

CAPITAL HABEAS CASE-BUDGETING
NORTHERN DISTRICT OF CALIFORNIA PILOT PLAN
Summary Overview for Appointed Counsel
[Revised October, 2002]

1. It is the intent of this court to work with counsel in an effort to manage the costs of capital habeas litigation. In furtherance of this objective, counsel are expected to prepare a budget for tasks to be performed by attorneys and paralegals and expenses to be incurred for investigators, expert witnesses and other costs. The judge assigned to the case will oversee the budgeting procedure in conjunction with the CJA Supervising Attorney. The budgeting process will be initiated in all open cases pending in the Northern District.
2. Considering the peculiarities of habeas practice in California cases, phased budgeting will be implemented. The phases include: I) Appointment ,Assembling the Record, Record Review and Preliminary Investigation; II) Preparation of the Petition, Exhaustion and Answer; III) Briefing of Procedural Defenses, Traverse, Motion for Evidentiary Hearing and Briefing of Claims Not Subject to Evidentiary Hearing; IV) Evidentiary Hearing, Final Briefing and Decision. Each phase will require separate approval.
3. The court will issue a case management order outlining procedures to be followed in capital habeas cases and setting a date for the submission of the budget for the first phase. Counsel are expected to adhere to the policies and procedures outlined in the *Criminal Justice Act (CJA) Panel Attorney Manual for the Northern District* and the *Supplemental CJA Guidelines for Capital Habeas Cases*.
4. For each phase, counsel should submit an original and one copy to the CJA Supervising Attorney of the following: case evaluation form (updated as necessary), proposed budget, and a detailed declaration outlining specifics as needed to support the budget request, including any relevant case law which supports a particular request. The tasks outlined in the budget forms are typical tasks required for each phase and are listed as a guide for counsel. Some tasks may not be applicable in a particular phase and other unlisted tasks may be appropriate. Counsel should complete the forms as appropriate to the case and may add additional tasks as required in the "Other" category. The supporting declaration must support a finding that any requested experts or other services "are reasonably necessary for the representation of the defendant," 21 U.S.C. § 848(q)(9), including, but not limited to a specification of: 1) the factual issues requiring expert or other assistance; 2) facts suggesting that such investigation, expert, or other assistance is warranted; 3) whether the evidence existed at the time of the state trial; 4) why the evidence is relevant to the federal habeas case; and 5) an estimated budget for each task, specifying the proposed billing rate, reasonableness of the rate and the total amount of the funds

requested. The court will issue an order approving the budget or schedule an *ex parte* conference to resolve any questions or unresolved issues. The court will give due regard to the provisions of 28 U.S.C. § 848(a)(9); therefore included in counsel's declaration supporting the budget, counsel should briefly outline reasons for confidentiality of the budget. With appropriate justification, the budget will be filed in the CJA confidential file.

5. Appointed counsel are expected to utilize paralegals and other cost effective means to minimize costs where attorney expertise is not required. Appointed counsel are not permitted to earn a profit from use of support staff. Reimbursement for independent contractors may not exceed the amount actually paid. The number of staff and payment rates, whether on the appointed attorney's staff or independent, must be consistent with the presumptive rates established by this court and outlined in the *Criminal Justice Act (CJA) Panel Attorney Manual for the United States District Court, Northern District of California*, and the policies outlined in the *Supplemental CJA Guidelines for Capital Habeas Cases*, unless otherwise authorized by the court. Use of associates, paralegals, law clerks, summer associates and law students must be pre approved in conjunction with case budgeting or a funding request; such requests must detail the projected number of hours and the hourly rate and total anticipated expenditure. The court expects that counsel will develop a reasonable division of labor between counsel, and between counsel and other staff, to avoid duplication of efforts and excessive staff conferencing.
6. Approval of any budget item will serve as approval of attorneys fees and expenditures for experts, investigators, paralegals, etc., unless the court specifically notes otherwise. In certain circumstances to be specified by the court, the court may require a subsequent written request to outline specifics not previously provided in the budget.
7. While a budget request is pending, counsel may proceed with necessary tasks until notification by court order as to resolution of the budget.
8. Absent good cause or excluded conditions, fees and expenditures in the case shall not exceed the budget for each phase.
9. Within a particular phase attorney hours may be transferred from one task to another; similarly paralegal hours may also be transferred from one task to another. As to experts and other services, unused funds from one service provided cannot be allocated to another service provider. A formal request to transfer allocated funds or to amend the budget will be required and decided on a case-by-case basis.
10. Any budget approved by the district judge must also be approved by the Judicial Council of the Ninth Circuit. Counsel are authorized to proceed based upon the initial budget approved by the district court and will be contacted should any further clarification or information be required in conjunction with the Judicial Council's approval process.