



U.S. DISTRICT COURT, DISTRICT OF MAINE CJA CASE BUDGETING POLICY AND PROCEDURE

INTRODUCTION

According to the District of Maine’s CJA Plan at § VII(A)(2), case budgeting should “be submitted to the Court, *ex parte*, in representations that appear likely to be extraordinary in terms of potential cost.” In general, “extraordinary” means a representation on behalf of an individual CJA defendant that has the potential to exceed 300 attorney hours or \$30,000 in total expenditures for counsel and expert services. It is counsel’s responsibility to initiate a case budget when a case has the potential to exceed the \$30,000/300-hour threshold; but the Court may direct the initiation of a budget as well. The development of a case budget will help ensure that CJA counsel will receive the resources necessary to represent the accused while providing the Court with sufficient information to fulfill its duties to monitor and assess the expenditure of public funds. Failure to submit a budget in a proper case could result in the provision of inadequate resources, delays in payment or, ultimately, reduced vouchers.

TYPES OF CASES SUBJECT TO CASE BUDGETING

1. Capital Cases: All death eligible cases are subject to case-budgeting.
2. Capital Habeas Corpus Petitions: Habeas Corpus proceedings in the District Court from death-related convictions are subject to case budgeting.
3. Mega-Cases: A case of potentially high expense in which 300 or more attorney hours will be required to be expended or in which \$30,000 in attorney and expert fees are anticipated or possible.
 - a. While there are no specific criteria or elements of a case which in and of itself will make a case achieve “mega” status, some identifiable factors, if present in a particular case, could indicate that the case will become a mega-case. The factors include one or more of the following:
 - i. Large volume of discovery
 - ii. Complex facts or legal issues
 - iii. Large, multiple-defendant crimes

- iv. Non-English speaking clients or witnesses especially where the language spoken is exotic or unusual
- v. A defendant who has mental health issues
- vi. Large indictments with multiple counts
- vii. Indictments where terrorism is alleged
- viii. Securities or other major fraud indictments
- ix. Wiretap cases especially where foreign languages are involved
- x. RICO cases
- xi. Organized crime cases
- xii. Drug trafficking/Drug kingpin cases
- xiii. Gang cases
- xiv. A plea appears out of the question because of such factors as immigration status or deportation consequences
- xv. Any case which appears, from an early stage, destined for trial

CJA counsel assigned to a case where one or more of the above factors are present or where it is believed the case may achieve mega status should either initiate a case budget to be submitted to the Court *ex parte* and in paper or contact the Clerk's Office for assistance in determining if case budgeting would be appropriate.

CASE BUDGETING PROCESS

FORMS

When the Court or counsel has determined there is a potential for extraordinary costs in a case, CJA counsel should complete **CJA Case Budgeting Forms 28 A through H** and submit them to the Court *ex parte* and in paper when they have enough information to do so. The forms and their instructions can be found on the Court's website:

<http://www.med.uscourts.gov/cja-criminal-justice-act>

CJA Forms 28A through H include both detailed and summary worksheets for each of the four types of services: attorney, investigator, expert and other. Both detailed and summary worksheets should be completed. The Court may choose to review only the summary worksheets, but the detailed worksheets will be available to ensure that cost estimates are tied to quantifiable, but not underestimated or overlooked, factors.

PROCESSING

Once completed, counsel should mail the CJA 28 forms in paper to the Clerk's Office. The Clerk's Office will direct them (*ex parte*) to the Judge presiding in your case for review. If the Court has questions or requires revisions, the Clerk's Office will schedule an *ex parte* meeting or telephone call between counsel and the Court. If accepted, counsel will be notified and the case budget forms will be held by the Clerk's Office until revised or until the final CJA voucher is submitted. CJA budget forms will be transmitted to the 1st Circuit at the conclusion of the case along with the final vouchers. The First Circuit has permitted the District of Maine to send them at this time rather than review them during the case.

TIMING OF BUDGET

Case budget forms are due as soon as counsel has enough information available to generate them. It is important that a realistic and carefully formulated budget be developed.

It is understood that, at the start of a case, it may be difficult for counsel to have sufficient information to provide a detailed case budget. For example, the charging instrument alone may not provide sufficient detail about the alleged offense to allow counsel to assess the defendant's involvement, the scope of the offense or a proper defense to the charge. Later, the volume of discovery generated may require time to process before counsel can assess the hours of research needed, the number of witnesses that may be called, the character of experts that may be employed, or the nature of scientific evidence or investigation required.

The Court asks that the budget forms be submitted once counsel has had an opportunity to evaluate key factors in the case and has sufficient information to provide a budget. Generally, once pretrial motions have been decided, sufficient information is available to produce a case budget. Revisions to the budget can be made at any time, so counsel are encouraged to monitor ongoing costs and hours as their case proceeds.

REVISIONS

A case budget should not be viewed as etched in stone. It is understood that subsequent events can impact the budget. For example, a superseding indictment may add new charges or counsel's investigation or subsequent events may call into question the mental status of the defendant.

As the case develops, as counsel assesses the nature of the defense, or as the discovery process is completed, the budget may need to undergo modification. A budget submitted after pretrial motions are decided may require significant revisions after trial or just before the sentencing process when such issues are more clearly understood. If the budget needs to be modified for any reason, please revise it accordingly and resubmit it to the Court for additional resources.

RECAP

What to submit: CJA Forms 28A-H

How to submit: Ex parte and in paper only to the Clerk's Office at either:

Edward T. Gignoux U.S. Courthouse
156 Federal Street
Portland, Maine 04101
(207) 780-3356

Margaret Chase Smith Federal
Building and U.S. Courthouse
202 Harlow Street
Bangor, Maine 04401
(207) 945-0575

When to submit: --As soon as counsel have enough information to do so
--Revise and resubmit as case progresses or changes

The Federal Defender's Office in Maine is willing to provide assistance to counsel who need it.