

## MEMORANDUM

Date: **November 25, 2024**

To: CJA Panel Attorneys

From: Mark Thomason, CJA Case Budgeting Attorney

Re: CJA Case Budgeting Guidance for Circuit Review

Early this week a guidance document was circulated concerning CJA case budgeting. A copy of that guidance is attached. The purpose of the guidance was to give district courts of a uniform approach to case budgeting that would be reviewed by the Circuit Chief Judge. It was not meant to create concern with CJA panel attorneys. It creates no additional oversight and will not increase the number of cases that require case budgeting.

The guidance addresses both non-capital cases and capital cases. Case budgeting is a valuable tool that allows an attorney an opportunity to create a litigation plan and to consider cost savings as well as give a district judge and circuit judge notice of a potential high-cost case. I will try and summarize the takeaways from this guidance and its application to your CJA appointments.

### NON-CAPITAL CASES

- 1) The circuit guidance follows the language in the Guide to Judiciary Policy, Vol. 7, § 230.26.10.
- 2) The circuit chief judge will only review a case budget if asking for more than 300 attorney hours or more than \$52,000 in attorney fees and service provider fees combined.
- 3) Budgets should be developed with the assistance of the case budgeting attorney prior to filing.
- 4) Budgets will be for individual attorneys only, no joint budgets.
- 5) Budgeting before the attorney knows the case needs is discouraged.
- 6) You should contact the case budgeting attorney after working 80 hours on a case that will possibly exceed \$52,000.

## CAPITAL CASES

- 1) All capital cases including capital habeas should be budgeted.
- 2) Contact the case budget attorney immediately upon appointment to start budget process and establish litigation team.
- 3) Budgets will be for periods of time or phases of the case.

## REVIEW OF VOUCHERS IN BUDGETED CASES

- 1) Approval of a case budget does not guarantee payment up to the approved amount.
- 2) District and Circuit Judge still have a statutory duty to conduct reasonableness review.

## FREQUENTLY ASKED QUESTIONS

- 1) If you are substitute counsel, does the work of prior attorneys count towards the 300 hours for budgeting purposes?

No, the work of prior attorneys appointed on the case does not count for budget purposes. It does still count towards the case maximum, and you will have to submit excess compensation letters for your district if over.

- 2) Do I need to call the case budgeting attorney on every case once I exceed the case maximum (\$13,400)?

No, if you know you are not going over \$52,000 in attorney fees and service provider fees combined, you do not have to call. The purpose of the guidance was to give you time to work on the case before deciding about budgeting. I would suggest that if you are between \$13,400 and \$20,000 in fees and you are not near completion on the case to give me a call. For cases that will not exceed \$52,000 you will need to submit what is required in your district for excess compensation claims.

- 3) What if my district judge or magistrate judge wants me to submit a case budget different than this?

Call me immediately and let me work that out with your district judge or magistrate judge. Let me be the bad guy.

- 4) I have a case that my fees are likely going to be about \$30,000 and I have several experts that have fees around \$30,000. Do I need to budget?

Yes, under the guidance if you have a case that will cumulatively exceed \$52,000 in attorney fees and servicer prover (expert) fees, you will need to budget.

- 5) What kind of non-capital cases are most likely going to require me to contact the case budgeting attorney?

Most of the non-capital cases that you will be contacting me about will be potential trial cases. If you have a case going to trial call me at least a few months prior to trial. Very large discovery cases are also potentially budget cases.

- 6) Do I need to prepare a draft budget before speaking with you on a case?

No, I prefer that you just reach out and contact me to discuss whether we will go forward with a budget. It is important that on the first call you know how many hours that you currently have worked. I will work with you to conduct the case budget for filing.

## **FINAL THOUGHTS**

I am here to assist you in your hard work as CJA panel attorneys. Thank you for your dedication to providing effective representation to criminal defendants. Please feel free to contact me at any time. I can assist you with not only budgeting but can also assist with finding experts and with large complex discovery cases. I look forward to working with each of you. Please do not hesitate to call me or email me any time.

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