

Guide to Judiciary Policy

Vol. 7: Defender Services

Pt. A: Guidelines for Administering the CJA and Related Statutes

Ch. 3: Authorization and Payment for Investigative, Expert, or Other Services

Appx. 3D: Sample Order Authorizing the Acquisition of Computer [Hardware and/or Software] Under the CJA

(**Note:** Footnotes explain options or provide suggestions to the presiding judicial officer.)

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

United States of America

v.

No. _____

Defendant #1
Defendant #2
Defendant #3
Defendant #4

ORDER AUTHORIZING ACQUISITION
OF [HARDWARE AND/OR SOFTWARE]
UNDER THE CRIMINAL JUSTICE ACT

The above-named defendants,¹ having been found to be eligible for services under the Criminal Justice Act (CJA), [18 U.S.C. § 3006A](#), have submitted an *ex parte*² application

¹ In most cases, counsel for one defendant is likely to make application on behalf of all co-defendants. Courts should encourage cooperation among defendants in multi-defendant cases and urge them to agree on needs before application is made.

² [Guide to Judiciary Policy, Volume 7A, § 310.30](#) anticipates an *ex parte* application for “services other than counsel” and instructs that applications “must be heard *in camera*” and are not to be revealed without the consent of the defendant.

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for the approval of CJA funds to purchase computer [hardware and/or software³], litigation support products and/or obtain litigation support services, personnel or experts as authorized by [subsection \(e\) of the CJA \[18 U.S.C. § 3006A\(e\)\]](#).

The Court finds, after inquiry and counsel's consultation with the Defender Services Office of the Administrative Office of the United States Courts (AO),⁴ that the item(s) and service(s) listed below is [are] necessary for an adequate defense and constitute unusual or extraordinary expenses.⁵

The Court, therefore, approves the acquisition of the following:

[1.]

[2.]

[3.]

[4.]

in the amounts listed for each item and a total expenditure not to exceed [the sum of all items approved⁶].

³ Hardware includes computers, laptops, CD drives, printers, scanners, memory boards or related tangible items. Software includes operating and application programs.

⁴ When computer hardware or software costs exceed the limitations in [Guide to Judiciary Policy, Volume 7A, § 310.20.30\(a\)](#) or when the combined cost of computer system fees, litigation support products, services, personnel, or experts is expected to exceed \$10,000, applicants must consult with the National Litigation Support Administrator and the National Litigation Support Team in the AO's Defender Services Office (510-637-3500) **before** submitting an application for funds to the Court. The Defender Services Office will provide technical advice to counsel to ensure the items requested are necessary, appropriate, and compatible with systems currently being used by counsel. Counsel is required to include, in writing, the advice and recommendation of the Defender Services Office in the application to the Court. **See:** [Guide, Volume 7A, § 320.70](#). The presiding judicial officer or the clerk also may wish to seek advice from the Defender Services Office.

⁵ Under [Guide, Volume 7A, § 320.70](#), approval for "unusual or extraordinary expenses" is authorized when "the circumstances from which the need arose would normally result in an additional charge to a fee-paying client over and above that charged for overhead expenses." The Court has discretion to determine when that condition is met. Circumstances of extraordinary expense may include but are not limited to: massive documentary discovery; voluminous electronically stored information (ESI); numerous hours of wiretap tapes; complex financial transactions; and national security concerns requiring disclosure, but no copying, of discovery. In all cases, the decision to approve expenses for hardware or software is a matter for the presiding judge (and if above the case compensation maximum, for the chief judge of the court of appeals, or designee of the chief judge).

⁶ The Court may wish to authorize acquisition of each specific item and a total cost ceiling but allow the designated purchaser some leeway to negotiate prices for individual items.

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It is further ordered that counsel must acquire the approved items in conformance with [Guide to Judiciary Policy, Volume 7A, § 320.70](#). Both the acquisition of the computer software and/or hardware and the procurement of litigation support services, should be submitted on [Form CJA 21 \(Authorization and Voucher for Expert and Other Services\)](#) or, in a death penalty proceeding, [Form CJA 31 \(Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher for Expert and Other Services\)](#). Upon actual purchase, counsel shall provide the AO's Defender Services Office with a copy of the court's order approving the request, a copy of the completed Form CJA 21 (or Form CJA 31), the purchase order from the vendor and any receiving documents. These documents should be sent to: National Litigation Support Team, Federal Public Defender Organization, 555 12th Street, Suite 650, Oakland, CA 94607-3627.

Because this [hardware and/or software] is [are] for the use of counsel appointed under the CJA and is being purchased with United States government funds, it is further ordered that the approved items are and will remain the property of the United States. The item[s] is [are] to be used only in the course of the representation of the above-named defendant[s]. Counsel must use due diligence and care to maintain the property in good condition.

Unless otherwise ordered by the Court, within 30 days after final judgment is entered as to a defendant, appointed counsel for that defendant is directed to contact the National Litigation Support Team in the AO's Defender Services Office at 510-637-3500 for instructions on returning any software, and directions for deleting case-related material from any hardware and returning it to the National Litigation Support Team for the permanent removal of case-related material. If appointed counsel has acquired software, then counsel should provide all accounting information for the software, including any serial numbers, activation codes, or other identifying information, and remove the software from his or her machines. If appointed counsel acquired computer hardware, it must be returned in good condition. Counsel should retain copies, electronic or otherwise, of the deleted information for the client's file.⁷

⁷ While it is preferable that counsel retain copies of the deleted information in the client files, there may be some cases where it is impossible or prohibited by law. For example, the retention of discovery that implicates a national security concern may be barred by federal law.