

GUIDANCE ON CASE BUDGETING IN THE EIGHTH CIRCUIT

This guidance concerns the use of case budgeting within the Eighth Circuit in cases involving representation by counsel appointed under the Criminal Justice Act.

A. CRIMINAL CASES NOT INVOLVING THE DEATH PENALTY

The Guide to Judiciary Policy, Vol. 7, § 230.26.10, encourages the use of case budgeting when attorney hours are expected to exceed 300 hours or total expenditures (combined compensation for counsel and service providers) are expected to exceed 300 times the prevailing CJA attorney non-capital hourly rate (currently, \$52,000). Budgets of this magnitude likely will lead to requests for compensation that require approval of the chief circuit judge under the statute, 18 U.S.C. § 3006A(d)(3).

Proposed budgets should be submitted to the chief circuit judge if they meet the thresholds described above. The district courts are free to require budgets in other cases, but those budgets should not be submitted to the chief circuit judge.

Budgets should be developed with the assistance of the circuit case-budgeting attorney, Mark Thomason. Budgets should be formulated for each defendant individually; no joint budgets should be submitted.

Attorneys appointed under the Criminal Justice Act should contact the case-budgeting attorney about preparing a case budget once their claimed fees have reached the statutory maximum (currently, \$13,400) or they have completed 80 hours of work on a case. Earlier case-budgeting is discouraged because counsel and the case-budgeting attorney will not have sufficient information about the case and the likely scope of representation to prepare an informed budget.

B. CAPITAL CASES

The Guide to the Judiciary, Vol. 7, § 640.10(a), provides that all capital cases should be budgeted with the assistance of the circuit's case-budgeting attorney. Therefore, counsel should contact the case-budgeting attorney promptly upon appointment in a capital case for budgeting assistance.

Capital cases will often be budgeted in phases. The first stage of a death-eligible prosecution may extend to the authorization decision. Depending on the timing of the decision-making process of the Department of Justice, counsel may submit a budget for the entire stage or for a given period within the stage.

For capital habeas proceedings, budgets may be composed of numerous stages, depending on a number of factors particular to a case or district. Stages ordinarily include record review, petition preparation, responsive briefing, and evidentiary hearing.

In capital prosecutions, it is important for the defense to assemble a team and to begin working promptly on an investigation of the charged offense and mitigation evidence for potential sentencing. Therefore, shortly after appointment, the case-budgeting attorney typically will provide counsel with a proposed “seed money” budget for the court’s consideration. This funding should allow counsel to become familiar with the case, develop strategy, gather a team, and develop a more detailed budget. This preliminary budget should provide sufficient funding for the first 120 days of representation and include authorization for counsel to enlist an investigator, paralegal, and mitigation specialist.

A budget for service providers that includes a projected cumulative cost of more than \$7,500 should be submitted to the chief circuit judge for approval. A budget for attorney hours in a capital case need not be submitted to the chief circuit judge.

C. VOUCHER REVIEW IN BUDGETED CASES

Approval of a budget does not guarantee payment of the budgeted amount. Budgets are based on projections made before work is performed. Vouchers are subject to audit and review to assess whether payment of a requested amount in excess of the statutory maximum is necessary to provide fair compensation to counsel or to provide fair compensation for services of an unusual character or duration. *See* 18 U.S.C. § 3006A(d)(3), (e)(3).

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