

CJA FUNDING REQUESTS VOUCHER BEST PRACTICES

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2023 CJA Panel Attorney Seminar

Oxford, MS

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Circuit CJA Case Budgeting Attorney – Fifth Circuit

FUNDING AND BUDGETING

ATTORNEY FEES

SERVICE
PROVIDERS

EXPERTS

- **AUTHORITY:**

- 18 U.S.C § 3006A
- 18 U.S.C § 3599 (CAPITAL CASES)
- CJA GUIDELINES
- CJA MODEL PLAN FOR THE DISTRICT



CJA GUIDELINES

- <http://www.uscourts.gov/rules-policies/judiciary-policies/criminal-justice-act-cja-guidelines>
- Chapter 2: Appointment of Counsel
- Chapter 3: Authorization for Experts and Service Providers
- Chapter 6: Death Penalty Cases

ATTORNEY FEES

When to budget –

- Guidelines Sec. 230.23
- 300+ attorney hours
- Remember: case compensation maximum is now \$12,800 (2023)
- Budget is not a guarantee of payment but is an estimate of case costs

Budget in stages in complex cases

- Discovery / pretrial litigation
- Trial and sentence

Cost savings for discovery review and management

- Think project management
- Litigation support
- Hosting platforms
- Case management software
- Coordinating Discovery Attorney

HOW TO CALCULATE

- Discovery
- Client contacts
- Witnesses / AUSA etc
- Motions – identify major or atypical issues
- Trial – prep and length
- Sentence – loss or drug quantity calculations; career criminal, etc

DISCOVERY MANAGEMENT and LITIGATION SUPPORT SERVICES

- Costs for computer systems, litigation support products, experts expected to exceed \$10,000: CJA Guidelines require that National Litigation Support be contacted § 320.70.40
- **Coordinating Discovery Attorneys (CDAs): available in multi-defendant cases with voluminous or complicated ESI issues**
 - Appointed by the court to manage discovery for multiple defendants
 - Contracts with third party vendor for hosting
- Alternatively, designate an appointed attorney to act as the discovery liaison attorney for multiple defendants
- Litigation support vendor services available (CJA funded for case)
 - Processing and hosting / Training and support
- Software discounts available (licenses for purchase)
 - secure cloud storage (box.com)
 - document and case information tools (Casemap / Docmanager)
 - document review platform (Casepoint)
 - document search programs (dtSearch)
- <https://www.fd.org/litigation-support/cja-panel-attorney-software-discounts>

Litigation Support

Litigation Support

What is Litigation Support?

[The Language of Litigation Support](#)

[I Have Electronic Data... Now What?](#)

[Who is the National Litigation Support Team?](#)

[Coordinating Discovery Attorneys](#)

[Direct Assistance for CJA Panel](#)

[CJA Panel Attorney Software Discounts](#)

[Joint Electronic Technology Working Group \(JETWG\)](#)

[Resource Materials](#)

[Litigation Support Blog](#)

What is Litigation Support?

The essential goal of litigation support is to organize, analyze, and present case materials through computer systems. In federal criminal defense cases, there are three primary ways that litigation support is used by Federal Defender Office (FDO) staff and Criminal Justice Act (CJA) panel attorneys. One is in conducting electronic courtroom presentations. Another is management and analysis of paper documents and their electronic equivalents. The third is the identification, collection, preservation, processing, review, analysis and production of electronically stored information (ESI).

Litigation support is the marriage of project management and technology. We believe that while every district is different and every case is unique, there are certain standards to follow in order to ensure that the data involved in a case is handled in a cost effective and time efficient manner allowing for good organization, easy retrieval and effective client representation.

Both federal defender offices and CJA panel attorneys are often faced with the challenge of limited resources and staffing. Litigation support technology can help to make up that deficit by allowing data to be intelligently collected, processed, organized, reviewed, analyzed and presented.

While there may not be a single piece of technology to address all the challenges you face, the National Litigation Support Team can help you to navigate through the process of evaluating your choices and in deciding what solutions best meet the needs of your case.

NATIONAL LITIGATION SUPPORT TEAM

Sean Broderick

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ATTORNEY BUDGET MOTION

- Description of charges / factual & procedural overview
- Description of cost drivers
 - Voluminous ESI - Client mental health issues - Multi-defendants; long-ranging conspiracy etc., - Travel issues
- Estimate hours for tasks
- Division of work if more than one attorney appointed or associate counsel assisting
- Request to submit interim vouchers
- *CBA available to discuss / review draft*

ASSOCIATE COUNSEL

- ❑ CJA Guidelines § 230.53.10 – need prior court approval if seeking associate counsel who is not an associate or partner of appointed counsel's firm; budget if likely to exceed case comp max
- ❑ Voucher / Audit Issues
 - Identify tasks performed by associate on voucher
 - eVoucher now puts both on the same voucher
 - Separate CJA 20 or 30 if appointed
 - AVOID: Appointed counsel delegating most of the work to associate
- ❑ District CJA Plan – e.g mentoring programs
- ❑ NOTE – if more than one attorney is appointed in an extremely difficult case, each attorney is entitled to claim the case compensation maximum

Electronic Budgeting Application – EBA

<https://eba.fd.org/>

**Electronic Budgeting Application**

Log in

Email address *

Password *

☐ I'm not a robot

 reCAPTCHA
[Privacy](#) • [Terms](#)

Log in

[Forgot your password?](#)

Don't have an account?

Request access

Welcome

The Electronic Budgeting Application (EBA) is a tool for CJA Panel attorneys to create and track budgets to procure funding and resources on criminal cases. Budgets generated in this tool can be uploaded to eVoucher or filed on CM-ECF, depending on the Court's practice.

If you need assistance with the budgeting process, please contact your Circuit Case Budgeting Attorney:

First Circuit Michael Andrews	Fourth Circuit Larry Dash	Seventh and Eighth Circuit Clarke Devereux
Second Circuit Alan Nelson	Fifth Circuit Margaret Alverson	Ninth Circuit Suzanne Morris Jennifer Naegle
Third Circuit Renee Edelman	Sixth Circuit Dennis Alerding	Tenth Circuit Rebecca Skordas

This system is for the use of authorized users only. Individuals using this computer system without authority, or in excess of their authority, are subject to having all of their activities on this system monitored and recorded by system personnel. In the course of monitoring individuals improperly using this system, or in the course of system maintenance, the activities of authorized users may also be monitored. Anyone using this system expressly consents to such monitoring and is advised that if such monitoring reveals possible evidence of criminal activity, system personnel may provide the evidence of such monitoring to law enforcement officials.

Electronic Budgeting Application – EBA

<https://eba.fd.org/>

**Electronic
Budgeting
Application**

[My budgets](#) [Useful links](#) [My account](#) [Log out](#)

[★ Step 1: General Case Information](#) [Step 2: Budget Justification](#) [Step 3: Discovery](#) [Step 4: Attorney Hours](#) [Step 5: Service Providers and Experts](#) [Step 6: Miscellaneous Expenses](#) [Step 7: Travel Authorizations](#) [Step 8: Budget Submission](#)

Step 1: General Case Information

Budget Information

Budget Stage * Period covered by this budget

- Select a budget stage - ▾ **Begin:** **End:**

Case Information

Case Name * Case Number *

Circuit * District *

Fifth Circuit ▾ - Select a district - ▾

Trial Date No of Trial Days Presiding Judge USSG Range (as charged)

- None - ▾

Please select the categories that are applicable to your case.

☐ Drug Related Offense	☐ Gang Related Offense	☐ Fewer than 10 Defendants	☐ Mortgage Fraud	☐ Violent Crimes/Homicide
☐ Financial Fraud Crimes	☐ Immigration Issues	☐ More than 10 Defendants	☐ RICO Offense	☐ Other

18 U.S.C § 3006A (e) – Experts and Service Providers

Counsel 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.

WHEN TO APPLY FOR FUNDS

- Once the need becomes apparent
- BEFORE YOU AUTHORIZE THE WORK
- BUT - district court may authorize the services nunc pro tunc, if the presiding judge “**in the interests of justice**, finds that timely procurement of necessary services could not await prior authorization”. CJA Guidelines, §§ 310.20.30(b)
- Monitor expenditures
- **Ask for additional funds BEFORE you authorize more work**

Experts and Service Providers Examples

EXPERTS:

- Computer expert // Cell phone / tower expert
- DNA // Ballistics // Forensics // CPA // fraud examiner
- Mental health experts – guilt / sentence mitigation / competency

SERVICE PROVIDERS

- Investigators
- Paralegals
- Mitigation specialists
- Assistance to catalogue and review numerous jail calls

DEFENSE TEAM

Chapter 3, § 320: Authorization of Investigative, Expert, and Other Services

Guide to Judiciary Policy, Vol 7 Defender Services, Part A Guidelines for Administering the CJA and Related Statutes, Chapter 3: Authorization and Payment for Investigative, Expert, or Other Services

- § 320.10 Investigators
- § 320.15 Interpreters
- § 320.20 Psychiatrists, Psychologists
- § 320.30 Transcripts
- § 320.40 Fact Witnesses and Depositions
- § 320.50 Guardian Ad Litem
- § 320.60 Commercial Computer-Assisted Legal Research Services
- § 320.70 Other Services and Computer Hardware and Software
- § 320.80 Reimbursement of Expenses
- § 320.90 Record Keeping



**18 U.S.C §
3006A (e)
No Approval**

Total costs for investigative,
expert, or other services
obtained without prior
request:

\$900 plus expenses

**18 U.S.C §
3006A (e)
District
Court
Approval**

For **each** service provider or expert:

\$2,800 per
provider (2023)

plus expenses



pre-approval may be waived in the
interests of justice where judge finds
that timely procurement of services
could not wait prior authorization

**18 U.S.C §
3006A (e)**
Circuit Approval

Any service provider or expert whose services are expected to exceed \$2,800

Must be certified by the district court as “necessary to provide fair compensation for services of an unusual character or duration”

Must be approved by the Chief Judge of the Circuit or his/her designee

CALCULATING THE EXPERT'S TIME

Document review

Interviews

- Client (incl travel time to jails)
- Witnesses

Evidence examination and testing

Preparation of reports

Consultation with counsel

Preparation to testify

Testimony

Travel (time and expenses)

Rate Ranges

CIRCUIT HAS NOT ADOPTED PRESUMPTIVE RATE RANGES

- Point of reference

EXPERIENCE BASED HOURLY RATES

- Training, experience, specialized skills
- Specific skills for specific case needs, e.g. paralegal with training in medical billing in health care fraud cases; paralegal/nurse who can read medical records; investigator who worked in a crime lab and can read/analyze DNA reports
- Need for the specialized skill that justifies higher rate must be present in the case
- Provide CV or resume and fee schedule where available

FUNDING MOTION REQUIREMENTS

Factual support for the need for assistance

Description of services to be performed / time required

Resume or CV

Hourly rate or fee schedule

Vet the expert

Shop around for competitive rates

Travel issues

CBA available to discuss / review draft

Funds Available to non-CJA appointments

Retained counsel may seek funding

Pro Se defendants / standby counsel

RETAINED COUNSEL

- § 310.10.10
 - Defendant with retained counsel may seek funding where
 - the defendant's resources are in excess of the amount needed to provide the defendant and his/her dependents with the necessities of life, defendant's release on bond, and pay a reasonable fee to retained counsel, **but are insufficient to pay for the necessary services.**
- § 310.10.20
 - (a) the court should inquire into counsel's fee arrangement
 - (b) If the court finds the fee arrangement unreasonable in relation to fees customarily paid to qualified practitioners in the community for services in criminal matters of similar duration and complexity, or that it was made with a gross disregard of the defendant's trial expenses, the court may order the retained attorney to pay out of such fees all or such part of the costs and expenses as the court may direct.

CIRCUIT ORDER



THINK
EVOUCHER



INCLUDE HOURS
/ RATE / TOTAL



EXPENSES

Order shall be filed under seal unless otherwise ordered by the district court.



Subject to the district court's approval, counsel may allocate the total amount approved among experts as needed.



Counsel shall monitor the work performed by the experts to ensure compliance with the funding order. Requests for an increase in the overall budgeted amounts must again be submitted for circuit approval and should be filed as soon as it becomes apparent that additional funds are likely to be required and before the work is performed.



VOUCHER REVIEW

- **§ 230.33.10 Standard for Voucher Review**
- Voucher cuts should be limited to:

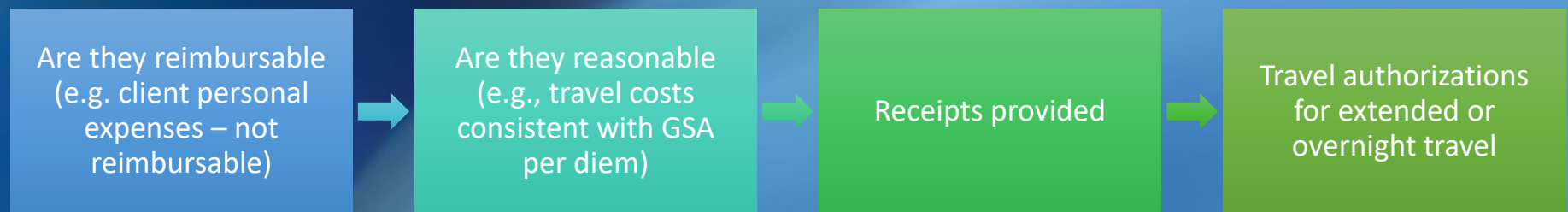
(1) Mathematical errors;

- **(2) Instances in which work billed was not compensable;**

- **(3) Instances in which work was not undertaken or completed; and**

- **(4) Instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.**

EXPENSES



NON-COMPENSABLE – ADMIN/OVERHEAD

§ 230.66.10 General Office Overhead

(a) General office overhead includes general office expenses that would normally be reflected in the fee charged to the client. The statutory fee is intended to include compensation for these general office expenses.

(b) Except in extraordinary circumstances (**see:** Guide, Vol. 7A, § 320.70.30), **whether work is performed by counsel or other personnel**, the following expenses associated with CJA representation are not reimbursable:

- personnel – rent – telephone & internet -- secretarial.

§ 320.70.30 a) CJA attorneys are expected to use their own office resources, including secretarial help, for work on CJA cases.

Not compensable clerical / administrative services examples



Filing, mailing, circulating



Printing and Scanning



Downloading and saving, including ECF notices, pleadings, etc.



Invoicing, setting up eVoucher accounts –



Calendaring and scheduling



Trips to copy center / post office / USAO to copy, scan, mail, pick up discovery etc.

** state in voucher if met with AUSA while picking up discovery

BUT must certify work by service providers & experts

NOTICE OF PROPOSED REDUCTIONS

- § 230.33.30 Notification of Proposed Reduction of CJA Compensation Vouchers
 - (a) ... If the court determines that a claim should be reduced, appointed counsel should be provided: prior notice of the proposed reduction with a brief statement of the reason(s) for it, and an opportunity to address the matter.
 - (b) **Notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.**
 - (c) Nothing contained in this guideline should be construed as requiring a hearing or as discouraging the court from communicating informally with counsel about questions or concerns in person, telephonically, or electronically, as deemed appropriate or necessary.

VOUCHER RECORDING – BEST PRACTICES

- Services:
 - Avoid block billing
 - Avoid clumping multiple tasks in one service entry (impossible to assess reasonableness)
 - Discovery review: add detail (e.g. wiretaps, video, medical records)
 - Legal research and writing – identify motions or areas of research
 - Plea – extended negotiations or unique issues / proffer sessions / cooperation
 - In court time is limited to actual time spent in the court as reflected on the minute entry
 - Wait time = other
 - Time meeting with client, AUSA, etc = interviews and conferences
 - Travel time should be separated out
 - Aggregate multiple ECF notices and emails. Include ECF doc. #

BREAK OUT TASKS

PROPER CLASSIFICATION OF SERVICES (NO BUNDLING)

Do This....

Date	Service	Time	Description
1/5/15	Interviews and Conferences	1.6	Met with client's mother (.4); phone call with client (.4); met with client at jail (.8)
1/5/15	Obtain/Review Rcds	4.0	Reviewed 200 pages of wiretap transcripts (Bates Nos. 220-420)
1/5/15	Legal Research	5.2	Researched whether the search of client's car without a warrant was unlawful; began draft of motion to suppress (Dkt. No. 112)

Not this...

Date	Service	Time	Description
1/5/15	Interviews and Conferences	10.8	Met with client's mother (.4); phone call with client (.4); reviewed discovery (4.0); met with client at jail (.8); researched whether the search of client's car without a warrant was unlawful; began draft of motion to suppress (Dkt. No. 112) (5.2)

DETAIL TASK DESCRIPTIONS

DETAILED TASK DESCRIPTIONS

Do this...

Date	Service	Time	Description
2/5/15	Travel Time	5.8	Drove to El Paso (Round trip travel and travel in El Paso to meet with two potential witnesses; (2.5 hours each way)
2/5/15	Interviews and Conferences	3.0	Interviewed two witnesses in El Paso
2/8/15	Obtain/Review Rclds	4.0	Reviewed 200 pages of wiretap transcripts (Bates Nos. 220-420)
2/17/15	Legal Research	5.2	Researched whether the search of client's car without a warrant was unlawful; began drafting motion to suppress (Dkt. No. 112)

Not this...

Date	Service	Time	Description
2/5/15	Travel Time	5.6	Travel for interviews
2/5/15	Interviews and Conferences	3.0	Interviews
2/8/15	Obtain/Review Rclds	4.0	Reviewed discovery
2/17/15	Legal Research	5.2	Legal research and writing

ECF REVIEW

Do This...

Date	Service	Time	Description
1/5/15	Obtain/Review Rcds	.3	Reviewed multiple ECF filings (Dkt. Nos. 2-9)

(NOTE: ECF review should reflect only the actual aggregate time that you spent reviewing the subject documents on a daily or weekly basis as opposed to billing every time you receive a notification)

Not This...

[illegible]

EXCEEDING THE CASE COMPENSATION Maximum

\$12,800 – district court / \$9,100 – appeals

§ 3006A (d)(3) – judge must certify; circuit approval required

§ 230.30 Supporting Memorandum Justifying Compensation Claimed

In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel will submit with the voucher a detailed memorandum supporting and justifying counsel's claim that:

- the representation given was in an extended or complex case (see: § 230.23.40(b)), and
- the excess payment is necessary to provide fair compensation (see: § 230.23.40(c)).

If the legal or factual issues in a case are unusual, thus requiring the expenditure of more time, skill, and effort by the lawyer than would normally be required in an average case, the case is "complex."

If more time is reasonably required for total processing than the average case, including pre-trial and post-trial hearings, the case is "extended."

LETTER IN SUPPORT OF EXCESS VOUCHER

- INTRODUCTION / BACKGROUND OF THE CASE
 - charges, unique or complex challenges, outcome.
- COST DRIVERS
 - Discovery (describe amount and challenges);
 - Client (detained in remote location, mental health issues, demanding)
 - Witnesses or evidence in remote areas
 - Suppression, evidentiary or issues requiring expert evaluation
- TRAVEL
 - Travel distances office/court/client/USAO
 - Pro rate when possible
- PLEA & SENTENCE
 - Extended negotiations, eve of trial, cooperation, sentencing hearings
- TRIAL
 - Length, verdict, post-verdict litigation

CJA DOES NOT PAY

Witness fees and expenses - § 230.66.50

- DOJ – Rule 17 **Subpoenas**; § 2254 proceedings – Rule 6; 28 U.S.C. § 1825
- If U.S. Marshals n/a, may incur expense; should seek prior approval
- But service while incidental to witness interviews o.k.

Competency Exam– DOJ pays CJA Guidelines § 320.20

Travel for non-custodial defendant

- 18 U.S.C. § 4285: US Marshals
- 3006A: *may be* interpreted as “other services necessary to the defense”

Filing Fees / PACER Fees (CJA account)

Defendant clothing, personal items CJA Guidelines § 230.66.20

- Assisting with disposition of defendant’s personal property compensable if obtaining the property contributes to a “representational purpose.”

**Competency –
Dual Purpose
Examinations
DOJ May Pay
Expert**

§ 320.20.50

- who requested the examination
- the specific purpose(s) of the examination
- Who gets copies of the report

§ 320.20.60 - Chart

Travel Policies

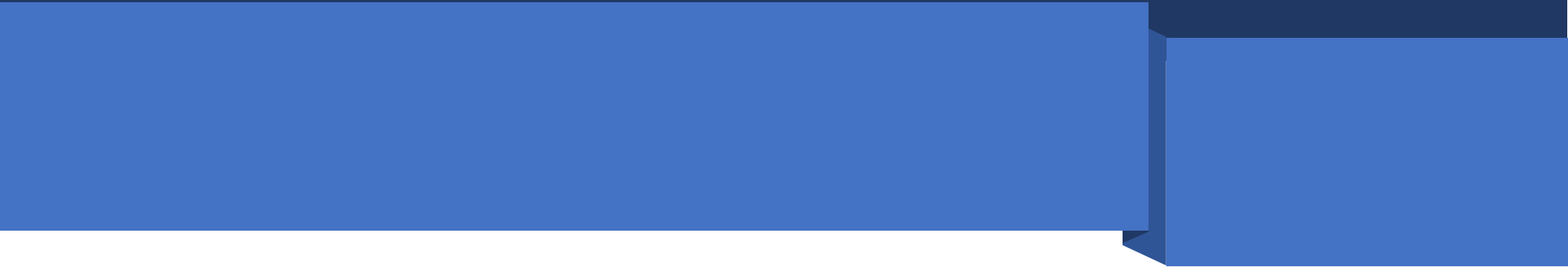
- ❑ Per District / Division
- ❑ Need for prior authorization per district CJA Plans or rules
- ❑ Prior authorization advisable, e.g., long trial away from home
- ❑ Audit Issues and Red Flags
 - Within GSA per diem rates
 - Alcohol, more than one person on a bill
 - Change of flight – necessity or convenience

Note: in-person meetings with clients, even when videoconferencing is available, is viewed as important and necessary to high quality representation. § 230.60

Contemporaneous time records: Guidelines § 230.76 – counsel are required to keep contemporaneous time and expense records for all work including work by associates and support staff for 3 years.

They are subject to audit.

Time can be recorded in eVoucher

The bottom of the slide features a decorative design consisting of two overlapping blue rectangular blocks. The block on the left is a solid medium blue, while the block on the right is a slightly darker shade of blue and is positioned behind the first one, creating a layered effect.

45 DAY RULE-
Guidelines § 230.13
– Vouchers should
be submitted within
45 days of
conclusion of the
case absent a
showing of good
cause

- Provide a memo or letter to judge with explanation for delay in submitting bill
- Upload in docs tab in eVoucher

INTERIM VOUCHERS

Budgeted Cases

- District court authorization to submit interim vouchers
- Payments within budget approved and paid by district court; circuit approval not required
- 20% withheld until final – then all billing reviewed by circuit
- Expenses paid in full by district court

No Case Budget

- District court authorization to submit interim vouchers
- District court may approve and pay up to case compensation maximum
- Circuit review once case compensation maximum exceeded
 - 100% payment

Audit of Interim Vouchers by District Court

- Services – verify court time, duplicate entries, mathematical errors
- Expenses – reimbursable and reasonable

CONTACT THE CASE BUDGETING ATTORNEY!

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