

Purpose

The purpose of this policy is provide guidelines for the provision of criminal defense investigative services on public defense cases by investigators under contract to provide such services.

Applicability

This policy applies to all private investigators and investigative services firms (“Contract Investigators”) providing services on public defense cases pursuant to a professional services agreement through the Office of Public Defense with Benton County.

Procedures

Contract Investigators shall observe the following procedures in providing investigative services (“Services”) on public defense cases.

Assignment of Cases

While public defenders generally get broad discretion as to the selection and assigned of investigators to any cases to which they are appointed, final authority for appointing Contract Investigators rests with BCOPD and Contract Investigators **shall not** receive case appointments directly from public defenders. Any work done based only on case appointments from public defenders and without authorization from BCOPD shall not be compensated.

The authorization and formal appointment from BCOPD will be in the form of an email from OPDAuthorizations@co.benton.wa.us listing the case name and number, assigned public defender, funding limit, and an authorization number. Since all authorizations/appointments and most other important contract related communication is made by email, **it is critically important for Contract Investigators to keep BCOPD apprised at all times with accurate email address information and to take**

the necessary steps to prevent email junk mail or SPAM filters from intercepting emails from BCOPD.

Control of Case Duties

All Services shall be provided at the direction of the attorney of record (whether contracted or staff) who shall have full and complete control over strategy in any and all cases to which Contract Investigators are assigned. Contract Investigators shall not, under any circumstances, consult with any other person or entity about directions or instructions given by any attorney of record in a public defense case to which Contract Investigators are assigned or strategic decisions/direction in any given case. An exception to this prohibition exists when Contract Investigator is directed by an attorney of record on a public defense case to engage in conduct that appears to be a clear violation of criminal law in which case Contract Investigator may advise the Public Defense Manager of this belief and request to be transferred off the case.

Funding Authorizations and Limits

Contract Investigators shall not start providing services on a given public defense case until receiving an email authorization from BCOPD providing funding authorization to proceed, establishing a funding limit, and assigning an authorization number for tracking purposes. Furthermore, Contract Investigators shall not exceed established funding limits on any given case without prior written authorization to do so. Compensation for services provided before funding authorization is granted, or in excess of established funding authorization without prior written authorization shall be subject to denial by BCOPD. *The only exception to this rule exists when services must be provided under bona fide emergency circumstances. For purposes of this section, "bona fide emergency" is defined as a situation where a defendant's legal interests would be significantly harmed if investigative services were not provided immediately and before authorization can be sought.*

Requesting Funding Increases

Requests for funding increases beyond the initially authorized funding amount may be made by either Contract Investigator or the attorney of record. Increases must be in the form of an email to OPDAuthorizations@co.benton.wa.us including the following information:

1. The case name and number
2. A clear and concise statement about the reason for needing the funding increase
3. The requested funding increase

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If Contract Investigator requests the funding increase, it **must be with the concurrence of the attorney of record**. Concurrence can be assumed by copying the attorney of record with the email requesting the funding increase.

Working with an Interpreter - Witnesses

If the services of an interpreter are needed for a **witness interview** then prior funding authorization from BCOPD is necessary before using the interpreter's services. Funding authorization must be requested using the BCOPD's standard funding authorization protocol that involves sending an email request to OPDAuthorizations@co.benton.wa.us including the following information:

1. The case name and number
2. A description of what is requested (ie interpreter services) and the desired vendor (if applicable)
3. An estimate of the length of time for which the interpreter's services will be needed

Working with an Interpreter – Client

If the services of an interpreter are needed for a **client interview** then the following procedures must be followed:

1. If the language needing translation is Spanish then the preference is to use the interpreter assigned to the criminal docket days during the days when she is in court (ie at the courthouse complex) – Wednesdays and Thursdays for Benton County.
2. If the language needing translation is other than Spanish or it is not possible to fit the client interview in the schedule of the interpreter assigned to the criminal docket days, then **prior authorization must be obtained from Superior Court Administration before using the services of an interpreter**¹.

Vendor Setup

Contract Investigators must, in addition to having a fully executed professional services agreement with Benton County and be set up as a vendor in order to be paid for services rendered. This requires that Contract Investigators submit a *properly completed* [IRS W9 form](#) to BCOPD. "Properly completed" means not only that the form is fully completed and signed, but also that the name of Contract Investigator (whether as an individual or a business entity such as a LLC or corporation) as listed on the W9

¹ While this is more or less a formality since it is required that Court Administration approve the funding, it is required that preauthorization be obtained since Court Administration coordinates interpreter services and must track them in order to receive reimbursement for the County from the State.

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form matches the name as listed on the professional services agreement, Contract Investigator's required insurance policies, and Contract Investigator's private investigator license as issued by the Washington Department of Licensing.

Claiming Compensation for Services

In order to claim compensation for services rendered, Contract Investigators must complete a [Claim for Compensation Form](#) and send it *bearing an original signature* to OPD.

Billing Details

Completed Claims for Compensation must be accompanied by a **detailed invoice on company letterhead**. The invoice should be divided up between time-based services, flat-fee services and allowable expense reimbursements. The time-based services entries must each include:

1. Date of services
2. Amount of time expended (rounded up to the nearest 1/10th of an hour – ie nearest 6 minute increments)
3. A description of services rendered – for witness interviews, the witness' initials shall be included

The billing for flat-fee services must be exactly as allowed in Exhibit B of the signed professional services agreement.

Mileage may only be claimed for services that involve travel outside of the Tri-Cities metropolitan area (city limits of Richland, West Richland, Kennewick and Pasco) while engaged directly in Services. No mileage may be claimed for commuting to the Tri-Cities metropolitan area to provide Services. All mileage claims must be made at the allowed Personally Owned Vehicle ("POV") reimbursement rate [published by the US General Services Administration](#) and in effect as of the date the mileage was incurred.

Billing Window for Claims for Compensation

Pursuant to the professional services agreements in place, Contract Investigators must submit Claims for Compensation within 60 days of the date when services are provided in order to be compensated (refer to executed professional services agreement for more information). For services that span a period of time, and are aggregated into one invoice, the last date entry for services rendered will be used for calculating the 60 day billing window. If it is anticipated that Claims for Compensation for any particular

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services will not be submitted before the expiration of the 60 day billing window, then a Request for Extension must be submitted to OPDAuthorizations@co.benton.wa.us.

Claims submitted outside of the 60 day billing window that have not had an extension authorized are subject to denial pursuant to the terms of investigative services professional services agreements.

Insurance Policies

Commercial General and Professional Liability insurance policies are required by the terms of investigator professional services agreements. Contract Investigators are obligated to ensure that these policies remain in force at all times when their contracts are active. Any lapse in coverage must be cured immediately (and in any case within 10 days) or official contract non-compliance action will be taken that, while not necessarily resulting in termination of the contract, may be considered adversely for future contract award decisions.

Any lapse in coverage that is permanent (ie not capable of being covered retroactively) and significant may be grounds for a for-cause contract termination.

Adverse Action

Contract Investigators are required to disclose any investigations relating to their professional licenses and any resultant adverse action against their license status as soon as possible after they learn of such. Failure to advise OPD will be considered grounds for either immediate contract termination for cause or termination without cause, depending on the circumstances.

Ability to Testify

Contract Investigators must maintain the legal ability to testify at trial or in hearings without being subject to impeachment for felony criminal convictions, other criminal convictions involving dishonesty or theft, or prior testimony or sworn statements that have been conclusively shown to be false or misleading. Contract Investigators were required to sign a statement about their lack of such background at time of RFQ application. Upon the occurrence of anything that changes their background for impeachment purposes (as described herein) Contract Investigator must advise OPD immediately. Failure to advise OPD will be considered grounds for either immediate contract termination for cause or termination without cause, depending on the circumstances.

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