

Policy Description

Benton County Office of Public Defense (“BCOPD”) recognizes that in certain cases, the services of retained experts are necessary for the effective representation of persons to whom appointed counsel is afforded and mandated by law. Nevertheless, BCOPD has a need to ensure that funding remains available for the use of experts in cases where such use is justified and mandated by law. In order to preserve this funding, BCOPD must ensure that only cases actually requiring the use of an expert receive such funding, and also that the limited available financial resources are utilized in a cost effective manner in the selection and compensation of experts.

Applicability

This policy applies to all requests for funding for investigative services to assist in defending any cases for which BCOPD has oversight over the counsel appointed therein, or where BCOPD is providing funding for investigative services pursuant to the decision in *State v. Punsalan*.

Procedures

1. Once the attorney of record in any given case determines that the need for an expert exists, a request shall be forwarded to the Public Defense Manager requesting funding for such expert.
2. While BCOPD's assistance may be requested, the attorney of record is primarily responsible for locating a suitable expert that meets the criteria set forth in this policy, the attorney's contract, and any other controlling documents or law. Attorney may seek the assistance of other offices of public defense or defense organizations such as the Washington Defender's Association in locating an appropriate expert.
3. The preferred form of the request is an email addressed to: [opdauthorizations@co.benton.wa.us](mailto:opdauthorizations@co.benton.wa.us). However, if the attorney has concerns about preserving the confidential nature of the request, he or she may arrange for an in person meeting with the Public Defense Manager or a phone call, instead.
4. The request, whatever form it is in, shall contain the following information:
  - a) The first and last name and cause number of the case in question

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- b) The charges
- c) A brief description of the facts and summary of the defense
- d) A justification for why expert testimony is necessary
- e) A summary of the key question or questions the expert will be answering
- f) Whether the expert is being sought for consultation only or for trial also
- g) A copy of the expert's CV unless the expert already has been previously approved by BCOPD
- h) The anticipated scope of work
- i) The expert's hourly rate
- j) A broken-down estimate of how much the scope of work will cost (as provided by the expert or compiled by the attorney)

5. Decisions about approval or denial of expert funding will be made as soon as possible and, under usual circumstances should be made within 5 business days from when all needed information is provided. Incomplete requests or unanswered questions will result in delays beyond these 5 business days.

6. Decisions about expert funding will be made, at the discretion of the Public Defense Manager, based on CrR 3.1(f)(2). In other words, there must be a showing that the services sought **are necessary** to the defense in the particular case. Approvals and denials will be provided to the attorney of record in writing. If the request for funding is denied, then the attorney of record may make a request for reconsideration if additional information is provided in writing or in person. **The attorney of record may also seek the review of a Superior Court Judge of the denial pursuant to Local Court Rules. In order to do so, the requesting attorney must note the matter up for an *ex parte* hearing and provide the Public Defense Manager with no less than five (5) business days notice thereof.**

7. To the extent possible, attorney should utilize the services of an expert in a tiered fashion. In other words, whenever there is any doubt as to the subsequent need of an expert to perform a full examination or render a full opinion on a matter, attorneys should retain the services of experts in a limited, consulting, capacity before deciding whether such a full examination or a full opinion is actually necessary.

8. Expert fees are limited to the following (not including travel expenses) unless articulated extraordinary circumstances warrant an exception:

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a) **RCW 10.77 competency evaluations** (\$2,500) – *a court order directing the examination and ordering State DSHS to pay for such must be obtained before funding will be approved and the defendant **must** have been previously evaluated by a State evaluator (as required by RCW 10.77) pursuant to court order. Copies of both court orders must be provided with the request for funding.*

b) **Toxicology, fingerprint, ballistics and questioned documents** - \$750 pre-trial, \$1,500 for trial. *Stipulation for telephonic or video testimony of these experts shall be sought whenever possible and evidence of denial or approval of such shall be submitted before funding will be authorized.*

c) **DNA** - \$2,000 pre-trial, \$2,000 for trial.

d) **Medical and psychiatric experts** – maximum hourly rate of \$250 with reasonable maximum funding level established based on scope of services to be provided.

e) **Other experts** – maximum hourly rate of \$175 per hour (or less depending on expertise) with reasonable maximum funding level established based on scope of services to be provided.

9. Out of state experts will not be approved if there is a comparable in-state expert who can provide comparable services for less cost. When out of state experts are approved, experts from outside of the West Coast states will not be approved if there is a comparable expert within the West Coast area who can provide comparable services for less cost. Exceptions may be granted upon articulation of the need for particular expertise or to address particular issues that necessitates a particular expert. However, the fact that an expert is recognized in their field, is better than other experts, or is easier to work with will not be sufficient to grant such an exception.

10. Attorneys seeking the services of experts are responsible for ensuring that experts understand BCOPD's billing and travel policies. BCOPD will send introductory letters advising of its billing and travel policies at the commencement of the first instance when an expert is utilized and a file is opened for the expert.

**VERY IMPORTANT: BCOPD will only pay for expert services that have been pre-authorized according to this policy. Compensation for experts retained by attorneys on any cases where pre-authorization has not been granted will be a matter to be resolved between the attorney and expert in question.**

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