by the court must certify dates of service for the representation. Indicate, where required, the date range for the services claimed on the voucher.

Item 20. APPOINTMENT TERMINATION DATE, IF OTHER THAN CASE COMPLETION: If the appointment is discontinued by order of the court (i.e., substitute counsel or reasons other than disposition of the defendant's case, such as fugitive defendant, appointment of federal defender, or retention of counsel by a defendant), give the effective date for termination of appointment.

Item 21. CASE DISPOSITION: Indicate case disposition for the person represented (e.g., dismissed, convicted/final plea guilty, probation revoked, other, etc.). **Select a code from the table below.**

Type of Disposition Code District Court Criminal and Other Proceedings

Dismissed 1	Reversed in Part/Affirmed in Part RA
Acquitted by court 2	Affirmed in Part/Reversed in Part AR
Acquitted by jury 3	Dismissed 1
Convicted/final plea guilty 4	Probation/Parole/Supervised Release Revoked RV
Convicted/final plea nolo 5	Restored RS
Convicted/court trial 8	Habeas/Petitions/Writs Granted GR
Convicted/jury trial 9	Denied DE
Mistrial C	
Not Guilty/insane/court trial E	
Guilty/insane/court trial F	
Not guilty/insane/jury trial G	
Guilty/insane/jury trial H	
Other (PTD matters, other reps. Transfers) X	
Appeals Affirmed A	
Reversed R	
Remanded 0	

Item 22. CLAIM STATUS: Indicate, by checking the appropriate box, whether the voucher is (1) the final payment for the services, (2) an interim payment, or (3) a supplemental payment (an additional claim submitted after a final payment is made). If an interim payment, indicate the interim payment number. Complete the remaining portion of Item 22.

ELECTRONICALLY SIGN AND DATE THE AFFIRMATION STATEMENT BEFORE SUBMITTING THE CLAIM FOR COURT APPROVAL.

CLAIMS FOR SERVICES: CJA20 Voucher should be completed in eVoucher within 45 days after final disposition in U.S. District Court, unless good cause is shown (Paragraph 2.21A, CJA Guideline).

All claims beyond jurisdiction of the U. S. District Court for Southern District of Georgia should be made to the 11th Circuit Court of Appeals on the form provided by the 11th Circuit.

All payments made pursuant to this claim are subject to post-audit; contemporaneous time and attendance records, as well as expense records must be maintained for three years after approval of the final voucher (paragraph 2.32, CJA guidelines). Any overpayments are subject to collection, including deduction of amounts due from future vouchers. Vouchers should not be submitted prematurely as an interim payment, unless scheduled interim payments are ordered by the Court.

For further information, please contact the CJA Liaison for the U. S. District Court for the Southern District of Georgia (Attachment A).

IX. Forms & Instructions

The following forms and instructions are for informational purposes only. No hard-copy forms will be accepted by the Court. All authorizations of funds and claims for services and expenses must be submitted through eVoucher.

See the following link: <https://www.uscourts.gov/forms/cja-forms>

1. CJA 26A Guide and Form CJA 26: Supplemental information statement for a compensation claim in excess of statutory case compensation maximum.

2. Form CJA 20 Appointment of and Authority to Pay Court Appointed Counsel: Voucher and Worksheets enclosed with these instructions). WORKSHEET FORMAT AVAILABLE IN WORD. CONTACT CJA LIAISON (ATTACHMENT A) FOR COPY.
3. CJA 21 Authorization and Voucher for Expert or Other Services: Obtained by counsel from Clerk's Office at time of motion for expert or other services. (See attached CJA 25 notice)
4. Form CJA 28E detailed worksheet for expert services with potential for extraordinary cost
5. Form CJA 24 Authorization and Voucher for transcript of proceedings
6. Form [DOJ-3](#) Fact Witness Voucher
7. Witness and Exhibit list and exhibit label forms (available www.gasd.uscourts.gov)
8. Transcript information sheet for Notice of Appeal

For additional forms and information, please see our web site www.gasd.uscourts.gov . Go to "Forms."

Note: Federal Rules of Criminal Procedures online: The Federal Judiciary has expanded its web site [<http://www.uscourts.gov/>] to include information on the Federal Rules of Practice and Procedure. Internet users can now access the current rules, proposed amendments to the rules submitted for public comment, and approved proposed amendments pending review by the Supreme Court and Congress.

ATTACHMENT A CONTACTS

AUGUSTA / DUBLIN / STATESBORO DIVISIONS:

Clerk's Office: 706-849-4400

CJA Liaison / Courtroom Deputy Clerk to the Honorable Brian K. Epps:

**Courtney Capps
courtney_capps@gas.uscourts.gov
Office: 706-849-4404**

SAVANNAH DIVISION:

Clerk's Office: 912-650-4020

CJA Liaison / Courtroom Deputy Clerk to the Honorable Christopher Ray:

**Molly Davenport
molly_davenport@gas.uscourts.gov
Office: 912-650-4035**

BRUNSWICK / WAYCROSS DIVISIONS:

Clerk's Office: 912-280-1330

CJA Liaison / Courtroom Deputy Clerk to the Honorable Benjamin W Cheesbro :

**Kim Mixon
kim_mixon@gas.uscourts.gov
Office: 912-262-2602**

E-VOUCHER LIAISON:

**James Burrell
912-650-4020**

NOTICE TO COURT-APPOINTED COUNSEL
OF PUBLIC DISCLOSURE OF ATTORNEY FEE INFORMATION

The Criminal Justice Act (CJA), 18 U.S.C. § 3006A, was amended in 1998 to require that the amounts paid to court-appointed attorneys be made publicly available upon the court's approval of the payments. Although the amended paragraph of the statute, §3006A(d)(4), expired after two years and thus only applies to cases commenced between January 25, 1998, and January 24, 2000, the corresponding guideline (paragraph 5.01 of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures*) continues as a matter of Judicial Conference policy. The court may disclose an unredacted copy of a payment voucher submitted by defense counsel, or a redacted copy of a voucher indicating only the amounts approved for payment according to categories of services listed in the statute. The extent of disclosure depends on whether the case is pending and on whether the court determines that certain interests (listed below in part B.1) require the redaction of detailed information on the voucher. Upon court approval of a voucher claim, payment information will be made available as follows:

A. BEFORE OR DURING THE TRIAL: After redacting any detailed information provided to justify the expenses, the court shall make available to the public only the amounts approved for payment. Upon the completion of trial, unredacted copies of the vouchers may be released, depending on whether an appeal is being pursued and whether the court determines that one or more of the interests listed in part B.1 require the redaction of information.

B. AFTER THE TRIAL IS COMPLETED: The court shall make available to the public either redacted or unredacted vouchers as follows:

1. If trial court proceedings have been completed and appellate review is not being pursued or has concluded at the time payment is approved: The court shall make an unredacted copy of the payment voucher available to the public unless it determines that one or more of the interests listed below justify limiting disclosure to the amounts approved for payment in the manner described in part A. The interests that may require limiting disclosure include:

- (1) the protection of any person's 5th Amendment right against self-incrimination;
- (2) the protection of the defendant's 6th Amendment right to effective assistance of counsel;
- (3) the defendant's attorney-client privilege;
- (4) the work product privilege of the defendant's counsel;
- (5) the safety of any person; and
- (6) any other interest that justice may require (with the exception that for death penalty cases where the underlying alleged criminal conduct took place on or after April 19, 1995, the amount of the fees shall not be considered a reason justifying any limited disclosure).

2. If appellate review is being pursued at the time payment is approved: The court shall make available to the public only the amounts approved for payment in the manner described in part A unless it finds that none of the interests listed above in part B.1 will be compromised.

C. AFTER THE APPEAL IS COMPLETED: The court shall make an unredacted copy of the payment voucher available to the public unless it determines that one or more of the interests listed in B.1 justify limiting disclosure to the amounts approved for payment in the manner described in part A.

If counsel believes that any of the interests listed above in part B.1 justify limiting disclosure to the amounts approved for payment, counsel should submit to the court a written request, identifying the interests at risk and the arguments in support of providing protection, AT OR BEFORE THE TIME A CLAIM FOR PAYMENT IS MADE. Failure to do so could result in the public availability of unredacted copies of your vouchers without further notice.

This constitutes notice under CJA Guideline 5.01. You may NOT receive additional notice before any payment information is made available to the public.

NOTICE TO CJA PANEL ATTORNEYS REGARDING AVAILABILITY OF INVESTIGATIVE, EXPERT AND OTHER SERVICES

All attorneys appointed to provide representation under the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, may request, under subsection (e) of the Act, authorization to obtain investigative, expert, and other services necessary for adequate representation to be paid from funds appropriated for the administration of the CJA. In death penalty cases (federal capital prosecutions and capital post-conviction proceedings), 18 U.S.C. § 3599 provides additional statutory authority to appoint counsel (also see 18 U.S.C. § 3005) and authorize investigative, expert, and other services (referred to as “subsection (e) services,” below).

In addition to investigators, psychiatrists, psychologists, and reporters, services other than counsel may include, but not necessarily be limited to, interpreters, computer systems and automation litigation support personnel and experts, paralegals and legal assistants, including law students, neurologists, and laboratory experts in the areas of ballistics, fingerprinting, and handwriting.

Requests for authority to obtain subsection (e) services should be made to the presiding judge or magistrate judge (see cautionary note below). In order to prevent the possibility that an open hearing concerning a request for subsection (e) services may cause a defendant to reveal his or her defense, these requests should be made by *ex parte* application. The Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), Volume 7A, *Guide to Judiciary Policy*, provide that the *ex parte* applications must be heard *in camera* and must not be revealed without the consent of the defendant. The CJA Guidelines further state that such applications must be placed under seal until the final disposition of the case in the trial court, subject to final order of the court. In death penalty cases, 18 U.S.C. § 3599 provides that counsel must make a proper showing concerning the need for confidentiality.

CAUTIONARY NOTE

There are, however, limitations that apply to the obtaining of these services. **PRIOR AUTHORIZATION SHOULD BE SECURED** from the presiding judicial officer for all subsection (e) services, in a non-death or death penalty representation, where the total cost (exclusive of reimbursement for expenses) of all services combined will exceed \$1,000. In addition to prior authorization, once the services have been provided, the claims for compensation must be approved by the presiding judicial officer. The limitation of \$1,000 may be waived if the presiding judicial officer, in the interest of justice, finds that timely procurement of necessary services could not await prior authorization.

In addition, in non-death penalty proceedings, claims for compensation by a service provider in a representation in excess of \$3,000 (excluding reimbursement for expenses) may be paid when the presiding judicial officer certifies that payment in excess of the amount is 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 (or the active or senior circuit judge to whom the chief judge has delegated excess compensation approval authority). In death penalty cases, there is a different waivable limit of \$7,500 (the \$3,000 amount does not apply). The \$7,500 limit applies to the total payments (including expenses) for all investigative, expert, and other services combined in a representation, not to each type of service or service provider individually. For payments in excess of \$7,500, the presiding judicial officer must certify the payments as necessary to provide fair compensation for services of an unusual character or duration.

Authorization for services in excess of \$1,000 should be made by motion to the Court. If granted, the appointed attorney shall submit an AUTH through eVoucher and attach the corresponding order. Upon service being provided, payment should be claimed by counsel through eVoucher by submitting a CJA Form 21, or, in death penalty proceedings, on the CJA Form 31.

Counsel should review both the Criminal Justice Act and the CJA Guidelines, which are accessible through www.uscourts.gov.

MEMORANDUM

FROM: Courtroom Deputy Clerk
U. S. District Court, Southern District of Georgia

RE: **Requests for Transcripts**

If the request is being made under the Criminal Justice Act, for a transcript without cost to the defendant or petitioner, the request for transcripts should be submitted via eVoucher on a CJA 24 form. Requests for transcripts of hearings before the Magistrate Judge should be made on one form, and requests for transcripts of hearings and trials before the District Judge should be on a separate CJA 24 form. In multi-defendant cases involving CJA defendants, no more than one transcript of a proceeding should be purchased from the court reporter on behalf of CJA defendants. The court reporter should provide to other CJA appointed attorneys for whom a transcript has been approved, additional copies at the commercial rate.

For CJA cases payment will be made via eVoucher. The CJA24 form will be forwarded to the court reporter at the time the transcript order is made. The original transcript will be filed with the Clerk of Court after preparation, and the copy will be forwarded to the requesting party. Attorneys appointed under CJA are advised that, under instructions from the United States District Court Judge, you are not to copy, allow the use of, or otherwise disseminate this transcript to any other counsel or party to this case. You may disseminate, at no cost to the government, a copy to the defendant you were appointed to represent but only if the defendant requests a copy in writing; however, the defendant may not reproduce said transcript. A failure to comply with these instructions will subject each of you to contempt proceedings by this Court.

If the requesting party is a civil litigant or does not qualify as an indigent in a criminal or habeas matter, the requesting party may use [Form AO435](#), which may be obtained from the Clerk of Court, or alternatively, the requesting party may write a letter addressed to the Clerk of Court, setting out the information necessary for the court reporter to produce the transcript: date of hearing, case number, proceedings requested, whether the production of the transcript is requested in expedited or ordinary transcription. The letter should include name, address, and telephone number of the requesting party. See Attachment A for appropriate addresses.

If the hearing was before a U. S. Magistrate Judge, the request for a transcript will be forwarded to the contract court reporter. The court reporter will contact the requesting party directly for financial arrangements before the transcript is prepared.

If the hearing or trial was before a U. S. District Judge, the request will be directed to the official court reporter for the District Judge, and financial arrangements should be made directly with that court reporter, except when a CJA 24 is approved.

If further information is required concerning this procedure, please call the appropriate Courtroom Deputy (Attachment A).

MEMORANDUM

RE: WITNESS SUBPOENAS ON BEHALF OF INDIGENT DEFENDANTS

Attached is a sample motion and proposed order (pursuant to Rule 17, FRCP) to subpoena witnesses for any hearing or trial in which the defendant has been determined by the Court to be indigent. Service of subpoenas on behalf of indigent defendants is made by the U. S. Marshal. Sufficient time for service should be allowed when filing a motion for a subpoena.

See also 28 U.S.C. 1821.

After an order is entered by the Court authorizing a subpoena, the attorney for the defendant should prepare the subpoena and deliver same to the U. S. Marshal, U. S. District Courthouse, for service. A copy of the notice to fact witness should be attached to the service copy of the subpoena to provide the witness with information concerning appearance. The defense counsel's telephone number **should be inserted** in the blank space in the second paragraph of the service copy of the subpoena.

The witness should be instructed to report to the Clerk's Office, U. S. District Court, after appearance to complete the forms for payment of witness fees and mileage.

In the event counsel requires further information concerning the issuance of subpoenas, please contact the appropriate Courtroom Deputy Clerk. (Attachment A)

U.S. DEPARTMENT OF JUSTICE
INSTRUCTIONS FOR FACT WITNESSES APPEARING AT A
SCHEDULED JUDICIAL PROCEEDING
(Not Applicable to Federal Government Employees)

IT IS IMPERATIVE THAT YOU READ THE INFORMATION CONTAINED ON THIS FORM BEFORE YOU TRAVEL FOR YOUR COURT APPEARANCE.

UPON RECEIPT OF THIS FORM, YOU MUST CALL THE PERSON(S) LISTED BELOW FOR INFORMATION REGARDING TRAVEL ARRANGEMENTS AND SPECIFIC ENTITLEMENTS.

IF YOU HAVE A MEDICAL CONDITION OR A FAMILY SITUATION THAT REQUIRES SPECIAL CONSIDERATION, YOU MUST INFORM THE PERSON(S) LISTED BELOW AS SOON AS POSSIBLE.

CONTACT PERSON(S):
TELEPHONE NUMBER(S):
EMAIL ADDRESS(ES):

≈ BEFORE YOU TRAVEL, YOU MUST CONFIRM YOUR TRIAL ATTENDANCE WITH THE ABOVE LISTED PERSON(S). DOING SO WILL PREVENT A WASTED TRIP IN THE EVENT THE TRIAL DATE IS CHANGED

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SECTION A: THE FOLLOWING INFORMATION APPLIES TO WITNESSES APPEARING IN THE TRIAL DISTRICT WHERE THEY RESIDE:

1. ATTENDANCE FEE: You will receive a fee of \$40 per day.
2. TRANSPORTATION: Call the person(s) listed above to discuss travel for your appearance.

The following rules apply to transportation expenses:

A. Local Travel: The reimbursable methods of travel to court are:

1. Bus
2. Subway
3. Uber or Lyft
4. Taxi/Shuttle
5. Privately Own Vehicle (POV)
 - a. Automobile _____ per mile
 - b. Motorcycle _____ per mile

B. Other Acceptable Reimbursable Travel Expenses:

1. Tolls
2. Parking

U.S. DEPARTMENT OF JUSTICE
INSTRUCTIONS FOR FACT WITNESSES APPEARING AT A
SCHEDULED JUDICIAL PROCEEDING
(Not Applicable to Federal Government Employees)

SECTION B: THE FOLLOWING INFORMATION APPLIES TO WITNESSES APPEARING IN THE TRIAL DISTRICT WHERE THEY DO NOT RESIDE:

1. **ATTENDANCE FEE:** You will receive a fee of \$40 per day including travel days.
2. **TRANSPORTATION AND LODGING:** Call the person(s) listed above to make travel and lodging arrangements. It is preferable that the government make the travel/lodging arrangement. You must request and receive approval to make your own travel and lodging arrangements, (you must contact the person(s) listed above for authorization prior to making any arrangements). If authorized, your reimbursement will be up to, but not exceed, the government rates for transportation, lodging and mileage. The government will utilize one of the following recommended modes of transportation:

A. Common Carrier:

1. Airplane
2. Train
3. Bus

If approved to travel by a privately owned vehicle in lieu of travel by common carrier to appear in another trial district, your request for reimbursement of mileage expenses cannot exceed the value of the common carrier ticket. Mileage expenses are paid to only one witness if two or more witnesses travel in the same vehicle.

The following expenses are not reimbursable:

B. Non-Reimbursable Expenses:

1. First class, business class or frequent flyer miles
2. Charter service (private plane or bus)
3. Non-refundable tickets
4. Hotel taxes (depending on the situation)

C. Meals: If you are required to remain away from home overnight, you will receive the following daily meal allowances:

1. \$ _____ for each travel day
2. \$ _____ for each full day at court

If you receive a cash advance from your local U.S. Marshals Service, the cash advance will be deducted from your total reimbursement.

YOU MUST RETAIN RECEIPTS FOR EXPENSES EXCEEDING \$75

SECTION C: CONCLUSION OF TESTIMONY

When your testimony concludes, you should request information from the person(s) listed above regarding the payment of the fees and expenses detailed on this document. The person(s) requiring your attendance will provide you with a DOJ-3 Fact Witness Voucher. You will be required to list your expenses on this voucher. The voucher will be submitted to the U.S. Marshals Service for payment. The U.S. Marshals Service will process the voucher and mail the payment to you directly. If you require funds to return home, notify the person(s) requiring your attendance.

SAMPLE FORM

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

UNITED STATES OF AMERICA

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Case No.:

EX PARTE MOTION FOR ISSUANCE OF WITNESS SUBPOENAS

COMES NOW the defendant _____, by and through (his)(her) court-appointed attorney, and respectfully moves this Court, pursuant to Rule 17(b), Fed.R.Crim.P., to have the following person(s) at the (trial)(hearing), in the above-captioned case:

(ITEMIZE NAMES AND ADDRESSES OF WITNESSES)

In support of this motion, defendant represents that (1) (he)(she) is financially unable to pay the costs and fees of the witness; (his)(her) financial condition at the present time being the same as it was when the Court found (him)(her) eligible for appointed counsel; and (2) the presence of the witness is necessary to an adequate defense. Specific facts of the relevancy and necessity of the requested witness(es) are as follows:

(OPTIONAL SEALING) Defendant prays that this motion and the order to be entered thereon be sealed by the Clerk of this Court during the pendency of this case.

Respectfully submitted this _____ day of _____, 20 ____.

NOTE: Counsel has the burden of articulating specific facts demonstrating both the relevancy and necessity of the requested witness's testimony. USA. v. RINCHACK 820 F.2d 1557.

SAMPLE FORM

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

UNITED STATES OF AMERICA

v.

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)
)
)
)

Case No.:

ORDER FOR ISSUANCE OF WITNESS SUBPOENAS

Defendant _____ having applied ex parte, pursuant to Rule 17(b), Fed.R.Crim.P., for the issuance of witness subpoenas without expense to(him)(her), and having made satisfactory showing that(he)(she) is financially unable to pay the fees of the witnesses, and that their presence is necessary to the defense of this case, it is therefore

ORDERED that subpoenas to the following witnesses requiring their attendance at the (trial)(hearing) of this cause is approved, and the costs incurred by the process and fees of the mentioned witnesses shall be paid in the same manner in which similar costs and fees are paid in the case of witnesses subpoenaed on behalf of the Government.

(ITEMIZE NAMES AND ADDRESSES OF WITNESSES)

IT IS FURTHER ORDERED *(optional sealing)* that this order and the accompanying motion be sealed during the pendency of this case, with the exception of necessary copies to counsel for defendant and the U. S. Marshal. Counsel shall prepare the subpoenas and deliver same to the U. S. Marshal for service upon said witnesses.

SO ORDERED this _____ day of _____, 20__.

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA**

NOTICE OF COUNSEL'S POST-CONVICTION OBLIGATIONS

1. Duty of Continuing Representation on Appeal:

Retained Counsel: I understand that under 11th Cir.R. 46–10(a), “[r]etained counsel for a criminal defendant has an obligation to continue to represent that defendant until successor counsel either enters an appearance or is appointed under the Criminal Justice Act, and may not abandon or cease representation of a defendant except upon order of the court.” *Id.*

Appointed Counsel: I understand that under 11th Cir.R. 46–10(c), “Counsel appointed by the trial court shall not be relieved on appeal except in the event of incompatibility between attorney and client or other serious circumstances.” *Id.*

2. Duties Regarding The Filing of Direct Appeals:

I understand that, whether I was retained or appointed to represent my client, I am obligated to fully advise my client about his direct appeal rights including: advising him about the advantages and disadvantages of pursuing an appeal, making a reasonable effort to discover his wishes in that regard, and filing a direct appeal if he so requests, irrespective of any perceived merits of the appeal. *See Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); *Thompson v. U.S.*, 504 F.3d 1203 (11th Cir.2007) (counsel has a constitutional duty to adequately consult with his client about an appeal if: (1) any rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) this particular defendant reasonably demonstrated to counsel that he is interested in appealing). Furthermore, I understand that I should not rely upon the sentencing judge's instructions alone to satisfy my duty to consult with my client, and “[s]imply asserting the view that an appeal would not be successful does not constitute ‘consultation’ in any meaningful sense.” *Thompson*, 504 F.3d at 1207. Rather, I must fully explain to my client the appellate process, the advantages and disadvantages of taking any appeal, and the fact that I am obligated to file an appeal if that is what my client requests, regardless of my recommendation. *Id.*

3. Duty Regarding Frivolous Appeals:

If, after conscientious review of my client's appeal, I find that the appeal is without merit, I am aware of the option to move the appellate court for leave to withdraw from further representation of the appellant and file a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). *See, e.g., U.S. v. Dotson*, 2008 WL 1946785 (11th Cir.2008) (unpublished) (standard procedure for Anders briefs); *U.S. v. Hall*, 499 F.3d 152, 155–56 (2nd Cir.2007) (Anders brief substantive requirements).

4. Duty to Provide Timely Notice of Decisions Impacting Client's Case:

My duties as appellate counsel on direct appeal include my obligation to give the defendant timely notice of any court decision affecting his case. *Smith v. Ohio Dep't of Rehab., and Corr.*, 463 F.3d 426, 433 (6th Cir.2006); *see also id.* at 434 (failure of defendant's counsel to provide him with timely notice of decision of intermediate appellate court on direct appeal was constitutionally deficient performance).

5. Suggested Filing:

I understand that I am duty-bound to not only consult with my client following conviction and sentence, but also have him or her express, in writing, his or her decision whether or not to appeal.

Rec'd this ___ day of _____, **20** ____.

Sign: _____ Print _____, Attorney for Defendant _____

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA**

POST-CONVICTION CONSULTATION CERTIFICATION

TO BE COMPLETED AND FILED BY COUNSEL:

I, _____ [print name], attorney for _____ [print name],
certify that I this day met with my client, _____ [print name] and:

- I found him/her to be of sound mind, clear-headed, and able to comprehend all of what I advised him/her regarding his/her right to appeal from the conviction and sentence in this case.
- I have fully explained to him/her the appellate process, including that he/she
 - (a) has the right to a direct appeal to the Eleventh Circuit, with assistance of counsel, free of charge, if he/she is indigent, but to exercise that right he/she
 - (b) must timely file a notice of appeal and
 - (c) comply with all appellate form-completion and briefing obligations;
- I have advised him/her about the advantages and disadvantages of pursuing an appeal;
- I have thoroughly inquired of him/her about his/her interest in appealing his/her conviction.

It is in that light that (check one):

___ he/she has decided to file an appeal and thus has instructed me to file it for him/her.

___ he/she has decided not to file an appeal, and I have explained to him/her the consequences of failing to do so. Those consequences include the waiver of his/her right to complain about the process that led up to his/her conviction, including in the future, should he/she decide to seek any form of habeas corpus, 28 U.S.C. § 2255, or other judicial relief from the conviction.

This ___ day of _____, 20__.

Print: _____ name of attorney

Sign: _____ signature of attorney

Witnessed:

Print: _____ name of defendant

Sign: _____ signature of defendant

TO BE COMPLETED BY THE DEFENDANT:

I, _____[print name], certify that I this day met with my attorney,
_____ [print name] and:

- I am of sound mind, clear-headed, and able to comprehend all of what my attorney has advised me about my right to appeal my conviction and sentence in this case;
- My attorney has fully explained to me the appellate process, including that I
 - (a) have the right to a direct appeal to the Eleventh Circuit, with assistance of counsel, free of charge, if I am indigent, but to exercise that right I
 - (b) must timely file a notice of appeal and
 - (c) comply with all appellate form-completion and briefing obligations;
- My attorney has advised me about the advantages and disadvantages of pursuing an appeal;
- My attorney has thoroughly inquired of me about my interest in appealing my conviction.

It is in that light that (check one):

- I have decided to file an appeal and thus have instructed my attorney to file it for me.
- I have decided not to file an appeal, and my attorney has explained to me the consequences of failing to do so. Those consequences include the waiver of my right to complain about the process that led up to my conviction, including in the future, should I decide to seek any form of habeas corpus, 28 U.S.C. § 2255, or other judicial relief from the conviction.

This ___ day of _____, 20__.

Print: _____ name of attorney

Sign: _____ signature of attorney

Witnessed:

Print: _____ name of defendant

Sign: _____ signature of defendant

FILING: Counsel must file this form in the trial-court record of the defendant's case within ten business days following its completion. Attach this as the second page of a document bearing the caption of your client's case with this title: "POST-CONVICTION CONSULTATION CERTIFICATION."

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA**

POST-CONVICTION CONSULTATION CERTIFICATION

(APPEAL WAIVED)

TO BE COMPLETED AND FILED BY COUNSEL:

I, _____ [print name], attorney for _____ [print name],
certify that I this day met with my client, _____ [print name], and:

- I found him/her to be of sound mind, clear-headed, and able to comprehend all of what I advised him/her regarding his/her right to appeal from the conviction and sentence in this case;
- I have fully explained to him/her that as a consequence of the waiver provisions of the plea agreement, he/she no longer has the right to a direct appeal to the Eleventh Circuit except for those exceptions outlined in the waiver provisions of the plea agreement;
- If the plea agreement contains exceptions to the appeal waiver and one or more exceptions apply to this case, then check here _____ and continue below:

- I have advised him/her that an exception to an appeal applies to his/her case and about the advantages and disadvantages of pursuing an appeal;
- I have thoroughly inquired of him/her interest in appealing his/her conviction.

It is in that light that (check one):

_____ he/she has decided to file an appeal and thus has instructed me to file it for him/her.

_____ he/she has decided not to file an appeal, and I have explained to him/her the consequences of failing to do so. Those consequences include the waiver of his/her right to complain about the process that led up to his/her conviction, including in the future, should he/she decide to seek any form of habeas corpus, 28 U.S.C. §2255, or other judicial relief from the conviction.

This _____ day of _____, 20_____.

Print: _____ (name of attorney)

Sign: _____ (signature of attorney)

Witnessed:

Print: _____ (name of defendant)

Sign: _____ (signature of defendant)

TO BE COMPLETED BY THE DEFENDANT:

I, _____ [print name], certify that I this day met with my attorney,
_____ [print name of attorney] and:

- I am of sound mind, clear-headed, and able to comprehend all of what my attorney has advised me about my right to appeal my conviction and sentence in this case;
- My attorney has fully explained to me that as a consequence of the waiver provisions of the plea agreement, I no longer have the right to a direct appeal to the Eleventh Circuit except for those exceptions outlined in the waiver provisions of the plea agreement;
- My attorney has advised me that an exception to an appeal waiver applies to my case and about the advantages and disadvantages of pursuing an appeal;
- My attorney has thoroughly inquired of me about my interest in appealing my conviction.

It is in that light that (check one):

_____ I have decided to file an appeal and thus have instructed my attorney to file it for me.

_____ I have decided not to file an appeal, and my attorney has explained to me the consequences of failing to do so. Those consequences include the waiver of my right to complain about the process that led up to my conviction, including in the future, should I decide to seek any form of habeas corpus, 28 U.S.C. §2255, or other judicial relief from the conviction.

This _____ day of _____, 20 _____.

Print: _____ (name of attorney)

Sign: _____ (signature of attorney)

Witnessed:

Print: _____ (name of defendant)

Sign: _____ (signature of defendant)

FILING: Counsel must file this form in the trial-court record of the defendant’s case within ten (10) business days following its completion. Attach this as the second page of a document bearing the caption of your client’s case with this title: “POST-CONVICTION CONSULTATION CERTIFICATION”.