

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
WASHINGTON, DC 20001

GUIDELINES FOR INVESTIGATORS
IN THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

(Approved by the Board of Judges, November 14, 2001)

Investigators who seek payment under the District of Columbia Criminal Justice ACT (CJA), D.C. Official Code (2001) § 11-2605 [§ 11-2605 (Cum. Supp. 1987)], or the Counsel for Child Abuse and Neglect (CCAN) Program, D.C. Official Code (2001) § 16-2326.1(g) and (h) [§ 16-2326.1(g) and (h) (Cum. Supp. 1987)], must comply with the following guidelines.

I. Application

Every individual investigator intending to seek payment for services must be certified by the Public Defender Service for the District of Columbia. To apply for certification each individual investigator must complete the attached application. Additional applications are available at the reception desk for the Public Defender Service for the District of Columbia, 633 Indiana Avenue, NW, Washington, D.C.

II. Requirements for Certification

In addition to any other qualifications required by law, each applicant must be at least eighteen (18) years of age. Each applicant must provide proof of a high school diploma, its equivalent, or demonstrated competence as an investigator, and provide work and/or academic references. Each applicant must provide a police clearance from the Metropolitan Police Department, and pass a criminal background check through NCIC (no impeachable convictions). Each applicant must successfully complete an Investigator Certification Course provided by the Public Defender Service for the District of Columbia. The Certification Course will include a minimum of twenty hours of classroom instruction, and additional fieldwork, homework and exams. The Course will be free of charge and training materials will be provided at cost. Dates and times for the course will be posted at the Public Defender Service, the CJA office, and the CCAN office. No applicant may attend a course prior to filing a completed application. Applications should be filed with the Public Defender Service for the District of Columbia at 633 Indiana Avenue, NW, Washington, D.C. On a date to be determined, compensation will only be paid for services provided by certified investigators.

After an investigator has been certified the investigator must complete, each fiscal year, such hours of training as may be determined appropriate by the Public Defender

Service to maintain the investigator's certification. Annual training will be provided by the Public Defender Service for the District of Columbia. Dates and times for these courses will be posted at the Public Defender Service, the CJA office, and the CCAN office.

Because the applications include criminal background information, they will be available for use and inspection only by appropriate court personnel and Public Defender Service personnel responsible for the certification of investigators. In addition to any other penalty provided by law, material misstatement(s) or omission(s) on an application shall result in nonpayment in any case in which services commenced after the filing of said application and possible disqualification from future investigative appointments. Applications must be supplemented or revised if there are material changes in the information thereon. Following an investigator's initial certification, the investigator's application will be maintained by the Superior Court. Notices of material changes in the application should be directed to the Superior Court. Notice of an arrest and/or conviction of a criminal offense in any jurisdiction must be provided to the Superior Court within five (5) business days of such event. In addition, such notice must also be immediately provided to any attorney who has retained, or seeks to retain, an investigator's services for a pending case. Failure to provide timely notice of material changes in the application or of an arrest and/or conviction may result in the denial of a certification or removal from the list of certified investigators.

III. Notice of Certification

Each applicant will be provided with notice of certification if the applicant successfully completes the above requirements. The Public Defender Service will provide the Superior Court for the District of Columbia with a list of certified investigators on a date to be determined and, thereafter, will provide the Superior Court for the District of Columbia with an annual update of the list of certified investigators.

A non-certified investigator will not be eligible for payment under CJA and CCAN except upon application by an attorney, and prior written approval of the judicial officer, demonstrating that the non-certified investigator is otherwise qualified and uniquely suited or necessary to conduct the investigation in the particular case.

IV. Documents Required for Payment

In addition to certification, an investigator seeking payment must complete the approved printed forms in full. These are Form EO (1)-992 (for CJA cases) and Form FD (3)-1474 (for CCAN cases), captioned "Appointment and Voucher for Expert and Other Services," and Form EO (1)-692 captioned "Explanation of Investigator's Claim for Services and Expenses." The "Explanation" form must be used in both CJA and CCAN cases and must be attached to the "Appointment" form.

The "Appointment" form contains spaces for name and type of case, docket number, the appointed attorney's certifications of need for services and their satisfactory rendering, estimated and final type and cost of services and expenses, name, address, and telephone

number of investigator, the investigator's signature, the judge's prior authorization signature, and the judge's separate payment approval signature.

The "Explanation" form has space for recording interviews, travel time, and other services. Dates, times, locations, and mileage must be specified. Minute-by-minute accounting of all time is required.

These claim forms are subject to both pre-payment examination and post-payment audits on an "as required" basis by the Financial Operations Division. All white copies must be filed with the CJA or CCAN Accounting Unit for payment processing. Yellow copies should be retained by the investigator and pink copies will be retained for court files.

All vouchers must be submitted in accordance with the time limits for the submission of vouchers for attorney services under the CJA Plan.

V. Prior Approval

D.C. Official Code (2001) § 11-2605 [§ 11-2605 (Cum. Supp. 1987)], amended in 1984, authorizes payment for investigative services in the maximum amount of \$375 without prior authorization of a judge in criminal cases. Prior authorization is always required in CCAN cases.

The Plan for Furnishing Representation to Indigents under the District of Columbia Criminal Justice Act (Plan), paragraph VI.B., amended in 1987 by the Joint Committee on Judicial Administration (see D.C. Code § 11-26-01), explicitly states that expenditures without prior authorization are not favored. The paragraph, which is quoted below, sets forth the terms and conditions currently in effect under which services may be reimbursed without prior approval.

VI. INVESTIGATIVE, EXPERT AND OTHER SERVICES

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B. WITHOUT PRIOR REQUEST

Except for reporter's transcript of proceedings, an attorney appointed under the D.C. Criminal Justice Act may obtain, without prior authorization and subject to later review, investigative, expert or other services necessary for an adequate defense. The total cost of services obtained without prior authorization, however, may not exceed \$375 and expenses reasonably incurred, and no greater amount will be ratified regardless of the number of persons used or the character of the services. Expenditures for services obtained without prior court authorization are not favored. In order to obtain ratification of and reimbursement for services obtained

without prior authorization, the attorney must submit an application to the court for ex parte review, including a statement that the services were necessary for an adequate defense and the defendant was financially unable to obtain the services, and the reason why prior authorization was not obtained before the services were rendered. The statement of reasons why prior authorization was not obtained is not necessary for investigative services that counsel certifies were rendered under circumstances which required immediate action in order to ensure that the defendant received adequate representation.

When counsel seeks ratification of expenditures for which there was no prior authorization, the request for payment must be accompanied by a full explanation by counsel. Counsel must state (1) that the defendant has been certified eligible for court appointed counsel, (2) that the expenditures were necessary for an adequate defense, and (3) the reason why prior authorization could not have been obtained. A certification of the circumstances requiring immediate action to ensure adequate representation may be substituted for item (3). A request for ratification of expenditures for which there was no prior approval shall be submitted to the judge to whom the case is assigned. If no judge was assigned to the case, the request should be submitted to the Judge-in-Chambers.

Prior approval for investigative services may be obtained from the judge to whom the case is assigned or who has retained jurisdiction. If no judge has been assigned to the case, requests for prior approval should be submitted to the Judge-in-Chambers. Requests to authorize investigative services exceeding 10 hours for a misdemeanor or CCAN case or 20 hours for a felony case will not be approved unless counsel's written explanation justifying more hours is attached.

In criminal and juvenile delinquency cases the "Appointment" form must clearly indicate the most serious criminal offense charged in the case. Vouchers omitting this requirement will be returned to the submitter.

Each advance approval request must contain the attorney's certification that (1) the services are necessary for an adequate defense, and (2) the person represented affirms that he or she is unable to pay the cost of the proposed services. Items (1) and (2) are printed on Forms EO (1)-992 and FD (3)-1474. If a defendant or respondent proceeding with retained counsel seeks payment by the Court for investigative services, prior authorization must be obtained and a written ex parte Motion must be filed. Counsel must attach defendant's or respondent's sworn financial statement, a full explanation why such services are not a part of counsel's representation, and a copy of counsel's retainer agreement and/or an explanation of payment arrangements.

VI. General Considerations

A. Compensation

The current rate of compensation for investigative services is \$25.00 an hour (effective March 1, 2002). Compensation will not be paid for services performed earlier than the first conference between the investigator and counsel concerning the case. It is counsel's responsibility to ensure that reimbursement is sought only for necessary services and expenses; reimbursement for unnecessary services or expenses will not be approved. Payment for services may not exceed the statutory limits of \$750 in criminal cases or \$300 in CCAN cases unless counsel provides written explanation why additional payments are necessary to provide fair compensation for services of unusual character or duration.

B. Identification

The Public Defender Service will provide each certified investigator with an identification card indicating that the person is a certified investigator. This identification card shall only be used when the investigator is providing investigative services for counsel appointed pursuant to the Criminal Justice Act (CJA) or the Counsel for Child Abuse and Neglect (CCAN) Program. Violation of this prohibition shall result in disciplinary action including, but not limited to (1) forfeiture of compensation in any case in which the violation occurs, and (2) loss of appointments in future cases.

No investigator shall use any identification or card that includes the name "D.C. Superior Court" or any variation thereof, nor shall any investigator state or imply that he or she has been appointed by the Court or the Public Defender Service to investigate any case. Violation of this prohibition shall result in disciplinary action including, but not limited to (1) forfeiture of compensation in any case in which the violation occurs, and (2) loss of appointments in future cases.

VII. Filing the Voucher for Payment

In most instances, vouchers for payment will be filed after all investigative services have been completed. If a case is lengthy or there are unusual circumstances, an interim claim may be filed and supplemental claims filed later. Any supplemental claim must indicate the amounts that have been requested or received for previous submissions.

Any voucher submitted that exceeds the amount that was previously approved must be accompanied by a written request by counsel setting forth justification for the additional services. If such a request is not provided the excess compensation will not be paid.

Each voucher submitted for payment must include an assertion by the attorney who engaged the services of the investigator that "services as stated have been satisfactorily rendered." That assertion will be considered as an acknowledgement by counsel that the services were performed at her/his direction and that the services were in fact provided as claimed.

All vouchers must be filed with the Budget and Finance Office (Building A, Room 116). Entries must be legible and either typed or recorded in ink. Vague or questionable claims will be disallowed.

VIII. Guidelines for Specific Items

A. Interviews

Investigator “interviews” with the defendant’s or respondent’s attorney and with the defendant or respondent will be evaluated for excessive duplication of counsel’s primary responsibilities in a case.

B. Travel

Investigators will not be reimbursed for travel from home to office or office to home, from home or office to the courthouse, police headquarters, U.S. Attorney’s Office, or defense attorney’s office or the reverse. If an investigator’s home or office is located in the District of Columbia, travel to such locations as the crime scene, witness’s home, etc., will be approved. If an investigator’s home or office is outside the District of Columbia, however, reimbursement for such travel will be allowed only at the time and distance from that home or office address or the D.C. Courthouse, whichever is less. To determine proper compensation for travel, the investigator must list a street address and city on the voucher; a post office box number is not sufficient. If the street address and city are not provided, travel time and expense will not be reimbursed.

The most efficient means of transportation must be used. For example, one hour travel by metro bus will not be approved at the allowable hourly rate plus fare if the trip could have been made by taxicab in fifteen minutes for a total expenditure less than that incurred by traveling by bus. Travel for unreasonable distances for routine matters will not be approved. For example, film purchasing and developing and any other similar services should be accomplished at a location close to the investigator’s home or office to avoid excessive travel time.

Investigators must also organize their travel efficiently and whenever possible service several cases at the same time. Travel and/or document retrieval or review on more than one case must be apportioned. For example, one trip to police headquarters should allow pick-up of records in several cases and should be apportioned among those cases on each voucher for reimbursement.

Travel addresses listed on Form EO (1)-692 must include a brief identification of their relation to the case, e.g., “witness’s home,” “crime scene,” “defendant’s home,” etc. Complete addresses for such familiar locations as the “Courthouse,” “Police headquarters,” “D.C. Jail,” etc., need not be specified.

There will be no reimbursement for any travel outside of the Washington Metropolitan area unless prior approval has been obtained pursuant to Section V.E. of the Plan.

C. Other Services

Investigators are not permitted to charge for legal research of “memoranda of law” of any kind.

Waiting time for an attorney or for court proceedings will not be reimbursed. If an investigator must testify, a witness fee shall be the exclusive means of compensation, including waiting time.¹

An investigator may not be reimbursed for “assisting” an attorney at trial (e.g., notetaking) or waiting with witnesses at trial except as may be exceptionally necessary for the orderly conduct of the trial. In no event will such services be compensated without the express prior approval of the trial judge. Time necessarily spent waiting for a witness or defendant to be brought up at the detention facility shall be compensable, as shall a reasonable period of time spent waiting for a witness elsewhere.

Service of subpoenas will be compensated only at the investigator hourly rate. Flat fees for service of subpoenas will not be paid.

D. Expenses

Parking expenses in the vicinity of the courthouse, the investigator’s office, or an attorney’s office will not be reimbursed. Claims for other parking expenses (both receipted and at parking meters) must specify the place where the expense was incurred.

Local telephone calls will not be reimbursed.

Ordinary postage expenses will not be reimbursed.

Xerox costs will not be reimbursed in excess of 25 cents per page.

Office overhead expenses or other normal costs of doing business will not be reimbursed.

IX. The Audit and Payment Process

Vouchers must be filed with the Budget and Finance Office (Building A, Room 116). When a completed voucher is presented for payment, the appropriate Accounting Unit pre-

¹ Witness fee payments and voucher payments will be periodically cross-referenced in post-payment audits to determine whether compensation has been received from both sources for the same appearance. Double payments will require re-payment and those knowingly receiving double payment will be denied future appointments.

audits the voucher for mathematical accuracy, obvious overlap of time, claims which are not allowable, and any unusual items. The voucher is then sent to the appropriate judge for review. Vouchers cannot be paid without judicial approval. After a judge reviews the voucher and approves payment, the voucher is returned to the Budget and Finance Office for payroll processing and scheduled for the next weekly pay cycle. Actual payment is prepared by the Superior Court's Budget and Finance Office and dispersed through the General Services Administration (GSA). The Court system, therefore, cannot guarantee payment on a particular date. Questions regarding the processing of claims should be directed to the Budget and Finance Office, 879-4210.

Investigator vouchers are subject to a post-payment audit. Such audits are intended to detect time overlap between cases or any items not discovered during pre-payment audits. Questions regarding a post-payment audit should be directed to Budget and Finance Office, 879-4210.

At the end of the calendar year, each participating investigator will receive a summary of payments which have been made on an Internal Revenue Service Information Return (Form 1099-NEC) in accordance with IRS regulations. Investigators should keep the Budget and Finance Office apprised of any change of address.

Updated 8-16-02.