

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 for your CJA case
- 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

This sounds terrible. Why would I do this?

- The #1 rule of case budgeting is that I shall not reduce the quality of representation which the Circuit and the District Court have grown to expect from CJA panel members
- The goal is cost efficiency and cost containment – not cost-cutting

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

- Finding cost-efficient ways to get through gigabytes and terabytes of discovery
- Shopping around and negotiating reasonable hourly rates for experts
- Using associates, paralegals and service providers to assist with appropriate tasks
- 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, and as soon as possible
- 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

Associates and non-appointed co-counsel

- Associates are a great resource in larger cases, particularly for discovery review and legal research
- The CJA Guidelines on the use of associates are less than clear and have caused problems across the Third Circuit

New Third Circuit policies on associates

- You must seek prior approval to use an associate or another attorney who is not appointed in the case
 - 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, a non-panel 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
- The District of New Jersey has benchmark rates of \$85/hour for investigators and \$60/hour for paralegals
- There are no official 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 should also 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 the National Litigation Support Team (and then call me)
- 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:

Renee Hurtig Edelman

renee_edelman@ca3.uscourts.gov

(267) 232-0210