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OFFICE OF THE CIRCUIT EXECUTIVE

UNITED STATES COURTS FOR THE NINTH CIRCUIT

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TO: CJA Panel Members

FROM: Kristine M. Fox and Blair Perilman,
Circuit Case Managing Attorneys

DATE: August 4, 2016

RE: Case Budgeting Overview

I. WHAT IS CASE BUDGETING?

Case budgeting is a process by which an appointed panel attorney develops a road map for funding litigation on a case, based on strategic analysis of the work required over the course of the representation and the amount of time required to perform the work. It is also a process by which counsel ascertains the need for and requests funding for service providers, including investigators, mitigation specialists, paralegals, and case-specific experts.

Budgeting is intended to enhance the quality of representation and optimize the use of resources by enabling counsel to manage the litigation in an effective, yet cost-conscious manner, through case planning. A carefully devised budget application provides the district court with sufficient information to assess the reasonableness of and necessary justification for expenditures. Upon approval by the district court, the budget goes to the circuit reviewing judge for approval. Once a budget order is in place, counsel can proceed with the assurance that funding within the budget will be forthcoming.

Budgeting also helps to facilitate efficient and expeditious voucher review. With a circuit-approved case budget, counsel may submit interim vouchers to the district court for payment without the need for circuit review, until the final voucher, thereby reducing delays and additional paperwork.

II. TYPES OF CASES THAT MAY BE BUDGETED

The *Guide to Judiciary Policy*, Vol. 7, Part A, Guidelines for Administering the CJA and Related Statutes, ("CJA Guidelines") encourages and provides guidance for case budgeting in non-capital and capital cases. Cases subject to budgeting are often protracted and complex litigation. A case typically meets the case budgeting threshold when the following high cost influences are present: (a) multi-count indictments, e.g., RICO, CCE, major frauds, (b) multiple defendants, (c) electronic surveillance, (d) voluminous documents or electronically stored discovery, (e) extensive scientific or forensic evidence, and (f) projected length of the trial.

III. THE BUDGETING PROCESS

Once it is determined by the district court that a case is appropriate for budgeting, a Ninth Circuit Case Managing Attorney will be available to consult with counsel on the preparation and review of the budget, and will provide the necessary forms and guidance.

Budget submissions are considered by the court *ex parte* and are maintained in a confidential manner.

There are several ways to generate a budget. Upon identifying the legal and factual issues in a case, counsel can assess the work that needs to be performed and the time needed to do it. The government's projection of the length of a trial enables counsel to budget for trial preparation and trial time. Counsel should also factor in post-verdict motions and sentencing proceedings.

Budgets are meant to be flexible, not rigid financial parameters restricting the defense of the case. If counsel determines that the budgeted amount will be insufficient, counsel should submit a supplemental budget request as soon as practicable.

We look forward to working with you. Please do not hesitate to contact either of us with any questions:

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Kristine Fox transferred to the Ninth Circuit from the U.S. District Court for the District of Arizona, where she was a Death Penalty Law Clerk for the past 17 years. In that capacity, she assisted the Court with managing both capital habeas petitions from state prisoners and federal death penalty cases. She is also an Adjunct Legal Writing Instructor at the University of Arizona College of Law, and author of the FJC's pocket guide for capital habeas cases. Previously, Kristine worked as a Law Clerk to the Hon. Thomas A. Zlaket on the Arizona Supreme Court. She received her J.D. from the University of Arizona College of Law and graduated from Hofstra University with a Bachelor's of Business Administration in Banking and Finance.

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Blair Perilman was a Solo Practitioner prior to joining the Ninth Circuit and specialized in discovery litigation in federal criminal-mega cases in San Francisco. She founded the company, Litigation Support Expert Services, which over the past nine years provided assistance with discovery organization, database management, and document review to practitioners on criminal defense panels in state and federal court. Prior to that, she was a Quality Control Manager for a discovery consulting firm servicing boutique civil firms in San Francisco. Blair received her J.D. from Golden Gate University School of Law and graduated from Kent State University with a Bachelor's of Science in Nutrition and Dietetics/Pre-Medicine.