M E M O R A N D U M

TO: Chief Judge (or Delegate)_____
    United States Court of Appeals For the _____ Circuit

DATE: _____

FROM: _____

SUBJECT: Advance Authorization for Investigative, Expert or Other Services

    It is requested that advance authorization be granted to obtain services in an amount in excess of the maximum allowed under the provisions of subsection (e)(3) of the Criminal Justice Act, 18 U.S.C. § 3006A, [**or, for capital cases commenced, and appellate proceedings in which an appeal is perfected, <u>on or after</u> April 24, 1996, under 21 U.S.C. § 848(q)(10)(B),**] as follows:

Case Name & Designation _____

Name of Expert or Investigator or Service Provider_____

Address _____

Type of Service _____

Reasons for Application _____

_____

_____

Estimated Compensation (Non-Capital Case) $_____

Estimated Compensation and Expenses (Capital Case) $_____

Estimated Compensation and Expenses of All Investigative, Expert, and Other Services (Capital Case) $_____

I certify that the estimated compensation in excess of the maximum set forth in 18 U.S.C. § 3006A(e)(3) [or, if applicable, the estimated compensation and expenses in excess of the maximum set forth in 21 U.S.C. § 848(q)(10)(B),] appears necessary to provide fair compensation for services of an unusual character or duration and therefore recommend approval of this advance authorization in the amount of $_____.

_____   _____
United States District Judge   Date
   or United States Magistrate Judge

Advance authorization is hereby approved in the amount of
$_____.

_____   _____
Chief Judge, United States Court of Appeals   Date
           (or Delegate)

APPENDIX C

MODEL ORDER AUTHORIZING THE ACQUISITION OF COMPUTER [HARDWARE
and/or SOFTWARE] UNDER THE CRIMINAL JUSTICE ACT

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   ORDER AUTHORIZING ACQUISITION
Defendant #2   OF [HARDWARE AND/OR SOFTWARE]
Defendant #3   UNDER THE CRIMINAL JUSTICE ACT
Defendant #4

   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 for the approval of CJA funds to purchase computer [hardware and/or software[3]], as authorized by subsection (e) of the CJA.

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   [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] In accordance with subsection (e) of the CJA, paragraph 3.03 of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures,* anticipates an *ex parte* application for "services other than counsel" and instructs that applications "shall be heard *in camera*" and are not to be revealed without the consent of the defendant.

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

The Court finds, after inquiry and counsel's consultation with the Office of Defender Services of the Administrative Office of the United States Courts,[4] that the [hardware and/or software] detailed in items [1. through . . .] is [are] necessary for an adequate defense and constitute unusual or extraordinary expenses.[5]

The Court, therefore, approves the acquisition of the following items:
    [1.]
    [2.]
    [3.]
    [4.]
in the amounts listed for each item and a total expenditure not to exceed [the sum of all items approved[6]].

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[4] In all cases, applicants shall consult with the Office of Defender Services of the Administrative Office of the United States Courts, (202) 502-3030, **before** submitting an application for funds to the Court. The Office of Defender Services will provide technical advice to counsel to ensure the items requested are necessary, appropriate, and compatible with systems in use within the federal defender system. Counsel is required to include, in writing, the advice and recommendation of the Office of Defender Services in the application to the Court. *See* CJA Guideline 3.16. The presiding judicial officer or the clerk also may wish to seek advice from the Office of Defender Services.

[5] CJA Guideline 3.16 authorizes approval for "unusual or extraordinary expenses" 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; 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 Office of Defender Services or the designated purchaser some leeway to negotiate prices for individual items.

It is further ordered that the Federal Defender Organization for the District of [_____],[7] as designated by the Office of Defender Services, shall acquire the approved items utilizing the Criminal Justice Act appropriation, in conformance with CJA Guideline 3.16.

Because this [hardware and/or software] is [are] for the use of counsel appointed under the Criminal Justice Act and is being purchased with United States government funds, it is further ordered that the approved items are and shall 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 shall 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 return all items acquired under authorization of this Order to a Federal Defender Organization designated by the Office of Defender Services, for assignment by the Office of Defender Services for any other appropriate use under the Criminal Justice Act.

Counsel for the defendant[s] is [are] further instructed to remove and delete all case-related data and software from any hardware before delivering the equipment to the Federal Defender Organization.[8] Software should be returned with all original disks and manuals. Counsel should retain copies, electronic or otherwise, of the deleted information for the client's file.[9]

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[7]After the Court issues this order, a Federal Defender Organization (FDO) designated by the Office of Defender Services, or the Office of Defender Services, will purchase the approved items in accordance with judiciary procurement procedures and charge the costs to the CJA panel attorney line of the appropriation. Payment will be made through the CJA Panel Attorney Payment System by means of a CJA Form 21 or 31 (to which this order should be attached), which has been approved by the presiding judge (and if above the case compensation maximum, by the chief judge of the court of appeals, or designee of the chief judge). The FDO or the Office of Defender Services will also maintain the tangible items on its inventory of property, noting the items are on loan to appointed counsel.

[8]Returning equipment cleaned of data and software will minimize risk of inadvertent disclosure of information protected by work product or attorney-client privilege.

[9]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.