

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Petitioner,) Case No. CV
)
) ORDER OUTLINING PROCEDURES
) FOR LITIGATION OF CAPITAL
) HABEAS CASE
vs.)
) **DEATH PENALTY CASE**
Respondents.)
)
)

In an effort to manage this case in a cost-effective manner, it shall be governed by the Central District's Plan for Budgeting and Case Management in Capital Habeas Cases, as required by the Judicial Council of the Ninth Circuit. The parties shall appear for a status conference on [DATE] at , in Courtroom , to discuss implementation of a case management plan and budget for this case.

A. Overview

For the purposes of case management and budgeting, the Central District's Budgeting Plan divides the litigation of capital habeas cases into five phases: Phase I (appointment of counsel), Phase II (record review and preliminary investigation), Phase III (preparation of petition), Phase IV (exhaustion, procedural bar, motion for evidentiary hearing), and Phase V (evidentiary hearing and final briefing). This case is currently in Phase IV. A copy of the Central District's Guide to Budgeting and Case Management in Capital Habeas Cases, providing additional information, is enclosed with this order.

2. Petitioner's counsel will be required to file a proposed case management plan and budget for each phase of this case. After in camera review, the Court will approve or reject the budget in whole or in part. Submission and review of a proposed budget may occur in conjunction with review of funding applications submitted pursuant to 21 U.S.C. § 848(q)(9).

3. The Court's review of interim payment requests for attorneys, paralegals, experts, investigators, and any other expenses, will be based on the previously-approved budget.

B. Confidentiality of Budgeting Process

4. Because the information required by the Court from counsel to develop a budget is likely to be protected by the attorney-client privilege or the attorney work product doctrine, all documents relating to case budgeting may be filed ex parte and under seal, without service on the opposing party. It is not necessary to obtain prior permission from the Court to file budget-related documents under seal. Counsel should not file a separate application to have such documents filed under seal. In addition, when necessary to protect confidentiality, and with notice to the opposing party, certain portions of case management conferences related to budgeting may be conducted ex parte and in camera.

5. Applications for investigative, expert, or other services pursuant to 21 U.S.C. § 848(q)(9), if filed under seal, must contain “a proper showing . . . concerning the need for confidentiality.” *Id.* This showing may be included within the funding request itself; counsel should not file a separate application to have a funding request filed under seal. However, whenever petitioner files a funding request under seal, counsel shall notify respondent and provide a brief summary of the reasons why confidentiality is necessary.

6. All documents relating to case budgeting shall be filed together with a conformed copy for the judge as required by Local Rule 3.5.1, and an additional conformed copy designated “Death Penalty Law Clerk.”

C. Case Management Conferences

7. Ten days before the initial case management conference, each party shall file a completed Confidential Case Evaluation Form. The Court anticipates holding an additional case management conference at the beginning of each subsequent phase of this case. Petitioner’s counsel shall file a revised Confidential Case Evaluation Form, reflecting any additional information acquired, ten days prior to any subsequent case management conference.

8. At the initial case management conference, the parties shall be prepared to discuss all issues relating to the scheduling of future proceedings in this case, including the filing of motions attacking the cognizability of any claims in the petition or the need for an evidentiary hearing in this case. In conjunction with the case management conference, the Court proposes to set due dates for the filing of pleadings or motions, and any other deadlines that appear necessary.

9. At the initial case management conference, petitioner’s counsel shall be prepared to identify the specific individuals who have been, or will be, hired or retained to assist counsel in litigating this case (including associates, paralegals, and investigators); counsel shall be prepared to describe each individual’s qualifications and identify their respective billing rates.

10. Five court days before the initial case management conference and all subsequent case management conferences, the parties shall file a joint status report addressing the purposes of that conference as identified in the Guide to Budgeting and Case Management in Capital Habeas Cases. The joint status reports should not be filed under seal.

D. Cost Management

11. The Central District’s Plan for Case Management and Budgeting of Capital Habeas Cases requires the district court and counsel for petitioner to efficiently manage the costs of capital habeas litigation. To achieve this objective, prior to each phase of the case, petitioner’s counsel shall prepare a budget for tasks to be performed by attorneys, paralegals, other support staff, and any other expenses.

12. At the case management conference, the Court will set a date for the filing of the proposed budget for Phase IV. The budget shall be presented to the Court on the “Case Management Plan and Budget Forms” created by the Judicial Council of the Ninth Circuit and available from the Clerk of this Court. Copies of the budget forms are enclosed with this order.

13. Separate budget forms shall be completed for attorneys, investigators, and experts. Paralegals or legal assistants should be accounted for in the appropriate section of the form for

attorneys. Travel must be distinguished from other services, as indicated on the forms. All the forms for a particular phase of the case should be filed together as a single document.

14. Together with the budget forms, counsel shall file a supporting declaration explaining the basis for the budget requests. Requests for funding pursuant to 21 U.S.C. § 848(q)(9) shall comply with the provisions of paragraphs 36–38 below.

15. Following the Court’s in camera review of petitioner’s proposed case management plan and budget, along with the current Confidential Case Evaluation Forms, and guided by the requirements of 21 U.S.C. § 848(q)(9), the Court will issue an order under seal, approving or rejecting the budget in whole or in part. The Court will issue a separate Case Management Order, not filed under seal, setting future deadlines and any other procedural matters decided by the Court.

16. The budget must also be reviewed by the Judicial Council of the Ninth Circuit. Counsel are authorized to proceed based upon the initial budget approved by the Court, and will be contacted should any further clarification, information, or action be requested by the Judicial Council.

17. Petitioner’s counsel shall make reasonable and diligent efforts to minimize costs, and shall, where appropriate, use paralegals and law clerks for tasks where an attorney’s expertise is not required. Billing for associates, paralegals, law clerks, summer associates and law students, along with their hourly billing rates, must be pre-approved in conjunction with the case budget.

18. The Judicial Council of the Ninth Circuit has established presumptive maximum billing rates of \$65.00 per hour for associate counsel, and \$35.00 per hour for paralegals and law clerks. Counsel’s billing for the services of associate counsel and other support staff shall not exceed counsel’s actual cost for providing such services and is subject to the presumptive rates established by the Judicial Council. However, these limitations on hourly rates do not apply to lawyers or other support staff who have previously been authorized by the Court to provide services in this case.

19. To avoid duplication of efforts, counsel shall maintain a reasonable division of labor between the lawyers, if co-counsel is approved by the Court, and between counsel and other staff. The Court will authorize compensation for only one lawyer to attend court hearings and case management conferences absent prior approval. The Court will not authorize compensation for support staff, including law clerks, paralegals and investigators, to attend court hearings without prior approval by the Court.

20. Appointed counsel shall maintain the records and files in this case in an organized and accessible fashion so as to minimize any duplication of efforts in the event new counsel is assigned to the case. The Court may withhold final payment until counsel have complied with this requirement.

E. Submission of Vouchers

21. Pursuant to General Order No. 97-2 of this Court, attorneys appointed under the Criminal Justice Act in habeas cases challenging a death judgment shall submit a request for compensation and reimbursable expenses on a monthly basis. The following procedures for interim payments shall apply during the course of representation:

Each month, appointed counsel shall submit an interim CJA Form 30, "Death Penalty Proceedings: Appointment of and Authority to Pay Appointed Counsel" to the CJA Supervising Attorney's Office, care of the Clerk's Office, together with an updated copy of the budget showing actual fees earned and expenditures to date. Compensation earned and reimbursable expenses incurred from the first to the last day of every one-month period shall be claimed on an interim voucher submitted no later than the tenth day of the following month, or the first business day thereafter, and shall include all compensation and expenses claimed for the preceding month regardless of the amount requested. Failure to timely submit a monthly CJA interim voucher may be considered a basis for denying the requested compensation.

22. Along with a completed CJA Form 30, appointed counsel shall submit an original and one copy of all supporting documents. The Clerk's office will file under seal the supporting documentation, but not the CJA Forms 30. Counsel should not file a separate application to have the billing statement filed under seal.

23. All requests for compensation for paralegals and law clerks must be submitted on a CJA Form 31, and not listed as expenses on a CJA Form 30. Along with each CJA Form 31, counsel shall include a copy of the order authorizing employment of the person whose services are being billed. These vouchers must be submitted contemporaneously with the attorney vouchers covering the same time period. Documentation of the services actually performed and the rate paid must be attached to the voucher, signed by the individual who performed such services.

24. The Court's review of interim payment requests will be guided by the previously-approved budget. Variances from the budget should be pre-approved and will only be authorized for good cause. However, within a particular phase of the case, attorney hours may be transferred from one task to another; similarly paralegal/law clerk hours may also be transferred from one task to another. Fees and expenses for the services of an expert or investigator may not be reallocated to another expert or investigator, however, without the Court's prior approval. To transfer allocated funds among experts or investigators, counsel must seek permission to amend the budget.

25. The Court also will authorize payment for all miscellaneous expenses such as postage, copying, etc., reasonably incurred and subject to national and district policies and procedures.

26. At the conclusion of the representation, each counsel shall submit a final voucher seeking payment for representation provided during the final interim period.

F. Supporting Documentation for Vouchers

27. Each interim voucher shall be supported by a detailed and itemized time and expense statement in the form prescribed by the Court. In addition, counsel shall identify all payments previously received. In conjunction with each voucher, counsel shall abide by the applicable provisions of the Guidelines for the Administration of the Criminal Justice Act, Part C, Chapters II, VI (published by the Administrative Office of the United States Courts), and the outline of procedures and rules for claims by CJA attorneys described in the Voucher Review Guidelines for Habeas Death Penalty Cases.

28. Counsel shall maintain accurate time records; such records are subject to audit and must be maintained for at least three years after approval of the final voucher for an appointment. Time

records must be in a format approved by the Court. Hours billed must be divided into tenths of an hour. Each time entry shall reflect discrete individual tasks and shall not simply list multiple tasks performed in a specified block of time. Information should be provided in sufficient detail as to permit meaningful review, including but not limited to: identification of individual witnesses interviewed; identification, by name or title, of persons involved in telephone conferences; specific topics researched; identification of pleadings drafted or reviewed by title and number of pages; and, if necessary for an understanding of the task, explanation of its relevance to the federal proceedings. Aggregate time blocks or entries which are vague or ambiguous will not be approved for payment. If the level of detail is insufficient for auditing purposes, the vouchers will be returned to counsel for resubmission with adequate detail. The presumptive rate for payment for review of the trial and appellate record is 60 pages per hour.

29. The Court will not compensate counsel for administrative, clerical, secretarial, or word processing services, regardless of whether the person performing the function is an attorney, law clerk, paralegal or secretary, even if counsel has no regularly employed secretary.

30. The Court will not compensate counsel for excessive staff conferencing.

The Court will not compensate counsel for services that are directly related to proceedings in state court for exhaustion of state remedies. Counsel should seek compensation for such services from the state court.

31. The Court will not compensate counsel for services relating to appeals (whether from interlocutory orders or final judgments) or other work related to the review of proceedings before this Court. Counsel should seek compensation for work done at the appellate level from the Court of Appeals after having obtained an appointment as counsel of record from that court.

G. Funding for Ancillary Services

32. The presumptive maximum billing rate for investigators is \$55.00 per hour.

33. The Court will not authorize reimbursement for ancillary services without prior approval by the Court. *See* 21 U.S.C. § 848(q)(9); *United States v. Barger*, 672 F.2d 772, 775–77 (9th Cir. 1982). An order approving the budget shall constitute such prior approval.

34. A request for funds to provide ancillary services shall document and explain previous expenditures in this case. If any expert or investigative funds have previously been approved by any court, whether state or federal, counsel shall describe the course of the investigation (counsel need not disclose the actual results) and affirm that previously authorized funds have been (or will be) exhausted. Counsel should also explain why the previous budget proved to be inadequate.

35. A request for funds to hire an expert witness shall separately identify each type of expert witness counsel seeks to hire. The request shall identify the subject matter to be covered by the expert, briefly explain why an expert is needed, and include an estimate of the amount of time the expert anticipates spending on each portion of the investigation or analysis. In explaining why an expert is needed, counsel should address both the facts indicating that further analysis is warranted and the reason why an *expert* witness is needed to interpret those facts. Counsel shall contact the proposed expert witness before submitting a request so that the application will

include the actual billing rate being requested and a description of the proposed expert's credentials and experience.

36. Requests for an investigator shall include a specification of the factual issues counsel intends to investigate, the facts suggesting that such an investigation is warranted, and an estimated time budget for each task. The time budget should be broken down into discrete portions of the investigation so that the court may assess the reasonableness of each request.

37. If the Court approves investigative services, experts or other services, counsel shall promptly inform the expert, investigator or other approved support staff of the specific terms and limitations of the Court's order. Investigators, experts, or other support staff will not be paid in excess of amounts authorized. *See Barger*, 672 F.2d at 775-77.

38. All requests for compensation for fees and expenses of investigators and experts must be submitted on a CJA Form 31, "Death Penalty Proceedings: Ex Parte Request for Authorization and Voucher for Expert and Other Services." Each CJA Form 31 seeking compensation for expert, investigative, or other ancillary services shall include (1) a copy of the approved budget, (2) the order authorizing interim funding and employment of the person whose services are being billed, and (3) an itemized statement of the individual's time and expenses as described in paragraphs 28 and 29 above. Requests for reimbursement for travel expenses must comply with the provisions of paragraphs 46 and 47 below.

H. Reimbursable Expenses

39. Counsel will be reimbursed for out-of-pocket expenses reasonably incurred in furtherance of the representation. The following additional guidelines may be helpful to counsel:

40. Telephone toll calls, telegrams, photocopying and photographs are reimbursable expenses if reasonably incurred. However, general office overhead, such as rent, secretarial assistance, telephone service, publications, supplies, costs related to educational seminars, or time expended for the preparation of vouchers are not a reimbursable expense, nor are expenditures for personal items for the client.

41. Photocopying will be reimbursed at counsel's actual cost not to exceed \$0.10 per page for in-house copying. Large copy orders should be reproduced by an outside copy service unless in-house photocopying is more economically efficient. Expenses for the service of subpoenas on fact witnesses are governed by 28 U.S.C. § 1825 and Federal Rule of Criminal Procedure 17, and are not reimbursable under the Criminal Justice Act.

42. The Court will reimburse for the actual cost of case-related postage. Counsel is to make every effort to use first-class U.S. mail whenever possible. Reimbursement for the actual cost of other postal services (such as overnight or two-day delivery) or for the use of non-federal carriers will be permitted only if there is a genuine necessity for such a service. To obtain reimbursement for extraordinary mail services, counsel shall include a copy of an itemized bill and a statement detailing the requisite necessity for expedited delivery. Fax transmissions will be reimbursed for the actual amount of the telephone charge.

43. The Court will not reimburse for messenger or attorney service without valid justification for the use of such services.

44. Computerized research fees are considered office overhead, as are other fees for library items. Given the availability of flat-fee subscriptions for computerized research services, the Court will reimburse counsel for the costs of computerized research only upon a showing of good cause, such as that fees imposed are outside the scope of the flat fee subscription plan or an explanation of why a flat fee plan is not feasible.

45. In the event that transcripts are required, counsel should arrange with the court reporter(s) to bill the Court directly through use of a CJA Form 24. Counsel shall not include the cost of transcripts as an out-of-pocket expense on a CJA Form 30.

46. Case-related travel by privately owned vehicle shall be claimed at the mileage rate established by the Administrator of General Services pursuant to 5 U.S.C. § 5707 (currently 34.5¢ per mile), plus parking fees, ferry fees, and bridge, road and tunnel tolls. Transportation other than by privately owned vehicle will be reimbursed on an actual expense basis.

47. For travel outside the district or overnight travel within the district on case-related business, counsel must obtain the Court's approval of a "Travel Request and Authorization" prior to seeking reimbursement for travel expenses such as air fare, mileage, parking fees, and meals and lodging. For all travel, counsel and other individuals traveling for a case-related purpose must comply with the "Travel Guidelines for CJA Attorneys and Experts."

48. Counsel may be required to provide further documentation substantiating the fees or expenses claimed, or to submit a declaration under penalty of perjury detailing counsel's compliance with the standards and procedures established herein.

49. Further information regarding services which are compensable under the Criminal Justice Act and the manner of obtaining compensation can generally be found in 18 U.S.C. § 3006A, 21 U.S.C. § 848(q), the CJA Plan of the United States District Court for the Central District of California, the Voucher Review Guidelines for Habeas Death Penalty Cases, and the Guidelines for the Administration of the Criminal Justice Act, published by the Administrative Office of the Courts. These items are available from the Clerk of this Court.

IT IS SO ORDERED.

Dated:

United States District Judge