

Case Budgeting and Excess Compensation Cases

Renee Hurtig Edelman

- Case Budgeting Attorney
- Started the Third Circuit's case budgeting program in 2015
- Case budgeting began with a pilot program in the Second, Sixth and Ninth Circuits nine years ago
- Prior to 2015, I was an Assistant Federal Defender in the Capital Habeas Unit in Philadelphia

Case Budgeting Basics

What is a case budget?

- A tool to get you the resources you need
- Three page spreadsheet and explanatory memorandum
- Covers attorney time, attorney travel and expenses, and service provider time, travel and expenses
- Budgeted in phases, with supplemental budgets available
- Includes all necessary prior approvals in one document

Some advantages of case budgeting

- Get paid faster
- Do less paperwork
- Show the judge the quantity of work involved in the case
- Find out in advance what the judge will pay for
- Demonstrate for the Court your cost consciousness and accountability

Tools for cost-containment without pain

- The #1 rule of case budgeting is that it shall not reduce the quality of representation which the Circuit and the District Court have grown to expect from CJA panel members
- Finding cost-efficient ways to get through large volume discovery
- 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
- Taking things one step at a time

Which cases should be budgeted?

- All capital or potentially capital cases
- Non-capital “mega cases” which are anticipated to exceed 300 attorney hours or \$38,000 in total costs

You should think about budgeting if:

- The AUSA starts talking about discovery in terms of hard drives, gigabytes or terabytes
- There is a complex case order
- You are requesting interim vouchers
- There are RICO, conspiracy or fraud charges, or multiple defendants
- You want to use more than one service provider
- The trial will take more than two weeks

When should I think about budgeting?

- For capital or potentially capital cases, as soon as you are appointed
- For non-capital cases, as soon as you get the sense that this case might require more than 300 hours of your time or significant service provider expenditures
- Budgeting can start at any time, but it is more useful earlier in the case

How do cases get budgeted?

- Referral to the CBA by counsel, judge or Clerk's Office staff
- Counsel confers with the CBA and prepares draft budget spreadsheet and memorandum
- Counsel and CBA finalize budget proposal
- CBA submits final budget proposal to the Court, with suggestions for a reasonable budget
- District Court reviews and approves the budget
- Circuit Chief Judge reviews and approves the budget

What happens after the budget is signed?

- Attach the budget to your vouchers and have your service providers do the same
- If the interim vouchers are under budget, no circuit level review is required for payment
- If your service provider has been named and approved in the budget, they are authorized to begin work
- You must keep track of your time relative to your budget
- If you or your service providers get close to (or over) budget, call the CBA to discuss a supplemental budget

Common Issues in Budgeted and Excess Compensation Cases

What is an excess compensation case?

- Any non-capital representation in which attorney compensation exceeds the statutory maximum of \$10,000
- Approximately 78 hours of attorney time
- The statutory maximum includes your compensation as well as any prior CJA attorney's compensation

Three rules of excess compensation cases

- Submit a CJA26 through e-Voucher
- The District Court must certify that the case involves extended or complex representation *and* the amount certified is necessary to provide fair compensation
- All payments must be approved by the Chief Judge of the Third Circuit or his designee

Common voucher pitfalls

If you are submitting vouchers that look like this:

1/1/16	Review discovery	8 hours
1/2/16	Review discovery	7 hours
1/3/16	Review discovery; phone conference with investigator re: witness interviews; draft & submit travel authorization request for witness interviews; write letter to AUSA re: missing discovery	4 hours
1/4/16	Open/read NEF (Doc. No. 30)	.5 hours

You may be getting a phone call or letter from a judge, wanting more information or giving notice of a proposed reduction.

Detail is important

- | | | |
|--------|--|-------|
| 1/1/16 | Review discovery – Bates # 001-425
(302s re: Count 1) | 8 hrs |
| 1/2/16 | Review discovery – Bates # 426-530
(302s re: Count 1), Audio disks #1-3,
(wiretap re: Count 1) | 7 hrs |

Separate your work

1/3/16	Review discovery – Bates #531-640 (302s re: Count 2)	2.8 hours
	Phone conference with investigator re: witness interviews	.3 hours
	Draft and submit travel authorization request for witness interview	.3 hours
	Write letter to AUSA re: missing discovery	.6 hours

Describe all of your work

1/4/16 Open and read Notice of Electronic Filing .1 hrs
Read Gov't Response to Motion to Suppress .4 hrs
(Doc. No. 30)

Submit a descriptive CJA26 – part 1

The amount of hours devoted to interviews and conferences was necessary because my client was difficult.

BAD

I was the second attorney appointed to represent my client. This was my client's first experience with federal court, although he does have a state court record. It took extra consultation to build trust with my client and to explain to him the differences between state and federal court procedure, and the much greater sentences imposed in federal court. As a result, my client agreed to plead guilty after having refused to allow his prior counsel to engage in plea negotiations.

GOOD

Submit a descriptive CJA26 – part 2

There were 25,000 pages of discovery and it was necessary for me to read every page of discovery in order to provide effective representation of my client.

BAD

The Government provided 25,000 pages of discovery in this multi-defendant RICO and drug distribution conspiracy case. I had my paralegal do an initial review of the discovery to identify the approximately 2,000 pages that were directly relevant to the allegations against my client, and to organize the remaining materials so that I could briefly review them to determine their relevance.

GOOD

Associates and non-appointed co-counsel

- Associates and non-appointed co-counsel are a great cost-saving resource, in addition to enabling you to take on CJA cases and maintain your practice
- You must seek prior approval to use an associate or another attorney who is not appointed in the case
 - One exception - if the attorney is an associate or partner in your practice, you may seek compensation for up to 10 hours of their time without prior authorization.
- You may not charge more than 80% of the hourly CJA rate for your associate's work, unless that associate is a CJA panel member
 - With a CJA rate of \$129/hour, your associate's hourly rate is capped at \$103.20
 - If your associate is a panel member, they get the full panel rate

Service providers and expert witnesses

- Service providers include anyone not paid on a CJA20 or CJA30
- There are no official district or circuit-wide presumptive rates for any type of service providers
- If you have questions about what a reasonable rate for a particular type of expert or service provider would be, please contact me

Approval and payment of service providers

- Between \$800 and \$2500, you must get prior approval from the District Court
- Over \$2500, you must get prior approval from the District Court and the Circuit
- If a service provider's total compensation is over \$2500, their interim vouchers must be approved by the District Court and the Circuit unless it is a budgeted case

New Third Circuit service provider policies

- In limited situations, service providers must bill at 50% of their hourly rate for travel time
- You must provide your service providers with a retainer letter setting out the terms of their service

Computer-related litigation support services

When the expected combined cost of the services exceeds \$10,000, counsel **shall first consult the National Litigation Support Team** in the Defender Services Office of the Administrative Office of the United States Courts for guidance. Counsel shall also inform the Court in writing of the DSO's advice and recommendation regarding counsel's proposed expenditure.

National Litigation Support Team

- If you hear the words hard drive, gigabyte or terabyte, call me and then call the NLST
- Free or discounted software licenses – CaseMap, Adobe Acrobat Pro, dt Search
- Individualized training and direct case assistance
- Referrals to Coordinating Discovery Attorneys

NLST contact information

○ Sean Broderick

(510) 637-1950 * sean_broderick@fd.org

○ Kelly Scribner

(510) 637-1952 * kelly_scribner@fd.org

○ Alex Roberts

(510) 637-1955 * alex_roberts@fd.org

Case budgeting is your way out of the maze of prior approval requirements

- All of your prior approvals in one document
- All of your service providers in one document
- Assistance of the CBA in getting through the process
- Approval in advance by the District Court and by Circuit Chief Judge McKee

If you have a case that may be appropriate for budgeting, please contact me:

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