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**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

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Honorable Kathleen Cardone, Chair
Ad Hoc Committee to Review
Criminal Justice Act Program
Thurgood Marshall Federal Judiciary Bldg.
1 Columbus Circle, NE
Washington, DC 20544

Re: Testimony of Robert Ranz, Case Budgeting Attorney for the 6th Circuit

Dear Judge Cardone and Committee Members:

Thank you for the opportunity to present testimony at the Committee's public hearing regarding case budgeting and the functioning of the Criminal Justice Act Program on March 2, 2016 in San Francisco. By way of my personal background, I was admitted to the practice of law in Ohio and the Federal court in 1980. I was a sole practitioner for 27 years, with the bulk of my practice being state criminal defense, including numerous death penalty representations. In April of 2007 I accepted the position as the CJA Case Budgeting Attorney for the 6th Circuit Court of Appeals.

Background of the Case Budgeting Program

In 2007, the Office of Defender Services, as it was then known, began a pilot project to put the position of case budgeting attorney into three Circuits, the 2nd, 6th and 9th. The impetus behind the project, as I understand it, was the realization that 3% of the CJA cases were using almost one-third of the available funds. Our goal from the very beginning was to try to maintain the high quality of representation for CJA clients while attempting to see if costs could be controlled in a more effective manner. The cases to be budgeted included capital prosecutions, capital habeas and what is referred to as mega cases; that is, cases where the attorney hours were expected to exceed 300 hours. For the most part the concept was readily accepted by the attorneys and the Courts. For the attorneys, budgeting allowed them to think about and plan their defense and strategy, and to get prior approval for what they need, both in attorney hours and expert service providers. Budgeting also allowed them to do interim vouchers which could be paid at the District level, with vouchers over the "cap" needing Circuit

approval. For the Judges, it allowed them to focus on the case itself without needing to function as accountants, and to allow, if they wished, financial decisions to be made by or with the input of someone objective, independent of the case, with the legal background to determine reasonableness. Many Judges have also told me that they feel the case runs more smoothly.

As I settled into the position it became apparent to me that one drawback for the CJA attorneys was the time it took them to get paid after their vouchers were filed. This was due, in my opinion, to the fact that many Judges did not have the background to feel comfortable in reviewing vouchers to know whether or not voucher requests were reasonable. They were hesitant to make decisions on the requests, the vouchers tended to pile up, and they were hard pressed to find the time to do a thorough review of the vouchers. I theorized that the attorneys would be much more receptive to working with me on budgeting cases if we could ensure prompt payment, as opposed to waiting six months, a year or even more to get paid. With the blessing of Defender Services I began reviewing all of the excess compensation vouchers from all of the Districts and from the Circuit, and making recommendations to the Chief Judge or their designee. This appears to have worked quite well, and has substantially reduced the time the attorneys wait for the payments to be processed. Several other Case Budgeting Attorneys are now also providing this service to their Courts.

The pilot project was extended from three years to four years, and at the end a report was done by the Federal Judicial Center for the Judicial Conference. The Conference recommended that the position of Case Budgeting Attorney be continued and expanded to more Circuits in March of 2011. As of today, all of the Circuits have one or more Case Budgeting Attorneys with the exception of the 11th Circuit, and the 5th Circuit is currently advertising for applicants for the position.

Budgeting Methods

Each Case Budgeting Attorney has his or her own methods and procedures, and in this writing I will only discuss mine. When I am contacted by a Judge or an attorney regarding budgeting a case, I normally contact the Judge, if they are new to budgeting, and go over how budgeting works and give them the option of being involved with the process or just having the final budget submitted to them. Paul Denicoff of Defender Services has worked with the CBAs over the years to develop checklists for Judges and for attorneys regarding some ways to deal with budgeting, along with various policies. These can be found on the J-Net under Court Services. I contact the attorneys either by phone or in person to explain budgeting. I have found that in a multi-defendant case of more than 6 or 7 defendants that it is more efficient to meet with the attorneys as a group to discuss possible methods of cost containment or more efficient methods of handling the case. I then have the attorneys submit a proposed budget to me for

review, after which I contact them and discuss possible changes. I try to assist them in determining if any resources can be shared, if a paralegal or other service provider could assist at a lower cost, or if we should try to negotiate a lower rate for a proposed expert. This is, of course, a very simplified explanation. I am more than willing to go into more detail at the hearing if requested to do so.

Common Problems

There are several issues which come up frequently while budgeting cases. The first is the huge increase in the amount of discovery being provided to defense attorneys. When I was in private practice a thousand pages of discovery was considered a huge discovery case. Now, with the proliferation of computers and social media, fifty to one hundred thousand pages of discovery is considered a small to medium discovery case, and usually comes with hundreds of hours of audio and video discovery. E-discovery can be extremely time consuming and very difficult to deal with. The National Litigation Support Administrator is very helpful with this, but they can only do so much. The AUSA frequently provides discovery in chunks, stretched out over a long period of time. The discovery is often provided in various formats requiring specific programs to be able to access it, and many times is not in a searchable format. I have budgeted cases where the discovery is provided in millions of pages or in terabytes of computer memory. Many attorneys still feel that they need to review every page of discovery, which is no longer humanly possible. We have attempted to give them the resources to assist in discovery review, such as paralegal help or associate help. However, there is no way to “speed read” audio or video discovery. Another great help was the advent of Coordinating Discovery Attorneys, but they too can only do so much and can only handle a limited number of cases.

Another problem is when discovery is provided to all defendants as a “data dump”, without the discovery being specific to any one defendant. When the case is a forty defendant case this can make for a staggering amount of discovery. I am currently working on a case where the discovery consists of 21,000,000 pages of discovery.

Finally and more recently is the widespread use by the AUSA of the protective order. It no longer applies to a few specific items in the discovery but to almost the entire discovery. I am still working on a case where a protective order was granted applying to all twenty defendants in the case, who were locked up in multiple prisons in multiple states. The discovery included several hundred hours of audio. Without being able to provide the clients with copies of the audio, not to mention the paper discovery, we were faced with at best having each attorney send a paralegal to sit with the client for hundreds of hours while they reviewed discovery, in some

cases out of state. The Coordinating Discovery Attorney was able to alleviate this somewhat by having us purchase iPads, loading the discovery on them and putting them under the control of the prison, who gave the defendant access in a separate room without allowing them to take notes. This of course was still very expensive, but better than the alternative. You might be interested to know that all of the state prisons agreed to this arrangement – the only prison which did not agree was the federal prison. When dealing with massive amounts of discovery and a protective order the case then gets very lengthy and time consuming, often lasting for two or three years.

Resources and Voucher Review

It has been brought to our attention that the use of service providers is very low in some of the nine districts in the 6th Circuit. As part of my position I give seminars around the Circuit regarding case budgeting and what we look for when we look at requests in vouchers for excess compensation. The attorneys and Judges are always told that a budget can be supplemented if necessary as long as it is justified. Usually the main reasons a budget needs to be supplemented are either because new discovery has been provided (many times I am told another 25,000 or 50,000 pages have been given to the attorney) or that the case has been extended due to a superseding indictment. I also encourage the attorneys to ask for what they need by way of service providers. I know that it has been said that the requests for service providers have been denied in the past, but I truly feel that in our Circuit the Judges do not turn down reasonable requests. It is possible that I have not been told of problems, but I do try to stay informed of any problems that might exist. It is also possible that the culture in some Districts is such that the requests are no longer being made. I am planning to address this with my CJA Panel Representatives at the Conference on March 4, 2016.

As far as voucher review and voucher cutting, again I do not believe that this is a prevalent problem in our Circuit. This does not mean that no vouchers are reduced, but of the vouchers I see the number is very small. The attorney is given notification of any proposed reduction and is given an opportunity to respond. I have seen only a handful of vouchers reduced every year among the vouchers I review. I do not have any information about any reductions made of vouchers which do not exceed the “cap”, but I have heard very few complaints. That being said, every Judge has his or her individual feelings and techniques about how they handle vouchers. There are very few things about how CJA matters are handled that

are uniform across the country, much less throughout the Circuit.

Suggestions

I believe that the position of Case Budgeting Attorney is an excellent first step in making the CJA program run more smoothly and efficiently, however I think more is needed.

As my counterpart Jerry Tritz in the 2nd Circuit says, the CJA Panels in a Circuit are comparable to a 300 or 400 person law firm. Every law firm needs a managing partner and supervisors. Perhaps each Circuit should have someone in charge of CJA, with a point person in each District. A small copy center could be set up in each District to allow the attorneys to make necessary copies more cheaply, as well as copying the CDs and DVDs which is the form used to provide much of the discovery. An IT person could be tasked also in each District to assist the attorneys in handling e-discovery. We presently spend a great deal of money for both of these services in the private sector – could we do it more cost efficiently?

Right now most of the CBAs have morphed into the CJA “go to person” regarding matters and questions about the CJA. We all spend a great deal of time answering and researching questions from Judges, attorneys and court staff about various CJA issues. Speaking for myself, I often check with Defender Services or my counterparts to attempt to answer these questions. A CJA point person in the Circuit would be very helpful, since matters are often not handled in the same way from Circuit to Circuit.

Conclusion

Thank you again for the opportunity to present testimony before the Committee. As I mentioned earlier, this is just a brief overview of case budgeting, I look forward to going into more detail at the hearing on any subjects that you might want more detail about. In our Circuit the Federal Defenders work very well with the CJA Panels, providing training and assistance. I have found our CJA attorneys to be excellent, providing high quality representation to their clients under what are sometimes very difficult circumstances. The attorneys and the Judges have embraced the new culture of trying to be cost-efficient without sacrificing quality. A large majority of my attorneys submit proposed budgets having already negotiated lower rates for experts and asking to share resources without any prompting from me. They know that we always attempt to give them what they need. I think they all realize that the climate of the government attorneys having seemingly unlimited resources will perhaps never change, but we attempt to keep the playing field as level as possible.

The Case Budgeting Attorneys are, in my opinion, a wonderful resource. I believe the CBAs are exemplary individuals, with various fields of expertise, who are and can be an excellent source of help to the Courts, attorneys and the CJA Program. I feel that over the years I have earned the confidence and trust of the people I work with, hopefully with good cause. I look forward to meeting you in San Francisco.

Robert Ranz
6th Circuit Case Budgeting Attorney