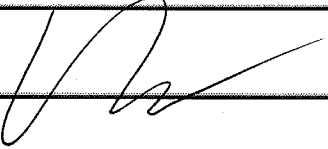
 King County	Department Policies and Procedures	General Department Policies & Procedures
Title Expert Services		Document Code No.
Department/Issuing Agency Community and Human Services / Office of the Public Defender		Effective Date October 13, 2008
Approved 		Revised Effective Date June 20, 2011

1.0 PURPOSE:

To establish clear and uniform policies and procedures for applying for and processing requests for expert services.

2.0 APPLICABILITY:

Applicable to attorneys requesting expert services for their indigent clients.

3.0 REFERENCES:

- 3.1 Revised Code of Washington (RCW), Chapter 10.101
- 3.2 King County Code (KCC) 2.60
- 3.3 Criminal Rules (CrR) 3.1(f)
- 3.4 Local Criminal Rules (LCrR) 3.1(f)
- 3.5 King County Superior Court Criminal Department Manual Section 10

4.0 DEFINITIONS:

- 4.1 **Order:** Order Authorizing Expert Services at Public Expense
- 4.2 **Expert Authorization:** Expert Service Authorization and Request for Payment form

5.0 POLICIES:

5.1 General Provisions

5.1.1 The King County Office of the Public Defender (OPD) may approve requests for payment of experts and investigators at public expense for indigent persons in criminal, juvenile, mental illness, and sexual predator proceedings. Requests in Involuntary Treatment Act (ITA) cases are approved by the ITA Commissioner.

5.1.2 Requests must be submitted to OPD prior to the expenditure of funds. OPD is not responsible for payment for services rendered before such approval.

5.2 Trial Judges' Authorizations

Trial judges can authorize expert services during a trial up to a maximum of \$250 per individual expert. Authorization for these services will be granted only if the urgency of the request is demonstrated. The judge's order authorizing expert services at public expense must be submitted to OPD.

5.3 Out of State Experts

If attorneys are requesting an out-of state service provider, they must explain which local experts/providers they have contacted and why those providers could not be used. If an out of area provider is requested, counsel must demonstrate that providers in neighboring states or provinces have been contacted before seeking an out-of-area provider.

5.4 Approval Process

OPD will review attorneys' requests as soon as possible. Additional information may be requested by phone or email. Attorneys' timely response will allow the processing of the request to be completed.

Allow at least five working days for OPD to approve the request. If attorneys believe their request is a rush, they should write RUSH and include trial date on the front of the Order Authorizing Expert Services. Rush processing will be within three working days, where possible.

Supplemental Motions will be processed on a "rush" basis.

5.5 Notification of the Approval or Denial

OPD will email attorneys notification and will attach a scanned copy of the Order. OPD may approve the Order as requested, may approve but modify the Order, or may deny the Order. OPD will also email attorneys a copy of the Expert Service Authorization and Request for Payment form, which attorneys must return with the expert's invoice for payment to OPD.

OPD will not send attorneys either a scanned copy or a hard copy of any other documents submitted with the Order. Attorneys must retain a copy of their documents.

5.6 Appealing a Denial

If a request has been modified or denied, requests can be appealed to the court or resubmitted to OPD by hardcopy with additional information as a Motion for Reconsideration.

To appeal to the court, submit the same request for *de novo* review to the Chief Criminal Judge or the Chief Regional Justice Center (RJC) Judge, pursuant to *King County Superior Court Criminal Department Manual Section 10* and local criminal rules. If the judge approves the Order, counsel must furnish a copy of the Order to OPD. OPD will then issue an Expert Service Authorization and Request for Payment form, which will permit the authorization to be paid.

To seek reconsideration by OPD, submit a Motion for Reconsideration. Include all the information to be considered by OPD, including all documents previously submitted. Documents in the prior request will not be cross-referenced by OPD in considering the second request. Motions for Reconsideration will be processed by OPD on a "rush" basis. If the Motion for Reconsideration is denied by OPD, attorneys may appeal to the court.

5.7 Cost Limitations

Expert payments are subject to the following guidelines, which can be exceeded only in extraordinary circumstances. Requests must detail the justification to exceed these limits.

- 5.7.1 Psychological or psychiatric evaluations (e.g. diminished capacity, or for sentencing). Not to exceed \$2,400.
- 5.7.2 Evaluations regarding competency or insanity. See Washington Administrative Code (WAC) 275-59, which establishes the Department of Social and Health Services (DSHS) reimbursable rate of \$800. OPD will not exceed an additional \$800.
- 5.7.3 Sexual deviancy evaluations. Not to exceed \$1,600, including polygraph.
- 5.7.4 Investigators. Attorney must provide OPD with a copy of the investigator's license if not on file.
 - a) Investigator fees are not to exceed \$30 per hour.
 - b) Attorneys should include the charge and brief investigative plan when requesting investigator funding, e.g. the number of civilian and police witnesses to be interviewed, other investigative tasks to be performed, and the amount of time reasonably anticipated to be necessary to accomplish these tasks.
 - c) When requesting investigator services in cases involving anticipated substantial amount of investigation, those requests should be made for 50 hours at a maximum per request (For homicide cases, a maximum of 100 hours per request may be requested). A supplemental request may be made upon or close to exhaustion of the previous request, identifying what investigation services have been done and what services are left to be done and the number of hours needed.
 - d) If it is necessary, due to exigent circumstances in a case, for an investigator to put in up to four hours of time before a funding request has been submitted, the attorney may document this time and include it in the request for investigator funding.
- 5.7.5 Sexual predator evaluations. See WAC 388-885, which establishes the DSHS reimbursable rates.
- 5.7.6 Forensic evaluations (e.g. fetal alcohol, eyewitness reliability, etc). Not to exceed \$500.

- 5.7.7 Miscellaneous: fingerprinting, handwriting, voice identifications, and other experts; extraordinary case preparation costs. Not to exceed \$250.
- 5.7.8 Transcripts of court hearings and trials will be paid as expert expenses where necessary for subsequent proceedings. Transcription of witness interviews will generally not be paid for and will only be paid for if counsel demonstrates the clear necessity for such transcripts in light of anticipated trial testimony.
- 5.7.9 Material witness travel expenses can be requested by the expert request procedure. Counsel must attach a copy of the court's order finding the witness material. RCW 10.55.060 provides \$.10 per mile and \$5.00 per day witness fees (payable by the Court, not OPD). Depending on the actual cost of the material witness to appear and the ability of the witness to travel, appear at court and return home in the same day, OPD will consider a request for funds to cover the cost of the travel in excess of that provided by the court. If OPD is reimbursing the cost of travel, any amounts paid by the Court pursuant to RCW 10.55.060 for appearance of witness may be deducted from the reimbursement.
- 5.7.10 Copy costs up to \$200 for medical/mental health records provided by a hospital or other institution (including DOC) or by a copying service may be incurred prior to requesting authorization. Authorization for copying costs for medical/mental health records up to \$200 may be requested using the short form of Order Authorizing Expert Services at Public Expense (Medical/Mental Health Copy Costs up to \$200). A copy of the invoice must be attached. All copying costs for medical/mental health records over \$200 require preauthorization using the customary forms.

5.8 Expert Travel Expenses

Attorneys must submit requests for travel expenses to OPD as an Order Authorizing Expert Services, using the forms and procedures as above. The request must include a proposed/pending travel itinerary including: dates necessary for travel by air, rail, auto; hotel needs; car rental, if necessary. When travel time for experts is requested, attorneys are encouraged to discuss with the expert prior to the request, the willingness

of such expert to accept a reduced rate for travel time. Such travel rate should be noted in the request.

- 5.8.1 OPD will send approval to counsel and to Global Express Travel, the OPD preferred, King County contracted, travel agency listed below (without any case specific information) to produce a budget for proposed travel itinerary. The travel agency sends an E-ticket pending notice to OPD and counsel.

Global Express Travel
1904 Third Ave.
Suite 1015
Seattle WA 98104
206-682-3080
1-800-682-1998

- 5.8.2 Once an Order is granted, counsel must contact Global Express Travel, or such other agency as may be specified by OPD to verify and initiate confirmation of E-ticketing. Global Express Travel has agreed to not disclose specific travel itineraries to persons other than OPD and its contracted counsel, and has further agreed to notify OPD if there is any request for this information from other parties.
- 5.8.3 Global Express Travel forwards E-ticket confirmation to OPD and counsel.
- 5.8.4 Global Express Travel can also book hotel and/or ground transportation, if these arrangements are necessary.
- 5.8.5 Lodging, meals and mileage costs are reimbursable at the federal rate. Please refer to the following web site for per diem reimbursable costs: www.gsa.gov/perdiem. OPD does not reimburse for tips, interest, or late charges.

5.9 **Insufficient Authorized Amount**

If the amount of compensation is anticipated to exceed the amount authorized, a second request following these same procedures must be submitted to authorize additional services before they are provided.

5.10 Missed Appointments

For missed appointments (e.g. polygraph), OPD will pay for the first appointment, but will not pay for a second appointment unless counsel can demonstrate good cause for the first missed appointment.

5.11 Privately Retained Attorneys with Indigent Clients

Occasionally a person other than the indigent defendant may retain and pay a private counsel to represent an indigent defendant. Pursuant to State v. Punsalan, 156 Wn.2d 875 (2006), private counsel may seek funding for expert services for their indigent defendant. In such cases, counsel shall follow the procedures outlined herein. In addition, counsel shall submit a copy of the retainer agreement, including agreements signed by defendant and any third party guarantors to said agreement. The defendant shall undergo OPD's screening process to establish indigency. In some cases, OPD will require the funding person to sign a promissory note to repay any funds provided for expert services.

6.0 RESPONSIBILITIES:

6.1 Applying for Expert Services at Public Expense:

6.1.1 Attorneys must use the forms posted on the OPD website (under Attorney Resources, Business Section) for the applicable Orders:

- Order Authorizing Expert Services at Public Expense
- Motion and Order to Seal Documents, CrR 3.1
- Order Appointing Independent Expert or Professional Person and Directing Payment to be Reimbursed by DSHS

6.1.2 Attorneys must attach a Motion and Certification for Appointment of Expert, which sets forth:

- the legal issue to be addressed and how the issue arises in the context of the facts of this specific case;
- a factual statement sufficient to establish the basis for the legal issue and detailed explanation to justify the use of an expert under the circumstances of the case. (For psychological evaluations, specify the mental health/legal issue being assessed (i.e., competence, NGI, or other specific issue) and

include the observations and/or information which led attorneys to request this evaluation);

- the expert's credentials;
- the proposed scope of work;
- estimated hours;
- requested hourly rate;
- the customary rate for the expert and customary rate in King County; and,
- a copy of the Certification for Determination of Probable Cause. If a certification of probable cause is not available, please include an explanation.

6.1.3 Bring the Motion and Order or send by U.S. mail to the OPD office at:

King County Office of the Public Defender
Walthew Building, Fourth Floor
123 Third Avenue South
Seattle, WA 98104

6.1.3.1 OPD will not accept faxed expert order requests. Attorneys must bring the motion and order to OPD at the Walthew Building or send by U.S. mail, except as provided in 6.1.3.2 below.

6.1.3.2 Attorneys may email the expert order request (order, motion and certification, and, if necessary, motion/order to seal or motion/order for protective order) to OPD using the following procedure:

- a) Send to OPDexpertservices@kingcounty.gov
(NOTE: Do not send inquiries regarding expert orders to this mailbox. Send any inquiries to OPD staff directly.)
- b) Use PDF format.
- c) An automatic confirmation of receipt will be sent by OPD. Do not reply to this automatic confirmation of receipt.

6.1.4 For all expert requests, attorneys must EITHER

- Check the box on the Order, “This Expert Order will NOT be sealed,” OR
- Include a Motion and Order to Seal and/or Motion for Protective Order and Proposed Order, listing each document to be sealed or subject to a Protective Order individually by its exact title as stated as the document title on the first page of the document and date submitted.

6.1.4.1 Expert requests with neither the checked box (“This Expert Order will NOT be sealed”), nor a Motion and Order to Seal will be returned to the attorney without processing.

6.1.4.2 After processing the request, OPD will forward the original signed expert order and attached documents to the Chief Criminal Department along with the proposed order sealing and/or Motion and Order for Protective Order. The Presiding Criminal Judge will review and approve or deny any motions to seal or for protective orders and file the documents.

6.2 Payment of Experts

OPD payment of experts is as follows:

- 6.2.1 OPD will send attorneys via email an “Expert Service Authorization and Request for Payment” form for each approved order.
- 6.2.2 Once services have been rendered and attorneys have received an invoice from the expert, they must sign and return the “Expert Service Authorization and Request for Payment” form together with the invoice to OPD.
- 6.2.3 The OPD Legal Administrative Specialist will confirm that the request does not exceed the approved amount or include work that was started prior to the authorization date, and will process the billing for payment.

- 6.2.4 For inquiries concerning payment status, or for “Expert Service Authorization and Request for Payment” forms, attorneys may contact Wendy Burk, OPD Legal Administrative Specialist II (LAS II) at Wendy.Burk@kingcounty.gov. Please note that the LAS II is not able to process requests for expert or attorney payments when the LAS II is answering attorneys’ phone calls. Attorneys should submit their questions via email if at all possible.
- 6.2.5 Requests for expert services in sexually violent predator cases should be submitted to OPD, but for payment, invoices should be submitted to the Department of Social and Health Services (see OPD website for information).
- 6.2.6 Requests for expert services for King County District Court should be submitted to OPD, but for payment, invoices should be submitted to the King County District Court.