

OFFICE OF THE CLERK  
**UNITED STATES COURT OF APPEALS**  
FOR THE FIRST CIRCUIT

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August 27, 2012

Dear CJA Panel Attorneys:

The Judicial Council of the First Circuit has directed the courts therein to enforce CJA Guidelines, § 230.56 (Substitution of Counsel), which provides:

If an attorney is substituted for an attorney previously appointed for a defendant in the same case, the total compensation paid to both attorneys may not exceed the statutory maximum for one defendant, unless the case involves extended or complex representation. In such cases, vouchers for attorney's services will not be approved by a judicial officer until the conclusion of the trial so that the judicial officer may make such apportionment between the attorneys as may be just.

This guideline also applies to appeals and will be enforced by the First Circuit, effective October 1, 2012, as follows. Consistent with present practice, district court counsel who continue to represent a defendant only briefly on appeal (i.e., "carryover counsel") may submit vouchers up to \$1,000 (excluding expenses) upon confirming that they have forwarded the case record to substitute appellate counsel. These vouchers will be processed promptly and need not be preceded by a motion for interim payment.<sup>1</sup>

In contrast, and consistent with CJA Guidelines, § 230.56, carryover counsel seeking compensation over \$1,000 (thereby increasing the likelihood that the case will exceed the statutory maximum) may not submit vouchers until the final disposition of the case. Vouchers for carryover and substitute appellate counsel will be considered together so that the court, "may make such apportionment between the attorneys as may be just." Id. If the total claims for compensation exceed the applicable statutory maximum, counsel submitting the higher voucher must submit a memorandum in support of excess compensation. For purposes of submitting a voucher, the "final disposition of the case" on appeal is either the date a petition for certiorari is filed or the date appellate counsel, having determined (and notified appellant) that such a petition would be frivolous and of the deadline for filing same, is allowed to withdraw. See Local Rule 46.5(c).<sup>2</sup>

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<sup>1</sup> Please note that an appointment order for the appeal is always necessary prior to the submission of a voucher. Carryover counsel who have not been appointed for the appeal and are replaced by substitute CJA appellate counsel may submit a motion for appointment nunc pro tunc from the date of the notice of appeal to the date of appointment of replacement counsel.

<sup>2</sup> Carryover CJA counsel should sign up to receive Notices of Docket Activity (NDAs) in the case to be apprised when the final disposition has occurred. See First Circuit CM/ECF

We thank you in advance for your adherence to the foregoing measures. Please monitor the First Circuit's website regularly to keep apprised of important information concerning CJA matters. To access new CJA information, please go to <http://www.ca1.uscourts.gov> and select the "CJA Materials" Tab. Then click on the link titled "CJA Panel Announcements."

Once again, on behalf of the First Circuit Court of Appeals, thank you for your service on behalf of indigent criminal appellants and to the administration of justice generally.

Very truly yours,

/s/ Margaret Carter, Clerk

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User's Guide, p. 39, available at <http://www.ca1.uscourts.gov/sites/ca1/files/UsersGuide.pdf#page=39>. Vouchers should be submitted no later than 45 days after the final disposition of a case, unless good cause is shown. See CJA Guidelines, § 230.13. Late vouchers are not favored. Carryover and substitute counsel should make every effort to submit their vouchers simultaneously and as soon possible after the final disposition of the case to enable the court to review both vouchers promptly. If simultaneous submission is not possible, the first attorney submitting a voucher should inform the court whether the other attorney will be submitting a voucher. If both vouchers are not received within 45 days of final disposition, and no motion showing good cause for the submission of a late voucher is filed within that time, the court will assume that only one payment is required for the appeal. Carryover counsel desiring an early interim payment (i.e., before final disposition) also must file a motion showing good cause for same.