

CASE BUDGETING BASICS FOR NON-CAPITAL MEGA- CASES AND CAPITAL CASES

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CASE BUDGETING IN A NUTSHELL

Case budgeting is a program to encourage cost-efficient, high-quality representation in the most complex and expensive CJA representations

A case budgeting proposal is a spreadsheet form covering all attorney and service provider time, travel and expenses, and a memo from you explaining the factual background and justification for your requests

Cases are budgeted in phases, with supplemental budgets available

Budgets are approved by the presiding judge and the chief judge of the Third Circuit

WHICH CASES SHOULD BE BUDGETED?

MDPA CJA Plan makes budgeting mandatory in all capital or potentially capital cases

MDPA CJA Plan recommends budgeting for non-capital mega cases

- Eligibility threshold is defined as likely to exceed 300 attorney hours or equivalent in total cost
- Signs of a mega-case:
 - RICO or murder charges
 - Fraud and financial crimes
 - Pill mill/medical prescribing cases
 - Cases with large quantities of discovery/ESI
 - Cases with large quantities of material in foreign languages
 - Multi-state or international investigation
 - Cases where multiple experts are needed
 - Cases where you plan to request appointment of coordinating discovery attorney or approval of a discovery management vendor

SOME ADVANTAGES OF CASE BUDGETING

Faster payments – no circuit-level review of under budget excess compensation interim vouchers

Secure all prior approvals in one document – no CJA26 or service provider authorizations needed

Assistance of the CBA in getting through the process

Opportunity to show the judge the amount of work required and find out in advance what the judge will pay for

Demonstrate for the Court your cost-consciousness and accountability

Planning is good practice

WHEN SHOULD CASES BE BUDGETED?

Capital cases – budgeting begins as soon as learned counsel is appointed

Non-capital cases – timing is flexible

Budgeting can begin before indictment

- More common in capital cases – appointment of learned counsel is usually triggered by USAO announcement that they are considering seeking death
- Non-capital grand jury cases – counsel may be asked to conduct privilege review of seized materials

KEY COST-CONTAINMENT TOOLS FOR CASE BUDGETING

Identifying resources to help you review large volumes of discovery in a cost-efficient manner

Shopping around and negotiating hourly rates for experts

Using associates, paralegals and service providers

Identifying opportunities to share service providers or minimize duplication of work in multi-defendant cases

Advance planning and taking things one step at a time

TIPS FOR PREPARING A CASE BUDGETING PROPOSAL

Don't panic. Just put some numbers on the form and write some words on a memo – I am here to help you turn your first drafts into workable proposals

Follow the instructions for the budget form and memorandum, and send me the form in Excel format at the same time as you send me your memorandum

Do a preliminary survey of the discovery to identify the types, formats, and quantity of material that has been provided to see if you need assistance in opening or reviewing the discovery

Your memo should include the reasons why your case is difficult, time-consuming, and requires various experts and service providers

Case budgeting is only as good as the information you bring to the process – facts and details are more important than law or standards

Please call or email me with any questions – I don't bite

EVOUCHER BUDGET AUTHORIZATION PROCESS

All new budgeted cases will switch to budget submissions via eVoucher through the Budget AUTH function

Budget AUTH is only for cases budgeted with the CBA

Budget AUTH process will automatically create all service provider authorizations for providers approved in the budget

Budget AUTH will allow for easier tracking using eVoucher reporting functions

With the Budget AUTH, unused hours from prior budget periods will roll over to subsequent budget periods

Third Circuit standing order permits submission of interim vouchers in all budgeted cases using the Budget AUTH

WHAT HAPPENS AFTER THE BUDGET IS APPROVED?

If a service provider has been approved in the budget, they are authorized to begin work – please contact the Clerk's Office to make sure they are set up in the payment system

It is your obligation to keep track of everyone's time relative to the budget

If you or your service providers get close to or over budget, call the CBA to discuss a supplemental budget proposal **BEFORE YOU SUBMIT A VOUCHER**

Keep the CBA advised of major case developments

All vouchers will be audited to make sure that they comply with the budget

Under-budget interim vouchers will be paid upon approval of the presiding judge

CASE BUDGETING FOR DEATH-ELIGIBLE CASES

In any case punishable by death, the defendant is statutorily entitled to the appointment of two attorneys, one of whom must be learned in the law applicable to capital cases

Attorneys appointed in death-eligible cases are entitled to a higher hourly rate

Appointment of learned counsel must occur no later than when a defendant is charged with a federal criminal offense where the penalty of death is possible

If you are appointed to represent a defendant who is charged with a death-eligible crime, or may potentially be charged with a death-eligible crime, contact the Federal Defender immediately in to begin the process of obtaining learned counsel

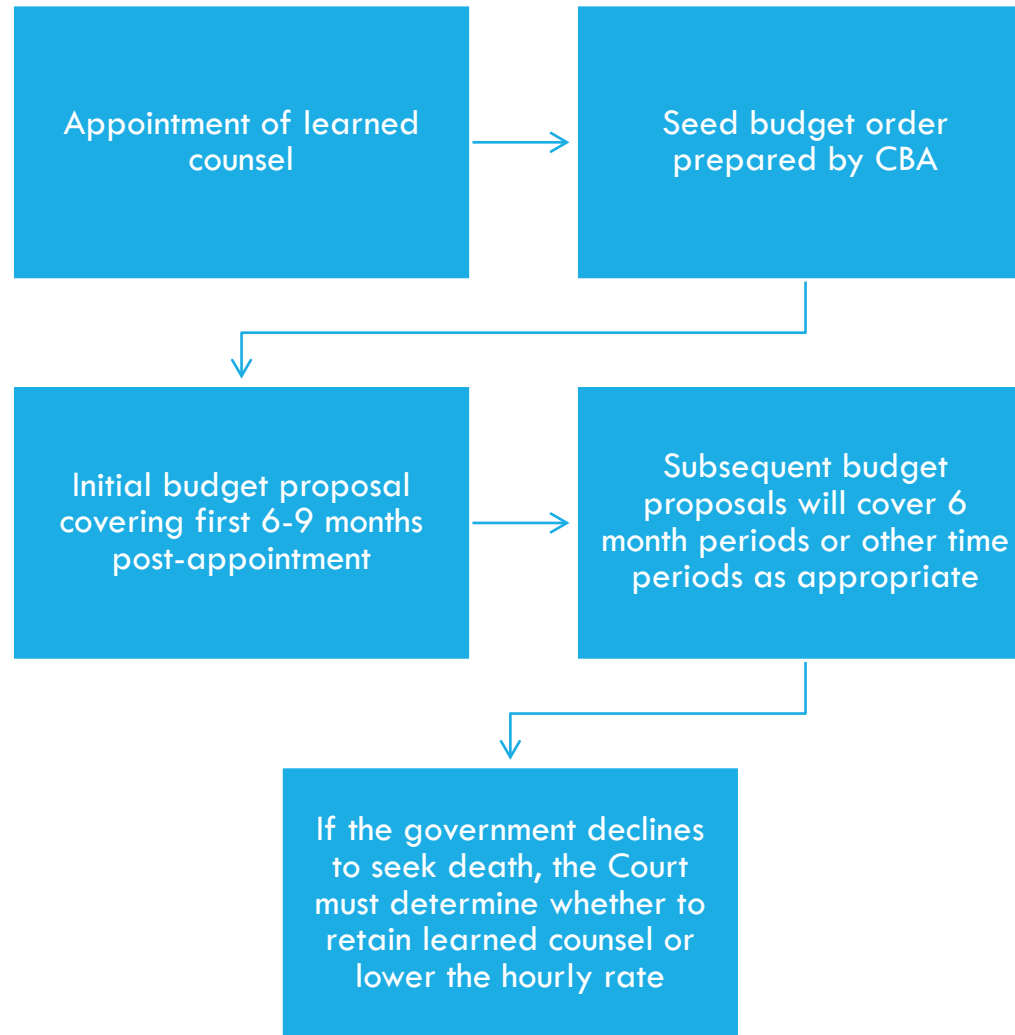
After contacting the Federal Defender, contact the CBA to discuss the capital case budgeting process

WHAT ARE FEDERAL DEATH-ELIGIBLE CRIMES?

[Federal Laws Providing for the Death Penalty | Death Penalty Information Center](#)

Attorney General's Memorandum on Reviving the Federal Death Penalty and Lifting the Moratorium on Federal Executions lists certain high priority crimes:

- Murder for hire resulting in death
- Murder in aid of racketeering
- Murder in furtherance of a continuing criminal enterprise
- Murder committed by use of a firearm in connection with a crime of violence or drug-trafficking offense
- Murder committed in a drug-related drive by shooting
- "Certain offenses involving extremely large quantities of drugs"
- Murder of a law enforcement officer
- Capital crime committed by an alien illegally present in the US
- Defendants associated with cartels or transnational criminal organizations



BUDGETING PROCESS FOR DEATH-ELIGIBLE CASES

DISCOVERY AND TECHNOLOGY FOR COMPLEX NON-CAPITAL AND CAPITAL CASES

To provide constitutionally effective assistance of counsel, you must have the technological capability, resources and facilities to manage cases where discovery comes in terabytes and not paper, contains electronically stored information, and cannot be reviewed with ordinary computer software

- Sufficient hardware to enable discovery review and storage – you may have to give up your Mac
- Familiarity with the basic formats in which the government produces discovery
- Ability to use common programs such as online discovery hosting and management programs, or other discovery review and litigation support software
- [You have to learn how to use eVoucher](#) – it's been ten years now

Large quantities of discovery require a large amount of planning *before you begin review* – do not start at the beginning and review it because it is there

Not all discovery management vendors are created equal

- Wide range of fee structures
- Different platforms for different needs

NATIONAL LITIGATION SUPPORT TEAM

In-house tech support team for CJA attorneys

Free or discounted software licenses

Individualized training and direct case assistance

Referrals to Coordinating Discovery Attorneys

Techniques in Electronic Case Management Workshop

www.fd.org/litigation-support

UPCOMING CJA PAYMENT DELAY

Due to a funding shortfall in the continuing resolution, the AO will delay all CJA payments for the period from July 16 through the end of FY2025

Length of the payment delay is based upon current budgetary projections

DSO is attempting to get additional funding from Congress

DSO guidance is that the courts should continue processing and approving vouchers during this period so that the AO can pay the vouchers as soon as funding is available

Payments will be made on a first in – first out basis once funding is available

SUBMITTING INTERIM VOUCHERS

Interim vouchers are an important tool for managing your practice

New Criminal Justice Act Guidelines on submission of interim vouchers

- “Courts and presiding judges...should allow interim payments of compensation and of expenses to attorneys...at regular intervals in representations exceeding 90 days in duration or \$4,000 in accrued compensation and expenses claims.”
- Similar language for service providers and capital cases
- Prior Guidelines language was much more restrictive

In cases that are not budgeted, you must file a motion asking for permission to submit interim vouchers

In budgeted cases, interim vouchers are permitted under Third Circuit standing order

COMPENSABILITY ISSUES FOR ALL CJA CASES

The Court will pay for all in court services and time reasonably spent out of court

The sum of the parts cannot be more than the whole

Administrative work, secretarial services and general office overhead

- Services that are clerical in nature are not compensable no matter who performs them – scheduling calls or meetings, downloading/saving files, copying/scanning/printing, etc.
- Services that require legal knowledge, professional judgment or decisions on representational strategy are compensable even if administrative in nature – organizing case materials, preparing documents for a hearing or trial, etc. – no matter who performs them

OTHER RESOURCES FOR CJA ATTORNEYS

www.CJAResources.com – private paralegal listings by state

www.ca3.uscourts.gov/case-budgeting -- Third Circuit CBA webpage

www.fd.org – Defender Services Office Training Division website

- CJA Attorney hotline: (800) 788-9908
- Legal and Policy Division Duty Attorney: (202) 502-3030

Sentencing Resource Counsel (non-capital) – <https://src.fd.org>

Capital Resource Counsel Projects – <https://capdefnet.org>

Defenders Initiative of the National Immigrant Justice Center – defenders@immigrantjustice.org

CIRCUIT BUDGETING ATTORNEY ASSISTANCE IS AVAILABLE IN ANY CASE

Information about service provider rates and requests

Assistance in finding service providers and experts

Questions about procedures in excess compensation cases

CJA Guidelines issues

Questions about unusual situations in which CJA funds may be available

Referrals to Defender Services resources

CIRCUIT
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