

**UNITED STATES COURTS
FIFTH JUDICIAL CIRCUIT**

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MEMORANDUM

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RE: Case Budgeting Overview

This memorandum provides an overview of case budgeting practices. Additional information is available from the Circuit CJA Case Budgeting Attorney, Margaret Alverson, 504-310-7799; margaret_alverson@ca5.uscourts.gov.

I. OVERVIEW

Case budgeting should be employed in cases where it is anticipated that the representation by counsel appointed under the Criminal Justice Act (CJA) will become extraordinary in terms of cost. Analyzing, organizing, and planning the factual and legal defense of the case will promote efficient and high-quality representation while enabling counsel to prepare a well-reasoned budget.

Advantages of a case budget

- Puts the court and counsel on notice of projected costs of the representation
- Allows for submission of interim vouchers
- Facilitates voucher review and approval
- Enables counsel to identify cost drivers and seek resources to support the defense

Appropriate cases to budget

- All capital cases
- Non-capital cases expected to be extraordinary in terms of costs, complexity and duration
- Funding pre-approval for associate counsel
- Funding pre-approval for service providers or experts
- Pre-approval to incur extraordinary expenses (e.g. voluminous copy costs or obtaining records)
- Travel budgets in representations expected to require substantial travel

The budgeting process

The presiding judge may order counsel to submit a case budget in the order of appointment, particularly in capital cases, or at any time in the case if it appears that budgeting would be beneficial to counsel and the court, for example, in multi-defendant cases or cases with voluminous discovery. Counsel may also

determine that a budget would be helpful and seek a budget.

Whatever the circumstance, the next step is for counsel to consult with the case budgeting attorney (CBA) for a preliminary discussion and analysis of the case. The CBA can help identify cost drivers and resources, particularly in large ESI discovery cases, and review provider and expert rates for approval. All consultations with the CBA are confidential.

The budget should be created in the Electronic Budgeting Application (EBA) database. The EBA is an online database that streamlines the budget creation process through a fillable form. The EBA can be used to create a full case budget, prepare sequential budgets through multiple stages of the case, or to create stand-alone attorney or service provider funding requests. The EBA can be accessed here: [Welcome to Electronic Budgeting Application | Electronic Budgeting Application](#)

Once the budget is developed, counsel will submit a motion requesting approval of the budget or funding request ex parte and under seal. After the budget is approved by the presiding judge, it will then be forwarded for review and approval by the chief circuit judge or her designee. A circuit budget order will then be filed ex parte and under seal on the district court docket. The approved amounts will be entered into eVoucher as AUTHs, which will enable counsel and providers to submit interim vouchers and monitor expenditures for compliance with the budget.

Attorney Fees

For non-capital cases, the *Guide to Judiciary Policy, Vol. 7A, Ch. 2* (“CJA Guidelines”) provides:

“[c]ourts are encouraged to use case-budgeting techniques in representations that appear likely to become or have become extraordinary in terms of potential cost (ordinarily, a representation in which attorney hours are expected to exceed 300 hours or total expenditures are expected to exceed 300 times the prevailing CJA panel attorney non-capital hourly rate, rounded up to the nearest thousand, for appointed counsel and services other than counsel for an individual CJA defendant).

CJA Guidelines § 230.26. Of course, an attorney may find it advantageous to budget in a case in which fees are expected to exceed the case compensation maximum, but may not reach 300 or more hours.

All capital representations should be budgeted. *See*, § 640 *et seq.*

Voluminous ESI – Litigation support

Particularly in cases with massive ESI discovery, counsel are encouraged to reach out to the CBA about obtaining resources early in the case. Resources may include funding for discovery management and hosting, discovery review tools, or in appropriate multi-defendant cases, appointment of a coordinating discovery attorney. Counsel may work with [National Litigation Support](#) to identify low-cost or no-cost discovery management and litigation software such as Casepoint, CaseMap, dtSearch, and Box.com, or

to identify third party vendors that can be funded under the CJA to manage documents and mixed media such as wiretap interceptions and jail calls, surveillance video, social media accounts and the like.

Budget in stages or time periods

Cases subject to budgeting typically involve protracted and complex litigation, so it will make sense to budget in phases of litigation. Budgets are meant to be flexible, not rigid financial parameters restricting the defense of the case. Importantly, counsel is responsible for monitoring work for compliance with the budget and for communicating with service providers regularly to gauge compliance with the budget. If counsel determines that the budgeted amount is likely to be exhausted, counsel should submit a supplemental budget request as soon as practicable and before authorizing excess work.

Suggested stages:

Non-capital cases

- discovery production; defense hosting and management; review; funding for third party vendors and for paralegals or other service providers to assist with review
- pre-trial litigation; defense investigation; plea negotiations
- trial; post-verdict litigation and sentencing

Federal capital prosecutions

- Seed money budget – immediately upon being appointed to a death eligible case
- Pre-authorization – may be sequential budgets over set time periods (e.g. 6-month budgets)
- Post-authorization – sequential budgets for pre-trial investigation and litigation
- Trial

Capital habeas 28 U.S.C. § 2254 or 28 U.S.C. § 2255

- Pre-petition – obtaining and reviewing the record; meetings with the client and prior counsel
- Petition and responsive pleadings
- Stay and state exhaustion if applicable
- Discovery, motion for evidentiary hearing, amended petition if applicable
- Evidentiary hearing if granted, post hearing briefing

Clemency

- CJA Guidelines § 680.30 provides for clemency budgeting.
- Habeas counsel may begin to prepare for clemency proceedings and a clemency budget early in the habeas proceedings.
- Clemency and end stage litigation may be budgeted once habeas and certiorari proceedings have concluded.
- Or, clemency and end stage litigation and budgeting may take place once a warrant has been

signed and an execution date set.

Travel Budgets

CJA Guidelines § 230.60 provides that necessary and reasonable travel includes travel time to meet with the incarcerated client. Even if video conferencing is available, in person client meetings are important to building and maintaining the attorney–client relationship and thus is crucial to the representation.

If the client is detained in a remote location, or if counsel accepted an out-of-district appointment or is geographically distant from the courthouse, it may be prudent to seek a budget estimating travel time and mileage reimbursement expenses. While approval of a budget is no guarantee of payment, and vouchers claiming time and expense reimbursement are still subject to audit, the budget will serve to put the court on notice of the need for and expected frequency of the travel and the estimated costs.

Travel authorizations for overnight travel

Some courts require pre-approval if overnight travel is required in the case. If counsel anticipates overnight travel, counsel should check with the presiding judge to determine that judge’s practices.

For appellate representations, counsel must seek prior authorization for overnight travel and car travel over 4 hours round trip, whether for oral argument, client meetings, or other representational purpose. Contact cja_travel@ca5.uscourts.gov for travel authorizations.

Travel rates and reservations

If the district allows for booking airfare through National Travel, counsel will request a travel authorization which will enable counsel to book at government rates through National Travel.

Lodging, meals and incidentals are reimbursed at the [GSA per diem rate](#) for the location. Counsel may need an order or travel authorization from the court to obtain the government rate at a hotel.

These travel practices apply to appointed counsel, experts, and service providers.

Experts and Service Providers

Counsel are encouraged to obtain funding for experts and service providers to fit the needs of the case. Particularly in cases with voluminous discovery, counsel are encouraged to use well-qualified paralegals, law clerks, investigators, and other service providers to assist with discovery management and review, records collection, and locating and interviewing witnesses.

Non capital cases

In non-capital cases, payment of service providers is provided for in 18 U.S.C. § 3006A(e) and in the CJA Guidelines at Chapter 3. Specifically, 18 U.S.C. § 3006A(e) provides that “services *necessary for adequate representation* may request them in an *ex parte* application.”

The statute provides amounts which trigger the need for authorization:

- Up to \$1,000 for all non-attorney services combined: no pre-approval required
- Up to \$3,000 for an individual service provider or expert: approval by district court
- Over \$3,000 for any one non-attorney provider: approval by chief circuit judge or her designee
- Applies to fees only; expenses do not need pre-approval

Capital Cases

For capital prosecutions and capital habeas matters, compensation and expenses for service providers including investigators, mitigation specialists, and experts, are limited to \$7,500 *combined* unless excess payments are certified by the trial court and approved by the chief judge of the circuit or designee. 18 U.S.C. § 3599(g)(2); CJA Guidelines § 660.20.20.

How to request

Funding for experts or service providers should be sought by *ex parte* motion filed under seal. The requests can be made as part of an overall budget, or for each expert or provider as the need arises. The requests can be made in the EBA. Requests should:

- identify how or why the services are “*necessary for adequate representation.*” (18 U.S.C. § 3006A(e))
- Identify the provider, hourly rate, and description of the anticipated work
- Include a copy of the provider’s CV or resume
- Capital cases: showing of need to proceed *ex parte* (18 U.S.C. § 3599 (f))