

CJA CASE BUDGETING POLICY AND PROCEDURE

U.S. District Court, Western District of Missouri

INTRODUCTION

The Western District of Missouri hereby enacts this Criminal Justice Act (“CJA”) Case Budgeting Policy and Procedure (the “Policy”) to address three primary issues relating to budgeting and funding.

First, the Policy expands the scope of cases subject to case budgeting. Specifically, a budget must now be submitted and approved for any representation in a non-capital felony case that may exceed the statutory maximum for attorneys’ fees. The current case maximum is \$11,800 if any work is performed on or after January 1, 2020. For work performed on or after January 1, 2020, the maximum hourly non-capital rate for attorneys’ fees is \$152/hour.

Second, the Policy now permits the submission of an interim voucher in every non-capital felony case when the outstanding amount of attorneys’ fees exceeds the statutory case maximum for attorneys’ fees. Subsequent interim vouchers may be submitted when an additional \$10,000 of attorneys’ fees has accrued.

Third, the Policy highlights requirements relating to the procurement, authorization, and funding of investigative, expert, and other services.

This Policy is supplemental and not exhaustive. In all representations, counsel should review and comply with the CJA, the Guide to Judiciary Policy (“Guide”), this Court’s CJA Plan, the CJA Information and Announcements on this Court’s website, and all other applicable requirements. This Policy applies to CJA appointments in non-capital felony cases filed on or after June 27, 2019.

Questions about case budgeting, including whether a budget is required, should be directed to the Circuit Case Budgeting Attorney, Clarke Devereux. Mr. Devereux may be contacted via telephone at 312-818-6618, or by email at clarke_devereux@ca7.uscourts.gov.

I. CASE BUDGETING, PROCESSING, AND MODIFICATION

A. Cases that Require a Budget

The following cases are subject to case budgeting:

1. Capital Cases: A budget is required in all death-eligible cases. This includes federal capital prosecutions, and habeas corpus proceedings in the district court from all death-eligible convictions. Guide, Vol. 7A, Ch. 6, § 640.10.

NOTE: Other than recognizing that a budget is required in all death-eligible cases, this Policy does not otherwise govern death-eligible representations. Such representations involve different rules and requirements. *See, e.g.*, Guide, Vol. 7A, Ch. 6, § 630.10.20 (providing that there is no statutory case compensation maximum for appointed counsel in capital cases).

Moreover, death-eligible cases impose a unique set of challenges and obligations upon appointed counsel. Counsel appointed to any death-eligible case should immediately review and comply with all applicable statutes, regulations, guidelines, and case law.

2. Representations that May Exceed the Statutory Maximum for Attorneys' Fees In a Non-Capital Felony Case. A budget is required if a representation has the potential to exceed the statutory maximum for attorneys' fees in a non-capital felony case. If any work is performed on or after January 1, 2020, the current statutory maximum for attorneys' fees is \$11,800 for the trial court level. 18 U.S.C. § 3006A(d)(2); Guide, Vol. 7A, Ch. 2, § 230.23.20. Payments to counsel may exceed this maximum if: (a) the case involves complex or extended representation¹ and is certified as such by the district judge or magistrate judge and approved by the Chief Judge of the Eighth Circuit (or his or her designee), and (b) payment in excess of the maximum is necessary to provide fair compensation. Guide, Vol. 7A, Ch. 2, § 230.23.40. This case compensation limit applies only to attorneys' fees, not expenses. *Id.*, § 230.23.10(d).

Because every case presents different facts and issues, there are no specific criteria for determining when a representation may exceed the statutory maximum. One or more of the following red-flags, however, could indicate a representation will exceed the statutory maximum:

- a) A large volume of discovery;
- b) Complex facts or legal issues;
- c) A case with multiple-defendants;
- d) A defendant who has mental health issues;
- e) Large indictments with multiple counts;
- f) Indictments where terrorism is alleged; and
- g) Securities or other major fraud indictments.

3. Non-Capital Felony Representations that May Become Extraordinary In Terms of Potential Cost. A budget is required “in representations that appear likely to become or have become extraordinary in terms of potential cost[.]” Guide, Vol. 7A, Ch. 2, § 230.26.10. In general, “extraordinary” means that “attorney hours are expected to exceed 300 hours or total expenditures are expected to exceed 300 times the prevailing CJA panel attorney non-capital hourly rate, rounded up to the nearest thousand, for appointed counsel and services other than counsel for an individual CJA defendant.” *Id.*

To determine whether a representation might be extraordinary, counsel should consider the red-flags identified above. Counsel should also specifically consider the potential for significant expenditures on expert, investigative, and/or other services.

¹ A case is “complex” when “the legal or factual issues . . . are unusual, thus requiring the expenditure of more time, skill, and effort by the lawyer than would normally be required in an average case[.]” Guide, Vol. 7A, Ch. 2, § 230.23.40(b)(1). A case is “extended” when “more time is reasonably required for total processing than the average case[.]” *Id.*, § 230.23.40(b)(2).

B. The Case Budgeting and Approval Process

At the time of appointment, counsel must evaluate the case and determine whether it is subject to case budgeting. If a budget is required, counsel must file the applicable documents (discussed below) as soon as practicable, but no later than 90 days after arraignment. If counsel initially concludes a budget is not required—but subsequently receives new information that triggers the budgeting requirements—counsel must file the applicable documents within 45 days of obtaining such information. The 90 and 45 day deadlines may be modified by Court order. The failure to timely file required materials may result in inadequate resources, a delay in payment, and/or the reduction of a voucher.

If a budget is required, counsel must file a motion to approve budget. The motion shall explain why the representation may be extended, complex, and/or extraordinary. For assistance in drafting the motion, counsel should review CJA 26A, “Guidance to Attorneys in Drafting the Memorandum Required for a Compensation Claim in Excess of the Case Compensation Maximum: District Court.”

The motion must attach a proposed case budget. In all cases that require a budget, the proposed budget must be completed on CJA Form 28A, “Attorney Services Detailed Budget Worksheet for Non-capital Representations with the Potential for Extraordinary Cost,” and CJA Form 28B, “Attorney Services Summary Budget Worksheet for Non-capital Representations with the Potential for Extraordinary Cost.” Counsel should also complete and attach CJA Forms 28C through H (as applicable). These forms contain detailed and summary budget worksheets for investigative, expert, and other services.

The motion and proposed budget shall be filed via ECF *ex parte* and under seal. The motion and proposed budget will be reviewed by the magistrate judge and/or district judge assigned to the case and, if Circuit approval is required, forwarded to the Chief Judge of the Eighth Circuit (or his or her designee). The approval of a proposed budget constitutes pre-authorization of expenditures up to the amount approved, but does not mean CJA vouchers for payment will ultimately be approved.

Once services are rendered, counsel seeking attorneys’ fees must submit, via eVoucher, CJA Form 20, “Appointment of and Authority to Pay Court-Appointed Counsel.” If the voucher exceeds the statutory maximum for attorneys’ fees, counsel must also submit CJA Form 26, “Supplemental Information Statement for a Compensation Claim in Excess of the Statutory Case Compensation Maximum.” The procedure for funding investigative, expert, and other services is discussed below. Final vouchers should be submitted no later than 45 days after the final disposition of the case. Guide, Vol. 7A, Ch. 2, § 230.13(a).

Each voucher will be reviewed by the district judge for reasonableness and necessity. Absent extraordinary circumstances, the Court will deny a request for compensation that exceeds the amount in an approved budget. A voucher seeking payment in excess of the applicable maximum must also be approved by the Chief Judge of the Eighth Circuit (or his or her designee).

The CJA Forms referenced herein are available at: <https://www.uscourts.gov/forms/cja-forms?panel=panel5>.

C. Modifying a Case Budget

A previously-approved budget may require modification as additional facts and issues are discovered during the litigation process. Appointed counsel must actively monitor the expenditure of fees and expenses, and if necessary, promptly request modification. Good cause must be shown to modify a budget. Good cause may be found if the requested modification is based on facts or issues unknown at the time of the initial budget, despite the exercise of due diligence.

Counsel seeking to modify a previously-approved budget must file a motion that sets forth good cause for the modification. A revised budget must be attached to the motion. The motion and proposed modified budget should be filed via ECF *ex parte* and under seal. The failure to promptly request modification may result in inadequate resources, a delay in payment, and/or the reduction of a voucher.

II. INTERIM VOUCHERS

Interim vouchers can reduce the financial hardship on counsel of undertaking representation for an extended period of time without compensation. Interim vouchers may also help expedite the review and processing of final vouchers at the conclusion of a case.

Consequently, in any non-capital felony case, the Court authorizes the submission of a CJA 20 interim voucher when the outstanding amount of attorneys' fees exceeds the statutory case maximum for attorneys' fees. Subsequent interim vouchers may be submitted when an additional \$10,000 of attorneys' fees has accrued.

An interim voucher must be supported by detailed and itemized time and/or expense statements. An interim voucher must also attach a written statement that contains: (a) a summary of the amounts paid on previously submitted vouchers; and (b) an explanation of whether the compensation sought exceeds previously submitted budget estimates and, if so, the reasons for exceeding the estimates. All documents relating to interim vouchers shall be submitted to the Court via eVoucher. Counsel should not file a motion for payment of an interim voucher via ECF.

Although an interim voucher may be submitted under this Policy without first obtaining leave of Court, the Court reserves the right to delay, reduce, or deny payment on any interim voucher.

III. REQUESTS FOR AUTHORIZATION OF OTHER SERVICE PROVIDERS

CJA counsel should also be familiar with the rules governing the payment of investigative, expert, or other services. Under 18 U.S.C. § 3006A(e), “[c]ounsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request them in an ex parte application.” 18 U.S.C. § 3006A(e)(1). Before procuring or requesting authorization for such services, counsel must ensure compliance with the Guide, Volume 7A, Chapter 3. Counsel must also review “Procedures for AUTH’s & CJA 21’s,” which is available on this Court’s website, and CJA 25, “Notice to CJA Panel Attorneys Regarding Availability of Investigative, Expert and Other Services.”

These documents explain the requirements applicable to obtaining investigative, expert, and other services. Among other things, if services are performed on or after February 15, 2019, and the combined cost of all services is \$900 or less (exclusive of expenses), counsel is not required to file a motion and obtain an order. Instead, counsel should submit an authorization form through eVoucher. *See* Procedures for AUTH's. If the authorization form is approved, counsel may then submit CJA Form 21 for payment once the services are performed. *Id.*

Prior court authorization is required if the cost of an individual service provider will exceed \$900 (exclusive of expenses). Counsel must file a motion via ECF, *ex parte* and under seal, and obtain a written order granting that request. Guide, Vol. 7A, Ch. 3, § 310.20.30(a); CJA 25. If an order grants the motion, counsel must upload the motion and order via eVoucher. *See* Procedures for AUTH's. Counsel must then complete and submit an authorization form via eVoucher. *Id.*

In addition, for work performed on or after February 15, 2019, the district or magistrate judge has authority to approve a maximum of \$2,600 (exclusive of expenses) for each individual service provider. Guide, Vol. 7A, Ch. 3, § 310.20.10(a)-(c); CJA 25. Payment in excess of the maximum may be made when certified by the district or magistrate judge and approved by the Chief Judge of the Eighth Circuit (or his or her designee) "as being necessary to provide fair compensation for services of an unusual character or duration." Guide, Vol. 7A, Ch. 3, § 310.20.20(a). To exceed the \$2,600 maximum, counsel must file a motion via ECF and obtain a written order granting the request.

eVoucher requires that an authorization form be submitted and approved before CJA 21 vouchers are created and submitted for processing. Completed CJA 21 vouchers must be submitted via eVoucher. *See* Procedures for AUTH's. The district judge will then review and, if necessary, forward to the Chief Judge of the Eighth Circuit (or his or her designee) for approval.