

Independent Voucher Review Process under the Criminal Justice Act for the Eastern District of Kentucky

The Criminal Justice Act Plan for the Eastern District of Kentucky provides that upon request by a presiding judge, the Criminal Justice Act Committee shall assist with review of vouchers.¹ Therefore, in order to accomplish and more fully describe the plan for voucher review, the following Independent Voucher Review Process is designed to assist any judicial officer in reviewing any submitted payment voucher for reasonableness and compliance with appropriate standards. 18 U.S.C. § 3006A; *Guide to Judiciary Policy*, vol. 7, ch. 2. This plan further fulfills the independent voucher review process required by the *Guide*.

The Court and counsel are guided by the following general principles for review and reduction of compensation claimed in vouchers:

a. Voucher cuts should be limited to:

- (1) Mathematical errors;
- (2) Instances in which work billed was not compensable;
- (3) Instances in which work billed was not undertaken or completed; and
- (4) Instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.

Guide to Judiciary Policy, vol. 7, ch. 2, § 230.33.10.

b. In a case where the presiding judge contemplates reducing attorney compensation for reasons other than mathematical or technical errors present in the voucher, the judge should provide to counsel a statement, either orally or in writing, describing the questions or concerns he/she has regarding the voucher. Counsel will be given the opportunity to provide responsive

¹ EDKY CJA Plan Act: IV(A)(iv)(d):

iv. Subject to oversight by the Court, the Committee shall have the responsibility for managing the CJA Panel, including the following powers and responsibilities:

d. Reviewing, at the request of and to assist any judicial officer, submitted payment vouchers for reasonableness and compliance with appropriate Administrative Office guidelines and/or CJA Guidelines[.]

information or documentation relevant to the questions raised by the presiding judge, in support of counsel's request for compensation.² This plan contemplates that counsel and the presiding judge may come to a mutual understanding resolving any concern regarding the voucher without further need for independent review. A judge may also initiate this informal step as to any other voucher adjustment, question, or concern.

c. However, if, following review and consideration of counsel's response, the presiding judge still contemplates cutting a voucher for reasons other than mathematical or technical errors, that judge MAY if he or she believes it would aid in consideration of the issues presented, submit the voucher for review and comment by an independent Voucher Review Subcommittee (VRC) formed for such purpose.³ That upon a review of the voucher by the VRC, it will submit, at the VRC's discretion, either orally or in writing, to counsel and the presiding judge, a non-binding recommendation regarding approval of the voucher, or whether, and in what amounts, and for what reasons the voucher should be reduced.

²*Guide to Judiciary Policy*, vol. 7, ch. 2, § 230.33.30 Notification of Proposed Reduction of CJA Compensation Vouchers:

- (a) The CJA provides that the reviewing judge must fix the compensation and reimbursement to be paid to appointed counsel. If the court determines that a claim should be reduced, appointed counsel should be provided:
 - prior notice of the proposed reduction with a brief statement of the reason(s) for it, and
 - an opportunity to address the matter.
- (b) Notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.
- (c) Nothing contained in this guideline should be construed as requiring a hearing or as discouraging the court from communicating informally with counsel about questions or concerns in person, telephonically, or electronically, as deemed appropriate or necessary.

³*Guide*, vol. 7, ch. 2, § 230.33.40 Independent Review Process

- (a) Every district or division should implement an independent review process for panel attorneys who wish to challenge any reductions to vouchers that have been made by the presiding judge.
- (b) Any challenged reduction should be subject to review consistent with this independent review process.
- (c) All processes implemented by a district or division must be consistent with the statutory requirements for fixing compensation and reimbursement to be paid under 18 U.S.C. § 3006A(d). See: JCUS-MAR 2019, p. 19.

d. The presiding Judge, upon review of the recommendation, may accept or reject it, in whole or in part.

e. The VRC shall be ad hoc, and composed of:

- i. One CJA Committee member from a panel other than the panel from which the voucher originates, to be alternated fairly, and
- ii. One Judge member of the CJA Committee, assigned by agreement of the then Judge members.

f. Notwithstanding the foregoing provisions, for any voucher reduced, the affected lawyer may seek review and a recommendation by VRC, as above-constituted, if the VRC has not already made a recommendation in the case.

g. Ultimately, the Court is subject to and will follow the Criminal Justice Act and the *Guide*, which place final voucher approval authority with the presiding judge in the particular case.