

**UNITED STATES COURTS
FIFTH JUDICIAL CIRCUIT**
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M E M O R A N D U M

TO: CJA Panel Administrators
U.S. District Courts

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CJA Panel Representatives
U.S. District Courts

FROM: Margaret E. Alverson
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RE: Excess Compensation: Procedures for Interim Voucher Payments under the Criminal Justice Act

Questions have arisen concerning the relationship between case budgeting and the payment of interim vouchers. This memorandum sets forth existing circuit policy in an attempt to clarify the process for review and payment of interim vouchers in the district court as well as the circumstances necessitating circuit review.

An interim voucher alone is sufficient to request payment for work that has been performed. Unless the circuit has specifically requested a budget in the case, payment of an interim voucher does not depend on the existence of a budget. Budgets that cover work that has already been done serve no purpose.¹

As detailed below, the existence of a circuit-approved budget determines whether interim vouchers that exceed the applicable case maximum must be reviewed by the circuit.

1. *Payment of Interim Vouchers – Non-Budgeted Case*

The circuit has no general requirement that a budget be in place in order for counsel to be allowed to submit and be compensated through interim payments, provided that the vouchers are sent for circuit approval once the attorney compensation exceeds the case maximum.

¹ If a budget for future work is submitted, counsel should set out the time already expended on the case, clearly distinguishing between work already done and work intended to be done, so that the budget can be considered with reference to the case as a whole.

A district judge can authorize an interim payment in full as long as the payment, combined with all prior payments in the case, does not exceed the case maximum. Circuit review and approval are not required.

Once an attorney compensation request exceeds the applicable presumptive case maximum, if there is no circuit-approved budget in place, circuit approval is required before the interim voucher may be paid. The district court should review any interim vouchers and submit them to the circuit for approval.

Interim vouchers individually approved by the circuit may be paid at one hundred percent (100%). This practice applies both to counsel and to service provider fees. Reimbursable expenses claimed on interim vouchers may also be paid in full.

To summarize, a budget is not required for payment of an interim voucher submitted to the circuit, unless the circuit specifically asks for a budget for that particular case.

2. Payment of Interim Vouchers – Budgeted Cases²

In cases in which there is a circuit-approved budget order in place, the district court may approve payment of interim vouchers as long as the requests are consistent with the budget. Circuit review is not necessary.

However, in such cases, the district court may pay only eighty percent (80%) of the amount approved for fees and should withhold twenty percent (20%) as retainage. The amounts withheld may be requested by counsel in the final voucher, which must be sent for circuit approval before payment. This policy applies to fees claimed by attorneys and service providers alike in both capital and non-capital cases. Reimbursable expenses claimed on interim vouchers may be paid in full.

Although not required, interim vouchers in budgeted cases may be sent to the circuit for review. The advantage is that interim vouchers approved by the circuit may be paid in full at 100%. The disadvantage is delay in payment and the creation of additional paperwork.

In short, if attorney compensation exceeds or is expected to exceed the case maximum and it is intended that the district court be able to pay interim vouchers without referring them to the circuit, a budget and an order specifically allowing such interim payments must be approved by the circuit. Vouchers in such cases are paid at 80% of fees (but 100% of expenses); the retainage is requested with the final voucher, which must be sent to the circuit for approval.

² The Guide to Judiciary Policy provides that courts are encouraged to employ case budgeting techniques in: a) non-capital cases in which the representation is expected to exceed 300 hours of attorney compensation (mega-cases), b) federal capital prosecutions, and c) federal capital habeas corpus proceedings (28 U.S.C. § 2254 and 28 U.S.C. § 2255)