

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

WASHINGTON, D.C. 20001

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

Defense investigation is an essential aspect of competent representation. It is through investigation that the attorney may learn necessary and relevant information about the case and preserve the client's rights. It is hoped that the requirements set forth in these Guidelines will provide the investigator with practical tools and information to competently carry out his or her duties. As such, investigators who seek payment under the District of Columbia Criminal Justice ACT (CJA), D.C. Code, Sec. 11-2605 (Cum. Supp. 1987), or the Counsel for Child Abuse and Neglect (CCAN) Program, D.C. Code, Sec. 16-2326.01(g) and (h) (cum. Supp. 1987), must comply with the following guidelines.

I. CJA/CCAN Investigator Panels

Every individual intending to seek CJA payment for investigative services must be certified by the Chief Judge of D.C. Superior Court before being named to the CCAN/CJA Investigator Panel. The CJA Investigator Advisory Program Committee (Investigator Advisory Committee) will select the most qualified candidates for certification. This committee, appointed by the Chief Judge will review and otherwise respond to non-disciplinary inquiries related to CJA and/or CCAN investigators. All matters related to disciplinary issues will be referred to the CJA Panel Implementation Committee's Subcommittee on Investigators, which is comprised of judges appointed by the Chief Judge. An individual's certification as an investigator is not a matter of right, but will be approved by the Court with due regard to the experience, qualifications and recommendations of the Investigator Advisory Committee of the individual. Certification of an individual as a CJA/CCAN investigator shall remain within the sole discretion of the Court.

II. Application Process and General Requirements

All interested candidates must first file a completed application (attached herein) with the Defender Services Branch in the D.C. Superior Court Budget and Finance Office which is located at 616 H Street NW (Gallery Place) on the 6th Floor. Additionally, all applicants must consent to an FBI Identification Record Check/Criminal Record Background Check, as well as a local criminal background check from the D.C. Metropolitan Police Department. Applicants will be required to use the FBI form FD-258 to make a request for a background check and request that the results be returned directly to the D.C. Public Defender Services, 651 Indiana Ave, Washington D.C. 20004, Attn: Claire Roth, Esq. Please see attached checklist for how to request an FBI criminal record check.

Additionally, applicants are directed to the FBI website at <http://www.fbi.gov/hq/cjisd/fprequest.htm> for more details. Further, each applicant must include with the application a certified print-out from MPD showing the results of the local criminal background check. Costs associated with background checks will be assumed by the applicant.

All candidates whose paperwork is complete will be vetted by the Investigator Advisory Committee, and those found to be most qualified will be notified by the Defender Services Branch in the D.C. Superior Court Budget and Finance Office that they may enroll in the Investigators Certification Class offered by the Public Defender Service (PDS). Eligible candidates must successfully complete the Investigator Certification Course provided by PDS the details of which are set forth in Section III of the Guidelines. Applicants who have failed to comply with the aforementioned requirements will not be permitted to enroll in the Investigator Certification Class. Upon successful completion of the class, the Investigator Advisory Committee will provide the Court with a list of qualified candidates for final approval for admission to the CJA/CCAN Investigator Panel.

In addition to any other qualifications required by law, an applicant must be at least eighteen years of age. Each applicant must provide proof of a high school diploma, its equivalent, or a demonstrated experience/competence as an investigator. Persons who are already members of the investigator panel should include any relevant continuing education training courses taken since becoming an investigator. The applicants should furnish references for all relevant work and/or academic accomplishments. All applicants should be committed to continuing education opportunities, complying with all applicable Administrative Orders regarding compensation, committed to being assigned at least 4 cases per year and committed to adhering to the guidelines herein. Prior disciplinary actions taken against the investigator candidate will be considered during the selection process.

III. Investigator Certification and Training Requirements

A. Applicants

Each eligible applicant must successfully complete the Investigator Certification Course provided by PDS. 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 PDS, and the Defender Services Branch Office of the Superior Court's Budget and Finance Division.

PDS will offer investigator training on an as needed basis to all qualified first time applicants, but will offer training to new applicants at least one time in the summer of each year, and will train up to 30 applicants at any given time. PDS will have the sole discretion to determine the nature and length of its investigative training course. However, PDS shall collaborate with members of the Superior Court Trial Lawyers' Association (SCTLA) and

the District of Columbia Association of Criminal Defense Lawyers (DCACDL) to determine the effectiveness of its course materials.

PDS's training will consist of at least 20 hours of course work with additional homework and field exercises. At least one two hour session shall be devoted to ethics for investigators working in the field. PDS shall evaluate each individual's performance in the training course and forward its evaluations to the Investigator Advisory Committee within two weeks of completing the course.

B. Continued Training for Certified Investigators

PDS will provide annual training to certified CJA/CCAN investigators, such hours of training as may be determined appropriate by PDS to maintain the investigator's certification. However, each certified investigator will be required to complete at minimum 9 hours of investigator training each year commencing after the first year of admission to the investigator panel. Dates and times for these courses will be posted on PDS's web site at www.PDSDC.org. PDS will inform the Investigator Advisory Committee of which investigators have and have not completed the annual training requirements. An investigator who fails to keep current with his or her investigator training will be required to seek recertification in accordance with Sections II and III of these guidelines.

C. Reconstitution of CJA/CCAN Investigator Panel

The Court will re-establish the CJA/CCAN Investigator Panel every four (4) years, beginning October 1, 2010. Investigators appointed to the CJA/CCAN Investigator Panel will need to reapply to the panel every four years, and will be required to follow the application process and general requirements set forth in Section II of these Guidelines. However, existing panel investigators will not be required to repeat the 20 hour Investigator Certification Course.

IV. Certified Investigator Identification Cards

The Court will create and administer identification cards to qualified CCAN/CJA investigators. Court issued identification cards shall be renewed every two years. The court shall require that the certified investigators submit a FBI Fingerprint Check before reissuing an investigator identification card. Costs associated with the fingerprint check will be assumed by the investigator. Candidates that are disqualified due to a criminal background investigation will not be entitled to renewal of a CJA Investigator Identification Card.

V. Removal from CJA Panel of Certified Investigators

Any party with cause to believe that a certified investigator should be removed from the CJA Certified Investigator Panel, or must be disciplined in any other manner, must forward such concerns and the reasons therefor, in writing, to the CJA Panel Implementation Committee's Subcommittee on Investigators for review. In accordance with D.C. Superior Court Procedures, the Superior Court will provide an investigator

with an opportunity for a hearing before the CJA Panel Implementation Committee's Subcommittee on Investigators should the circumstances merit it before final suspension or removal.

In addition to any other penalty provided by law, material misstatement(s) or omission(s) on an application shall result in nonpayment for any CJA investigative services rendered by the investigator as well as disqualification from the CCAN/CJA investigator panel. Applications must be supplemented or revised if there are material changes in the information thereon. Notice of an arrest and/or conviction of a criminal offense in any jurisdiction must be provided to the subcommittee within 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 service 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 nonpayment for services rendered and denial of a certification or removal from the CCAN/CJA Panel of Certified Investigators. Other grounds for removal shall include, but is not limited to improper use of the court-issued CJA investigator identification card and/or misrepresentation of investigator credentials; and if proven will subject an investigator to disciplinary action by the D.C. Superior Court, such disciplinary action to include suspension or removal of the investigator's certification as a CJA investigator, and confiscation of the court issued identification card.

PAYMENT PROCEDURES

VI. Documents Required for Payment

An investigator seeking payment must complete the Electronic Appointment and Voucher for Expert Services form completely. This electronic document consists of four (4) pages. The pages are identified as follows:

Page #1-The "Appointment and Voucher for Expert Services Main" page" contains all the pre-printed information pertaining to the case your services are solicited for and are directly connected to the legal voucher for the appointed counsel. The appointed counsel is required to generate this voucher for all expert (e.g. Investigators; Psychiatrist, etc.) service providers prior to contacting the expert to perform services. Upon completion of the required services, all investigators should enter all services rendered in the performance of their duties as it relates to each case only. The investigator is required to verify all data entered for correctness and accuracy. Once the voucher data has been reviewed and is therefore completed, the investigators will submit this voucher to the appointed counsel for review and certification that the services have been rendered to their satisfaction. The appointed counsel must ensure that all the services are correct before sending the completed voucher to the presiding judicial officer for review and approval.

Page#2-The “Explanation of Claims and Services” page contains general information and hyperlinks to pages 3 and 4.”

Page#3- The “Billing” page has space for recording interviews, travel time, and other services. Dates, times, locations, must be specified.

Page #4- Itemized Expense” page relates to mileage and itemized expenses incurred in the course of performing services. Itemized Expense must be recorded in the “Itemized Billing Area” page only. The tenth of an hour format is utilized for all billing accounting entries. There is a “Pop-up” window available to display the conversion format; it is located at the top of the voucher pages.

This entire claim is subject to both pre-payment examination and post-payment audits on an “as required” basis by the Budget & Finance Division. All electronic vouchers are retained within the web vouchers system and are available for viewing in a read only format after payment has been made. All financial records are maintained for a six (6) year record retention schedule and are subject to later audit examinations.

VII. Prior Approval

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. Pursuant to Administrative Order 09-06 and in accordance with the Criminal Justice Act Plan and Counsel for Child Abuse and Neglect Plan, any request to authorize investigative services exceeding 10 hours for a misdemeanor, 20 hours for felony II, 35 hours for felony I for CJA cases, or 10 hours for CCAN cases will not be approved unless counsel’s written explanation justifying more hours is attached to the electronic voucher preapproval request.

Expenditures for services obtained without prior approval are not favored. 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. This explanation should be provided to the presiding judicial officer in the identified areas on the voucher for comment, over-the-limit letter, expert comments, and over-the-estimated amount letter areas. 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 for ex parte review. If no judge was assigned to the case, the request should be submitted to the Judge-in-Chambers.

VIII. General Considerations

Compensation for investigative services may not exceed \$25 per hour. 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 investigative services may not exceed the limits of \$1600 with prior authorization 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 as outlined in Administrative Order 09-06.

No investigator shall use any identification or card which 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 to investigate the case. Violation of this prohibition shall result in (1) forfeiture of compensation in any case in which the violation occurs, and (2) loss of appointments in future cases and/or removal from the certified listing. Investigators are independent contractors and not employees of DC Courts, and at no time should s/he misrepresent themselves as such.

IX. 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 approved for payment from any 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 electronically filed through the Web Voucher System (WVS) at <https://www.dccourts.gov/secure/wvs/index.do>. Vague or questionable claims will be disallowed.

X. Guidelines for Specific Items

1. 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.

2. 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 is 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 or records in several cases and should be apportioned among those cases on each voucher for reimbursement.

Travel addresses listed on the billing page of any electronic voucher 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.

3. Other Services

Investigators are not permitted to charge for legal research of “memoranda of law” or 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 “hand-holding” 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.

4. 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 cost of doing business will not be reimbursed.

XI. The Audit and Payment Process

Vouchers must be filed online through the DC Courts’ Web Voucher System. In the event you have any questions or concerns relating to the voucher submission process, contact the Defender Services Branch staff on 202-879-4210. All completed vouchers will be sent to the appointed counsel for certification, upon certifying the appointed counsel will send the expert voucher to the presiding judicial officer for review. When a completed voucher is presented for payment, pre-audits are conducted within the programming software to check for mathematical accuracy, obvious overlap of time, claims which are not allowable and any unusual items. It is your responsibility to ensure all data is correct on the voucher prior to sending the voucher to the appointed counsel for certification of services rendered. At the time you select “Send to Judge” the online electronic voucher will move

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.

directly to the presiding judicial officers (pre-selected by the appointed counsel) online awaiting decision folder. Vouchers cannot be paid without judicial approval. After a judge reviews the voucher and approves payment, the next step in the electronic workflow process will move the approved voucher to the Defender Services Branch's (DSB) "Approved Voucher" folder. Only vouchers that do not exceed the statutory limit of \$1600.00 as set in Administrative Order 09-06 for final payment will follow this workflow. In all cases where the final amount for payment exceeds \$1600.00, those vouchers will also require approval from the Chief Judge. All approved vouchers when received by the DSB are prepared daily for batching and subsequently scheduled for the next available payment disbursement cycle. Actual payment is made by the General Services Administration (GSA) through its Bulkload Payment System. The Web Voucher System (WVS) therefore, cannot guarantee payment on a particular date. Questions regarding the processing of claims should be directed to the Defender Services Branch, 202-879-4210 for all CJA and CCAN payment processing inquiries. .

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 the Internal Audit Branch, 879-4210.

At the end of the calendar year, each participating investigator will receive a Form 1099 from the General Services Administration Offices summarizing payments received during the calendar year and information submitted to the Internal Revenue Service in accordance with IRS regulations. Investigators should keep the Defender Services Branch, of the Budget & Finance Division apprised of any change in on record mailing address or mailing receipt address (e.g. P.O. Box) immediately following any changes. Investigators are contractors and not employees and should not mis-represent themselves as employees of DC Courts.

XII. Effective Date

These practice standards were adopted by Administrative Order 10-14 and will take effect on October 1, 2010.