

**CASE  
BUDGETING  
AND EXCESS  
COMPENSATION  
CASES**

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# CRIMINAL JUSTICE ACT BASICS

- The Criminal Justice Act (18 USC § 3006A)
  - The attorney “shall...be compensated...for time expended in court or before a United States magistrate judge and...for time reasonably expended out of court” and “may be reimbursed for expenses reasonably incurred”
  - “Upon finding...that [investigative, expert or other services] are necessary [for adequate representation]...the court...shall authorize counsel to obtain the services”
- Guidelines for Administering the CJA and Related Statutes, Guide to Judiciary Policy, Volume 7A
- eVoucher & eVoucher Manuals
- Middle District of Pennsylvania CJA Plan

## STANDARD CJA PAYMENT PROCESS

- Attorney submits a CJA20 voucher through eVoucher at the end of the case
- The Clerk's Office audits the voucher
- The presiding judge approves the voucher
- Attorney is paid

# THE NOT-SO-STANDARD CJA PAYMENT PROCESS FOR EXCESS COMPENSATION CASES

- An excess compensation case is any non-capital felony representation in which attorney compensation exceeds the statutory maximum of \$12,300
  - Approximately 78 hours of attorney time
  - Includes your compensation as well as any prior CJA attorney's compensation
- The attorney must submit CJA26 through eVoucher no later than when CJA20 is submitted
- Presiding judge must certify that case involves extended or complex representation *and* the amount is necessary to provide fair compensation
- All payments must be approved by the Third Circuit

# THE NOT-SO-STANDARD CJA PAYMENT PROCESS FOR SUBMITTING INTERIM VOUCHERS

- The court may authorize the submission of interim vouchers in extended and complex cases where waiting until the end of the case would pose a financial hardship
- Interim vouchers are available for attorneys and service providers
- You must receive permission from the presiding judge before you submit an interim voucher
- Special procedures for interim vouchers during the pandemic – every 4 months or \$4,000

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# COMMON VOUCHER PITFALLS IN EXCESS COMPENSATION CASES



# NOT ENOUGH DETAIL

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9/1/18	Review discovery	7.5 hrs
	Open/read NEF	.5 hrs

*OR*

9/1/18	Review discovery – Bates # 001-425 (302s re: Count I/RICO)	7.5 hrs
	Read Gov't Resp to Mot to Suppress (Dkt. #130)	.5 hrs



# BLOCK BILLING

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9/3/18 Review discovery; phone conf with investigator; write letter to AUSA 4 hrs

*OR*

9/3/18 Review discovery – Bates #531-640 3.1 hrs

Phone conf with investigator re: witness interviews .3 hrs

Write letter to AUSA re: missing discovery .6 hrs



# NOT REVIEWING YOUR BILL BEFORE YOU HIT SUBMIT

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**Reasonableness** is the CJA standard for compensation of out of court time

- Sometimes the whole is less than the sum of the parts
- In a multi-defendant case it may not be reasonable to bill for reading every filing on the docket

# NOT TAKING THE CJA26 FORM SERIOUSLY

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- This is your opportunity to advocate for your work
- Use the CJA26 to educate the circuit-level reviewer about your case and your client
- Explain why you did the work and not just what you did
- Provide detail on the factors about your case that made it more expensive – quantity of or issues with discovery, unusual motion practice, long distance to where client was incarcerated, other client factors, length of trial, etc.

# YIKES! MY VOUCHER IS BEING CUT

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There are two types of voucher reductions:

- Technical adjustments
  - Made by the Clerk's Office
  - Errors, billing for non-compensable work, etc.
- Reasonableness reductions
  - Made by the presiding judge or the circuit excess compensation reviewing judge
  - You are entitled to notice of proposed reductions and an opportunity to respond
  - You may “appeal” any proposed reductions at the district court level through the independent voucher review process

# COMMON ISSUES IN EXCESS COMPENSATION AND BUDGETED CASES

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# ASSOCIATES AND NON-APPOINTED CO-COUNSEL

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- 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
- 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 \$158/hour, your associate's hourly rate is capped at \$126.40
  - If your associate is a panel member, they get the full panel rate
  - An associate must be a licensed attorney – summer associates do not count

# SERVICE PROVIDERS AND EXPERT WITNESSES

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- Service providers include anyone who is not an attorney – paralegals, investigators, psychologists, computer forensics, etc.
- The Third Circuit and the Defender Services Office **encourage** the use of service providers because they are cost-efficient and/or provide necessary expertise
- 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, or need a referral, please contact me

# APPROVAL AND PAYMENT OF SERVICE PROVIDERS

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- Service provider requests go through eVoucher, not ECF
- For service provider expenditures over \$900, you must get **prior** approval from the District Court
- Over \$2700, you must get **prior** approval from the District Court and the Circuit
- If a service provider's total compensation is over \$2700, their vouchers must be approved by the District Court and the Circuit
- In limited situations, travel is billed at 50% of the hourly rate
- You must give your service providers a retainer letter with the terms of their service



# TIPS FOR REQUESTING FOR SERVICE PROVIDERS AND ASSOCIATES

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- These requests are a form of advocacy on behalf of your client
- You must provide the Court with enough information for the presiding judge or circuit excess compensation review judge to determine that the services are necessary within the meaning of the Criminal Justice Act
- Facts and details are more important than law or standards
- For service providers, you can request flat fee services or an hourly rate and number of hours, but that information must be in the request
- Take advantage of the opportunity to attach a memorandum or letter to the AUTH request in eVoucher
- Do not forget travel and expenses for your service provider or associate

# DISCOVERY MANAGEMENT AND REVIEW

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- Do not start at the beginning and review it because it is there
- Large quantities of discovery require a large amount of planning *before you begin review*
  - Assess the quantity and formats of discovery
  - Identify any technological issues before you begin review
  - Ask for help
  - Make a strategy for your review – including timing

# DISCOVERY AND TECHNOLOGY

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

- Sufficient hardware to enable discovery storage and review
- Familiarity with the ESI Protocol
- Discovery review and litigation support software - Adobe Acrobat Pro, dt Search, CaseMap & Trial Director
- Online discovery hosting programs such as CasePoint

# NATIONAL LITIGATION SUPPORT TEAM

- In-house tech support team for CJA attorneys
- Free or discounted software licenses
- Individualized training and direct case assistance
- Techniques in Electronic Case Management Workshop
- Referrals to Coordinating Discovery Attorneys
- CJA Guidelines require you to consult NLST on any request for computer-aided litigation support services over \$10,000

# NLST CONTACT INFORMATION

**[www.fd.org/litigation-support](http://www.fd.org/litigation-support)**

- Sean Broderick

(510) 637-1950 \* [sean\\_broderick@fd.org](mailto:sean_broderick@fd.org)

- Kelly Scribner

(510) 637-1952 \* [kelly\\_scribner@fd.org](mailto:kelly_scribner@fd.org)

- Alex Roberts

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- Kalei Achiu

(510) 637-1950 \* [kalei\\_achiu@fd.org](mailto:kalei_achiu@fd.org)



# CASE BUDGETING BASICS

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# WHAT IS A CASE BUDGET?

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- A tool to get you the resources you need in the most cost-intensive cases
- 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



# WHICH CASES SHOULD BE BUDGETED?

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- All capital or potentially capital cases
- Non-capital “mega cases” which are anticipated to exceed 300 attorney hours or \$47,500 in total costs

# SOME ADVANTAGES OF CASE BUDGETING

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- No circuit-level review of excess compensation interim vouchers
- It is an omnibus motion for CJA matters
- 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

# YOU SHOULD THINK ABOUT BUDGETING IF:

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

# WHEN SHOULD I THINK ABOUT BUDGETING?

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- For capital or potentially capital cases, as soon as you are appointed (even pre-indictment)
- 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 is more useful earlier in the case



# KEY COST-CONTAINMENT TOOLS FOR BUDGETING

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- Case budgeting shall not reduce the quality of representation which the courts have come 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
- Advance planning and taking things one step at a time

# HOW DO CASES GET BUDGETED?

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- 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?

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- Submit AUTH requests for budgeted service providers in eVoucher
- If your service provider has been named and approved in the budget, they are authorized to begin work
- You must keep track of everyone's 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
- Attach the budget to your vouchers and have your service providers do the same



# COMMON ISSUES IN CJA APPEALS

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# THE BASICS OF CJA APPEALS APPOINTMENTS

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- If you were appointed in the District Court you will be appointed automatically by the Circuit
- You will receive an appointment order and further instructions from the Circuit
- You will get a Third Circuit eVoucher log in and password
- Same CJA rules apply to circuit-level representations
- Excess compensation limit is \$8,800 for a felony appeal
- Appeals are not budgeted

# SERVICE PROVIDERS AND ASSOCIATES AT THE CIRCUIT

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- To request prior approval for a paralegal or other service provider, you must submit an AUTH request in eVoucher and include a memo explaining why the service is needed, a billing statement if one has been received and a CV for the provider
- Prior approval for an associate may be requested through an ex parte motion to the Court

# TRANSCRIPT REQUESTS

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- Authorization for preparation of transcripts must be obtained from the District Court
- Auth-24s for transcripts must be filed in eVoucher in the District Court even if the appointment did not originate in the District Court
- Deadlines for ordering and filing transcripts will be set by the Circuit
- File a Transcript Purchase Order with the Circuit and indicate in Part IB that “CJA form submitted to District Court Judge”
- Financial arrangements for transcripts will not be considered complete until the Auth-24 has been submitted in the District Court
- Failure to follow procedure may result in order to show cause being issued

# INTERIM VOUCHERS AT THE CIRCUIT

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- You do not need to separately request permission to submit interim vouchers
- When you submit an interim voucher you must attach a statement explaining why interim payment is needed



# TIPS FROM THE CLERK'S OFFICE

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- Receipts are required for any expense over \$50
- Circuit eVoucher passwords expire in 180 days – if you do not log in and change the password you will be locked out
- If you enter an incorrect password in eVoucher six times, you will be locked out
- If you are locked out, you must call the Third Circuit Clerk's Office at (267) 299-4966 to regain access to your account
- In order to complete your profile in eVoucher you must enter your SSN under the Attorney Information tab before entering any information under the Billing tab

## OTHER RESOURCES FOR CJA ATTORNEYS

- Defender Services Office
  - Training Division – [www.fd.org](http://www.fd.org)
  - Legal & Policy Division Duty Day Attorney – (202) 502-3030
- CJA Guidelines – available on [www.uscourts.gov](http://www.uscourts.gov)
- Third Circuit Case Budgeting website – [www.ca3.uscourts.gov/case-budgeting](http://www.ca3.uscourts.gov/case-budgeting)
- CJA Resources website – [www.cjaresources.com](http://www.cjaresources.com)



If you have a case that may be appropriate for budgeting or have CJA-related questions, please contact me:

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- [renee\\_edelman@ca3.uscourts.gov](mailto:renee_edelman@ca3.uscourts.gov)
- (267) 232-0210
- [www.ca3.uscourts.gov/case-budgeting](http://www.ca3.uscourts.gov/case-budgeting)