GUIDANCE TO ATTORNEYS IN DRAFTING THE MEMORANDUM REQUIRED FOR A COMPENSATION CLAIM IN EXCESS OF THE CASE COMPENSATION MAXIMUM: DISTRICT COURT

Section 230.30(b) of the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), Volume 7A, *Guide to Judiciary Policy*, provides:

> In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel will submit with the voucher a detailed memorandum supporting and justifying counsel's claim that: the representation given was in an extended or complex case (**See:** § 230.23.40(b)), and the excess payment is necessary to provide fair compensation (**See:** § 230.23.40(c)).

Section 230.23.40(b) of the CJA Guidelines states that a case is **complex** if the "legal or factual issues. . . are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case," and that a case is **extended** if "more time is reasonably required for total processing than the average case". Section 230.23.40(c)) lists the following criteria as useful in determining **fair compensation** in extended or complex cases: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and injury thereto; any extraordinary pressure of time or other factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

To assist counsel in writing a "detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation," the following topics are provided for counsel's consideration. Some of these issues may not apply to a particular case or may not be noteworthy for this memorandum. Counsel, of course, may address topics other than those listed below.

Length of appointment to case; total number of in-court hours, specifying pre-trial hearings, trial, sentencing hearings, and other; and total number of out-of-court hours.

Offense(s) charged; number of counts charged; and other pending cases of defendant during the representation.

Number of co-defendants.

The sentencing guideline range found by the court and whether a mandatory minimum was found or at issue at sentencing.

Discovery materials (nature and volume) and/or discovery practices.

Motions, legal memoranda, jury instructions, and sentencing documents, or legal research not resulting in such, which were drafted originally for this case (do not include standardized motions, etc., unless content was modified significantly).

Investigation and case preparation (e.g., number and accessibility of witnesses interviewed, record collection, document organization).

Use of investigative, expert, or other services (CJA 21 voucher).

The following client considerations: communication with client/family, language difference, accessibility of client, other.

Any expense (see Items 17 and 18 of the CJA 20 voucher) greater than $500.

Any other noteworthy circumstances regarding the case and the representation provided to support this compensation request. Include, if applicable: negotiations with the U.S. Attorney's office or law enforcement agency; complexity or novelty of legal issues and factual complexity; responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed and knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and hardship or injury resulting from the representation; any extraordinary pressure of time or other factors under which services were rendered.