



ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS


HONORABLE JOHN D. BATES  
Director

WASHINGTON, D.C. 20544

May 22, 2014

MEMORANDUM

To: Chief Judges, United States Courts of Appeals  
Chief Judges, United States District Courts

From: Judge John D. Bates 

RE: SUGGESTIONS TO REDUCE COSTS IN CRIMINAL JUSTICE ACT REPRESENTATIONS  
(**INFORMATION**)

The Judicial Conference Committees on Defender Services (DSC) and Court Administration and Case Management (CACM Committee), in response to the Judicial Conference Executive Committee's request for committees to consider legislative changes that might facilitate cost containment, have endorsed two ideas that can be addressed by the Judiciary through changes to court rules and practices. As explained below, these ideas include eliminating the filing of paper copies of briefs and appendices in Criminal Justice Act (CJA) representations and reminding courts about the importance of conducting an adequate inquiry into substitution of counsel motions. I encourage courts to consider these issues as the Judiciary continues to address practical methods of cost containment.

**Eliminating Filing of Paper Copies of Briefs and Appendices in CJA Representations**

The DSC proposed, and the CACM Committee endorsed, a suggestion that a communication be sent to the chief judges of the courts of appeals requesting that their courts consider, in CJA representations (federal defender and panel attorney representations), eliminating any requirement to file a paper copy of briefs and appendices, or reducing the number of paper copies required. The current practice of filing paper briefs and appendices is resulting in a significant cost to the Defender Services account.

Approximately six years ago, the Sixth Circuit Court of Appeals successfully implemented rules and policies that exceed the recommendation – both CJA and retained counsel file only electronic copies of documents, which include briefs and appendices, with electronic service on

each party unless the rules or a court order provide otherwise.<sup>1</sup> (See [Sixth Circuit Rules](#) 25(a) and 31(a), and the [Sixth Circuit Guide to Electronic Filing](#), sections 3 and 9.1.) In addition to substantial cost savings for the Defender Services account, Debbie Hunt, Clerk of the Sixth Circuit Court of Appeals, indicated that savings are realized for the court as well. Ms. Hunt noted that the court's savings are the product of reduced space and storage requirements, reductions in records personnel, and reduced shipping and postage costs. In order to mitigate any inconvenience to judges and chambers staff when these rules went into effect, the court created an electronic workspace to facilitate electronic access to relevant briefs, appendices, and other documents. The clerk's office also supplied brief binding machines to any chambers that wanted to produce bound paper copies. Ms. Hunt invites inquiries regarding the Sixth Circuit practice.

### **Substitution of Counsel**

The CACM Committee initiated a discussion by expressing its concern about the implications for costs and delay caused by defendants "firing" multiple attorneys under the CJA. Subsection (c) of the CJA, 18 U.S.C. § 3006A, provides that "[t]he United States magistrate judge or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceeding," and in *Martel v. Clair*, 132 S.Ct. 1276, 1287 (2012), the Supreme Court stated that the standard "contemplates a peculiarly context-specific inquiry." The two committees endorsed reminding courts about the importance of conducting an adequate inquiry into substitution of counsel motions, particularly when multiple motions are made.

Please feel free to contact us if you have any questions or comments, or call the Defender Services Office Legal and Policy Division Duty Attorney on 202-502-3030.

cc: Circuit Executives  
District Court Executives  
Clerks, United States Courts of Appeals  
Clerks, United States District Courts

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<sup>1</sup> Exceptions to the electronic filing policy are that paper copies (1) of the brief and appendix may be filed by pro se litigants and (2) of the appendix in section 2254 state death penalty habeas corpus cases are filed when an electronic copy of the record is unavailable. (See the [Sixth Circuit Guide to Electronic Filing](#), section 3.3 and [Sixth Circuit Rules](#) 30(d)(2).)