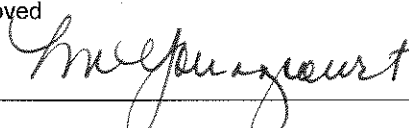
 King County	<h2 style="text-align: center;">Department Policies and Procedures</h2>	
Title Expert Services		
Department/Issuing Agency Department of Public Defense	Effective Date 04/11/16	
Approved 		

1. PURPOSE

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

2. APPLICABILITY

Applicable to attorneys requesting expert services for their indigent clients and to defendants who have been granted the right to represent themselves (proceed *pro se*). All references to "Attorneys" shall include *pro se* defendants as under the law they are held to the same standards as attorneys.

3. REFERENCES

- A. Revised Code of Washington (RCW), Chapter 10.101
- B. King County Code (KCC) 2.60
- C. Criminal Rules (CrR) 3.1(f)
- D. Local Criminal Rules (LCrR) 3.1(f)
- E. King County Superior Court Criminal Department Manual Section 10

F. RPC 1.8(m)(1)(ii)

G. WSBA Standards for Indigent Defense, Standard Four

4. DEFINITIONS

A. **Order:** Order Authorizing Expert Services at Public Expense

B. **Expert Authorization:** Expert Service Authorization and Request for Payment form.

5. POLICIES

General Provisions

A. The King County Department of Public Defense (DPD) may approve requests for payment of experts and investigators at public expense for indigent persons in criminal, juvenile, dependency (child representation) and mental illness cases. Requests in Involuntary Treatment Act (ITA) cases are approved by the ITA Commissioner. Requests in sexually violent predator cases are approved by the State Office of Public Defense.

B. Requests must be submitted to DPD prior to the expenditure of funds. DPD is not responsible for payment for services rendered before such approval except as otherwise provided. If services begin prior to approval of authorization, payment for services rendered before approval may be authorized by the director or designee, if warranted, on a case by case basis.

C. Requests for expert services will be granted in accordance with applicable court rules and caselaw. The declaration submitted in support of the request must establish that the requested services are necessary for the representation of the client.

6. APPLICATION FOR EXPERT SERVICES

Requirements for Motions for Expert Services

A. Attorneys must use the forms posted on the DPD website for the applicable Orders:

- Order Authorizing Expert Services at Public Expense
- Motion & Certification for Appointment of Expert

- Motion and Order to Seal Documents, CrR 3.1
 - Motion and Protective Order for Expert Witness
 - Order Appointing Independent Expert or Professional Person and Directing Payment to be Reimbursed by DSHS
- B. Attorneys must attach a Motion and Certification, Affidavit or Declaration for Appointment of Expert, which sets forth:
- A statement of the facts of the case.
 - The relevant facts/legal issue supporting the need for the expert:
 - If the attorney is seeking a psychological evaluation, the attorney should include those facts which show the need for the evaluation, e.g., facts in the discovery, the client's history, observations by the attorney, and how the attorney intends to use the evaluation-NGRI, diminished capacity, competency, mitigation, etc.
 - If the attorney is seeking evidence examination, e.g., computer or cell phone, the attorney should detail how the item of evidence is relevant to the case.
 - This must establish the expert is necessary for the representation of the client. Conclusory statements that the work is necessary are not sufficient.
 - The anticipated scope or focus of the expert's work and the issue(s) the attorney needs the expert to address.
 - Whether the services are provided at an hourly rate or whether the services are provided at a flat rate.
 - If the services are provided at an hourly rate:
 - The requested hourly rate and whether that rate is within the DPD guidelines. If the rate exceeds the guidelines, the declaration should indicate why the higher rate is necessary, or why other experts, who could provide the services within the guidelines, are not appropriate.
 - The estimated number of hours the expert will need to complete the work, include a breakdown of each task, e.g., interview client, write report, and how many hours each task will take.
 - The name of the expert's business. If there is not a dba, then just the name of the expert and the expert's credentials. A CV need not be submitted if the attorney knows DPD has a copy on file.
 - A copy of the Certification for Determination of Probable Cause.

- Whether there have been any prior approved funding requests, the date the request was submitted, the expert authorized and the amount authorized.
- C. **NGRI/Competency.** A request for an NGRI or competency evaluation must also include a proposed Order Appointing Independent Expert or Professional Person and Directing Payment to be Reimbursed by DSHS in addition to the Order Authorizing Expert Services at Public Expense.
- D. **Supplemental Requests.** A request for supplemental funds for an expert previously authorized must include in the declaration an explanation of the facts and circumstances that necessitate exceeding the initial authorization. If the original request was for services provided at a flat rate, as opposed to hourly, a supplemental request will not be granted, absent extraordinary circumstances and a detailed explanation of those circumstances.
- E. **Testimony.** A request for testimony from the expert must indicate the number of hours of anticipated testimony and the hourly rate for testimony. An interview by opposing counsel will be paid at the same rate as testimony.
- F. **Transcripts/Depositions.** A request for a transcript of either a hearing or an interview must include either the length of time it will take to prepare the transcript and the hourly rate, or an estimate of the number of pages and the rate per page. A request for a deposition must include the anticipated length of the deposition and the cost of transcription. DPD will authorize transcription for DPD attorneys only if the attorney's division is unable to provide the transcription in the time frame needed.
- G. **Translation.** An attorney who needs a document, recorded statement or interview translated or transcribed must contact King County Interpreter Services to obtain an estimate of the cost prior to submitting the request.
- H. **Pro Se Defendants/Standby Counsel.** A defendant, authorized by the court to proceed *pro se* pursuant to *Faretta v. California*, 95 S. Ct. 2525 (1975), seeking expert services is responsible for finding an expert and submitting the required documents. DPD Expert Services or stand-by counsel, if one is appointed, will be responsible for providing the defendant with the necessary forms.
- I. **Investigators (Assigned Counsel and Pro Se Defendants)**
- The number of hours authorized will depend on the facts and circumstances of the case. Normally, DPD will not authorize more than 50
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hours per request, absent special circumstances. If the request is for more than 50 hours or supplements a previously granted request, the declaration must set out the tasks to be completed by the investigator and an estimate of the time necessary to complete those tasks. This limitation is per request, not per case.

- For investigation conducted in the State of Washington, attorneys may seek authorization only for investigators licensed pursuant to RCW 18.165.030 and must provide DPD with a copy of the investigator's license if not on file.
- Attorneys must 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.
- DPD will consider requests for investigators for pro se defendants in the same manner in which it considers any other expert request. DPD will not appoint investigators employed by DPD to assist in any case in which the client is not represented by a DPD attorney, including pro se litigants or appointed counsel. Doing so would result in violations of the Rules of Professional Conduct. RPC 1.6 requires that an attorney and his/her staff keep all client information confidential. A DPD investigator working for a client not represented by a DPD attorney would be unable to keep the client file confidential from other DPD staff. In addition, DPD Managing Attorneys are required by RPC 5.1 to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct." Managing Attorneys cannot make such efforts when a staff investigator works for a client who is not represented by DPD. RPC 5.3 requires that a lawyer having supervisory authority over a non-lawyer, e.g., an investigator, shall ensure that person's conduct is compatible with the professional obligations of the lawyer. That is not possible if the non-lawyer is working with a client not represented by DPD. Finally, the WSBA Standards for Indigent Defense require that a minimum of one investigator be employed for every four attorneys (Standard 6). Requiring DPD investigators to investigate non-DPD cases results in a violation of this standard because those investigators are less available to work on DPD cases.

J. Medical and Mental Health Records

- DPD Divisions will follow internal DPD procedure for ordering copies of medical and mental health records, with the exception of hospitals and other institutions which do not accept the P-card and are not King County Public Health. In those circumstances the copies must be requested by expert services request.
- Assigned counsel must request medical and mental health costs by expert services request, if over \$100. If the amount is under \$100 it can be listed as an expense in the attorney's billing.

K. Privately Retained Attorneys with Indigent Clients

- An attorney who has been retained to represent a defendant may seek, pursuant to CrR 3.1 and *State v. Punsalan*, 156 Wn.2d 875 (2006), funding for expert services for their client.
- The attorney must follow the procedures outlined in these policies. Counsel must also submit a copy of the retainer agreement, including agreements signed by defendant and any third party guarantors to said agreement.
- Additionally, prior to the authorization of any requests for expert services, the defendant shall undergo DPD's financial screening process to establish indigency. In some cases, DPD will require the defendant or a third party guarantor to sign a promissory note to repay some or all of the funds authorized and paid for the expert services. After expert services have been provided and invoiced, if the invoiced amount is less than the promissory note, counsel should contact the Chief Financial Officer of DPD to adjust the promissory note amount.

L. Travel Expenses

- The attorney must submit requests for case-related travel expenses, for the attorney, staff or the expert, to DPD 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, and an estimate of the total cost. Counsel should contact Passport Travel & Tours at the below email address/phone to get an estimate for air travel. 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.

- **Travel Expenses Not Requiring Expert Services Approval.** Expert Services approval is not needed for travel expenses for attorneys or staff where the travel is not overnight travel, is not by air and the estimated cost is less than \$200. These costs can be expensed via a voucher. All requests for funds for travel by an expert must be submitted to DPD as an expert request.
- **Travel Agency.** DPD will send approval to counsel and counsel should contact the travel agency to ask for issuance of the ticket. The travel agency will contact DPD. The travel agency sends an E-ticket pending notice to DPD and counsel. After DPD confirms approval, the travel agency issues the ticket. All tickets are purchased as non-refundable unless specifically approved by DPD.

Passport Travel & Tours
Marlene Stuteville
marlene@passport2travel.net
6270 NE Bothell Way
Kenmore, WA 98028
206-524-7448

- Passport Travel & Tours can also book ground transportation, if these arrangements are necessary. Passport Travel & Tours does not book hotels.
- Lodging, meals and mileage costs are reimbursable at the federal per diem rate (available at the following web site for per diem reimbursable rates: www.gsa.gov/perdiem). DPD does not reimburse for tips, alcohol, interest, or late charges. Receipts must be submitted with request for reimbursement; however, receipts are not necessary for reimbursement for meals. Payment of the federal per diem rate covers the cost of meals.

M. **Material Witnesses.** 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 DPD). 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, DPD will consider

a request for funds to cover the cost of the travel in excess of that provided by the court. If DPD is reimbursing the cost of travel, any amounts paid by the Court pursuant to RCW 10.55.060 for appearance of witness will be deducted from the reimbursement.

- N. **Out of State Experts.** An attorney requesting an out of state expert, must detail in the declaration why a local provider is not appropriate or available for the case. The declaration must also indicate which Washington experts have been contacted, including experts in neighboring states, if the expert is not from a neighboring state.
- O. **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 DPD.
- P. **Missed Appointments.** For missed appointments (e.g. polygraph), DPD 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.
- Q. **Capital Cases.** All requests for funding are to be submitted to Department Director for review.

6.1 Submission of Materials

- Electronic submission of materials is preferred. Submit the Motion and proposed Order by email as set forth below. The materials may be hand-delivered or mailed to the DPD office at:

Expert Services
King County Department of Public Defense
Chinook Building
401 Fifth Avenue, Suite 550
Seattle, WA 98104

- DPD will not accept faxed expert order requests.
- If the attorney emails the expert order request to DPD, the following procedure must be used:
 - Send to DPDexpertservices@kingcounty.gov

(NOTE: Do not send inquiries regarding expert orders to this mailbox. Send any inquiries to DPD staff directly.)

- All attachments should be in PDF format.
- An automatic confirmation of receipt will be sent by DPD. Do not reply to this automatic confirmation of receipt.
- In Superior Court, all expert requests which include a Motion and Order to Seal and/or a Motion and Protective Order for Expert Services must be submitted via email to Superior Court Chief Criminal Judge at seacriminalmotions@kingcounty.gov, or the Chief Juvenile Judge bailiff (linda.tran@kingcounty.gov) prior to sending the documents to DPD. See the procedures set forth in the King County Superior Court Criminal Department Manual, Section 10.
 - The Court will rule on the Motion and Order to Seal and/or Motion and Protective Order for Expert Services. If the Court approves the Motion and Order to Seal and/or the Motion for Protective Order for Expert Services, the Court will email all the documents to DPD Expert Services for review and processing. If the Court denies the Order to Seal/Protective Order, the Court will email the denial to the attorney. The attorney may choose to submit the request to DPD without sealing or to move the Court for reconsideration of the Motion to Seal/Protective Order.
- In District Court, all expert requests which include a Motion and Order to Seal and/or a Motion and Protective Order for Expert Services must be submitted to DPD Expert Services first. If the request is approved by DPD, the documents will be returned to the attorney. The attorney must then present the Court with all of the documents: the approved Order Authorizing Expert Services at Public Expense, the Motion and Certification For Appointment of Expert, the Motion and Order to Seal Documents, the Motion and Protective Order. If the Court signs the Protective Order and Sealing Order, the documents must be filed with the court. If the court declines to sign the order sealing, the materials should be returned to counsel by the Court. The decision to file an unsealed order authorizing expert services rests with counsel. Orders authorizing expert services must be filed in order to be valid. If counsel declines to file an unsealed order authorizing expert services, the order is void and will not be honored by DPD.

- As noted above, requests must be submitted prior to the expert providing services on the case. Assigned Counsel who engage expert services which commence before authorization will be subject to termination from the assigned counsel panel. Division attorneys who engage expert services which commence before authorization will be subject to appropriate corrective action by DPD.

7. APPROVAL PROCESS

A. Approval Timeframe

- DPD 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. In some cases a supplemental declaration may be requested. Responses to the DPD email inquiries will be retained by DPD as part of the record of the request. However, the email responses will remain in DPD and will not be filed with the court when the expert services request is filed.
- Allow at least five working days for DPD to approve the request. If an attorney believes a request should be expedited the attorney should indicate it is a RUSH request and include the trial date on the front of the Order Authorizing Expert Services. Rush processing will be within three working days, where possible. The attorney should also indicate in the declaration the reason for the expedited request.

B. Notification of the Approval or Denial

- DPD will email the attorney a notification and will attach a scanned copy of the Order. DPD may approve the Order as requested, may approve but modify the Order, or may deny the Order. DPD will also email the attorney a copy of the Expert Service Authorization and Request for Payment form, which attorneys must return to DPD with the expert's invoice for payment.
- If the request is denied, DPD will provide a written reason for the denial. DPD will not normally provide a written reason for a modification of an order but will provide one if requested.
- DPD will not send the attorney either a scanned copy or a hard copy of any other documents submitted with the Order. The attorney must retain a copy of their documents.

C. Appealing a Denial

- If a request has been modified or denied, that decision can be appealed to the Chief Criminal Judge in Seattle or Chief MRJC Judge. If the appeal is by a DPD attorney, the attorney should consult with their supervisor prior to filing the appeal.
- The attorney must submit the initial request to the Chief Criminal Judge in Seattle or the Chief MRJC Judge, pursuant to *King County Superior Court Criminal Department Manual Section 10* and local criminal rules. The attorney must also provide a copy of the appeal to the Expert Master. The Court's review will be de novo, however, a copy of the written reason for the DPD denial must be attached for judicial review. If the Court approves the Expert Request, the attorney must furnish a copy of the Order to DPD. DPD will then issue an Expert Service Authorization and Request for Payment form, which will permit the authorization to be paid.

8. COST GUIDELINES

The authorization of expert services funds are subject to the DPD Expert Fee Guidelines, which are attached. These guidelines may be exceeded but only with justification set forth in the declaration. Any experts in areas not listed will be considered on a case by case basis.

9. PAYMENT OF EXPERTS

A. DPD payment of experts is as follows:

- DPD will send attorneys via email an "Expert Service Authorization and Request for Payment" form for each approved order.
- Once services have been rendered and an invoice received from the expert, the Attorney must sign (confirming performance of the services) and return hard copies of the "Expert Service Authorization and Request for Payment" form together with the invoice to DPD Fiscal Specialist.
- Attorneys are responsible for the accuracy of the invoices submitted for payment.

- The DPD Fiscal Specialist will confirm that the request does not exceed the approved amount.
 - For inquiries concerning payment status, or for "Expert Service Authorization and Request for Payment" forms, attorneys may email Marcella Clement at Marcella.Clement@kingcounty.gov.
- B. Questions regarding expert services for RCW 71.09 (sexually violent predator) cases and for dependency cases assigned under the Parent Representation Program must be addressed to the Washington State Office of Public Defense. See www.opd.wa.gov.
- C. Expert Services requests for Seattle Municipal Court (SMC) shall be submitted pursuant to SMC expert policies.
- D. Invoices from experts for King County District Court should be submitted to DPD.