

# Expert Service Requests

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# Why is Expert Services the way it is?

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LCrR 3.1, the Ethical Walls Policy, and why DPD has Expert Services Administrative Attorneys that are independent of DPD

# LCrR 3.1 Right to and Assignment of Counsel

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- (f) Services Other Than Counsel. Pursuant to the authority under CrR 3.1(f), all requests and approval for expert services expenditures are hereby delegated to the King County Department of Public Defense (DPD). Upon finding that investigative, expert or other services are **necessary to an adequate defense** and that defendant is financially unable to obtain them, DPD shall authorize the services. Where services are denied in whole or in part, the defendant may move for de novo review to the Chief Criminal Judge or the Chief Judge of the Maleng Regional Justice Center. Should defendant seek an order sealing the moving papers, defendant shall present, along with the moving papers, a motion and proposed order sealing the documents to the DPD. DPD shall submit the motion to seal and proposed order with the moving papers regarding request for expert services and DPD's order on the motion for expert services to the Chief Criminal Judge or the Chief Judge of the Maleng Regional Justice Center.

# Ethical Walls and the ESAA

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Upon the formation of DPD, the issue of ethical considerations in handling attorney-client privileged information required us to create a way to handle expert service requests outside of any particular Division and outside of the Director's Office.

Essentially, the Ethical Walls Policy created the ESAA position to operate as a quasi-judicial officer independent of any DPD involvement in their decisions to grant or deny expert services requests. With this comes decision-making based on:

1. LCrR 3.1(f)
2. DPD's Expert Services Policy
3. **DISCRETION**

# Who is “In Charge” of ESAAs at DPD?

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- **NO ONE-** The Ethical Walls Policy created the ESAA to operate as a quasi-judicial officer independent of any DPD involvement in their decisions to grant or deny expert services requests
- No one in the Director’s Office is in charge of the ESAAs. This includes the AC Coordinator. The Director’s Office is in charge of handling the logistical issues of getting your requests from Superior Court (if sealed) to the ESAAs and then making sure your expert gets paid if approved. Part the AC Coordinator’s job is to ensure that everyone is following the DPD Expert Services Policy.

# Who are the ESAAs?

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## Dan Norman

- Felony criminal defense attorney in state and federal court for the last 23 years
- TDA staff attorney (2002-2007)  
Whatcom County staff attorney (1999-2002)

## Jennifer Kaplan

- Criminal defense attorney in state and federal court for the last 10 years
- Currently the resource attorney for the Federal CJA Panel reviewing expert requests

# What Rules are the ESAAbs Bound By?

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- DPD Expert Services Policy
- Washington State Courts RPCs
- Employment contracts through DPD
- Imputed fiduciary duty in decision-making involving spending public funds: they are obligated to determine what minimal competent work can be accomplished at the least cost. They are bound by case law and require high quality expert service requests to justify expenditures.

# Selecting an Expert

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Basic Practices and Fee Guidelines

# Selecting the Expert

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- Basic Practices
  - Attorney is responsible for finding the appropriate expert or service
  - Attorney must present the **most cost-effective means** to accomplish the desired goal or task
- DPD provides a contact list of commonly used experts
  - Attorneys are not required to use the experts on this list
  - Experts on this list are **NOT** pre-approved or vetted by DPD
  - WDA has a longer list -- <https://defensenet.org/resource-category/expert-bank/>

# Out-of-State Experts

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Per DPD's Expert Service Policy, attorneys must detail in the expert service request why a local provider is not appropriate or available for the case. The expert service request **MUST** indicate which WA experts have been contacted, as well as any experts in neighboring states who have been contacted.

It can be challenging to establish the need for an out-of-state expert due to this requirement. The presumption by the ESAAAs is that there is a local expert or expert in a neighboring state who can competently perform the services you are requesting.

# Fee Guidelines

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DPD provides a list of fee guidelines for commonly used services. **These fee guidelines may only be exceeded based on a showing of extraordinary demands of the case, often based on complexity or scope of issues that demands greater expertise or time demands.**

If requesting an expert service or expense that is not contained in the guidelines, the expert service request should contain the following:

- The market date
- How you determined the market rate
- Why your request is reasonable in light of this market rate

# Flat Fees

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Flat fees are discouraged. Some experts/services may require flat fees. If your expert service request is a flat fee, you must include the following information in your Certification/Declaration:

- You must clearly state the expert is working for a flat fee
- You must clearly state what services will be performed for the flat fee
- Flat fee expert service requests **CANNOT** specify maximum hours
- A flat fee will **NOT** be authorized for testimony unless there are extraordinary circumstances

# Tips for Exceeding Fee Guidelines

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- Address basis for exceeding guidelines in the Certification/Declaration
- Specify the extraordinary needs, expertise, and/or demands of the case/client
- Explain why services within the guidelines are not available within the community
- Explain which local experts you have contacted and why they cannot accomplish the same goal
- Be specific to your case. **The fact that the amount exceeding the guidelines has been authorized in the past is NOT a basis to exceed them again. DO NOT ARGUE THAT THE EXPERT WAS APPROVED ALREADY ON A DIFFERENT CASE AT A HIGHER RATE.**

# Expert Service Requests

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Preparing and submitting the expert service request, seeking additional funds, appealing a denial, and common issues and delays

# Preparing the Expert Service Request

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Expert service requests are a judicial function and should be treated as such. This means that DPD support staff do not have the authority to modify submitted pleadings. Pleadings that are incomplete or contain errors must be returned to the attorney who submitted them for correction.

# Basic Rules for Expert Service Requests

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## **Do NOT incur expenses or initiate expenses prior to approval**

- If this occurs, be sure your expert service request contains an explanation of why this happened

## **Do NOT exceed the amount of funds authorized by the ESAAs**

- If this occurs, submit an expert service request for supplemental funds ASAP and be sure the request contains an explanation of why this happened

# Expert Name and Expert's Payment Name (DBA)

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- ORES requires the expert's name and the name the expert uses for payment (“DBA”)
- Sometimes these names are the same but often they are not.
  - For example: Dr. Marnee Milner DBA Milner Evaluation and Consulting Services, Inc.
- Payments made to the wrong entity are difficult to rectify so it's critical that the correct names are in the ORES
- Consult the ORES instructions for guidance in providing the correct names

# Contents of Certification/Declaration

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- Statement of the Facts
- Statement on prior funding approvals
  - Date of request, name of expert authorized, and amount authorized
- Detailed explanation of why services are reasonable and necessary
  - The relevant facts/legal issues supporting the need for the expert
  - Be long-winded: more information is better, including the specific facts of your case and the specific reasons this particular expert will help you help your client
  - **THE PROTECTIVE ORDER ENSURES THIS IS CONFIDENTIAL AND WILL NOT LEAVE THE ESAA OR SUPERIOR COURT BENCH**

# So what is taking so long?

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ESAAs may request more information on expert service requests for many reasons. Here are some of the most common:

- No description of services to be performed or estimate of hours for tasks
- Referencing information from prior pleadings as a basis for the current request
- Justifying the expert or expert's rate based on a different case or prior experience
- "Check the box" pleadings without factual basis

If your expert service request was submitted to KCSC for sealing, it may be idling in the void that is Presiding and may not have been returned to DPD for submission to the ESAAs yet

# Common Expert Service Requests

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Mental Health Evaluations, Investigators,  
and Sexual Deviancy Evaluations

# Psychological Evaluations

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- Psychological evaluations may be authorized in cases where counsel has a reasonable belief that a professional evaluation:
  - may assist in supporting a legal defense or issue; and/or
  - may assist in mitigation for negotiations or sentencing
- You have to state which one or both and **WHY**

# Psychological Evaluations (cont.)

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- Factors in support of psych evaluations:
  - History of mental health diagnosis and/or treatment
  - History of prescribed mental health medication
  - Reports from family or friends that client suffers from a mental health condition or has a history of abnormal behavior
  - The existence of school or health records indicative of cognitive or behavioral difficulties or mental health issues or needs
  - Case facts such as witness or law enforcement observations indicating suspected mental health issues
  - Placement in a mental health unit within the jail
  - Defense team observations of behavior indicative of a mental health disorder, particularly input from social worker, mitigation specialists, or supervisor
  - Proposed expert's preliminary assessment of possible mental health issues or needs
  - Credible self-reports from client of symptoms evidencing mental illness or prior treatment or hospitalizations ideally should be corroborated with the above factors if reasonably possible

# Requests for Competency or NGRI Evaluations Require DSHS Order

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- Requests for competency or NGRI evaluations will not be approved without an accompanying “Order Appointing Independent Expert or Professional Person and Directing Payment to be Reimbursed by DSHS”
  - This is a separate order directing DSHS to pay \$800
- If the request is for a hybrid eval involving competency or NGRI you must submit the order. Stand-alone diminished capacity or forensic mental health evaluations do not require this order.
- The DSHS Order is available on the DPD Expert Services website  
<https://www.kingcounty.gov/depts/public-defense/Assigned-Counsel-and-Expert-Service-Requests/Expert%20Services.aspx>

# Investigators

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- For attorneys outside of DPD - Investigators are approved routinely for work on criminal cases but may require some more specificity or justification for family law matters. The DPD guidelines provides for up to 50 hours per request for a non-Class A felony and 75 hours per request for a Class A felony. The current rate is \$40.00/hour.
- It is important to communicate with your investigator so you know when they are approaching their hour limit. You must submit a supplemental request for additional hours before they exceed the approved time in the original expert service request.

# Seeking Additional Funds

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In some cases it may be necessary to seek additional funds for an expert who has already been approved. This requires a new expert service request. Do **NOT** authorize the expert to continue work until these supplemental funds have been approved by the ESAA.

Expert service requests for supplemental funds should include:

- Clear statement this is a supplemental request
- The amount of funding previously authorized and how it was used
- Why additional funding is necessary and how it will be used

# Appealing a Denial

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If an expert service request is modified or denied, that decision can be appealed to the Chief Criminal Judge at KCCH or the Presiding Judge at the MRJC. **The appeal submission must include the ESAA's written ruling modifying or denying the request and the signed ORES.**

These appeals are submitted directly to the court, not through the DPD but you must provide the ESAA and DPD with a copy of your appeal and the Court's ruling.

# Special Expert Service Requests

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Expert service requests for family defense,  
transcriptions/depositions, and attorney travel

# Expert Services for Family Defense

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The expert process for family defense is a complicated web of funding streams and only one particular case/request involves the Director's Office. Most family law attorneys simply email OCLA (Jill Malat) or (OPD) Jana Heyd to request funding for experts. It does not go through DPD or the ESAAs.

**ONE EXCEPTION:** Alternative Process for Dependency Child Representation (see DPD Expert Services Policy for details). Sealing is unnecessary and the request does not go through ESAAs, but is sent directly to [DPD-ExpertRequest@kingcounty.gov](mailto:DPD-ExpertRequest@kingcounty.gov).

# Transcriptions/Depositions

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Transcription requests within DPD do not need to go through the expert service process. (See the **amendment regarding transcripts and records (DPD attorneys only)** to the Expert Services Policy.)

Requests for **court reporters** must be submitted as an expert services request even if they are only creating a “transcript” of proceedings both inside and outside DPD.

The Expert Services Policy as written currently conflates these two different bodies of work. If you have questions contact the Assigned Counsel Coordinator prior to submission of your request.

# Travel

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Within DPD, most travel expenses will be handled through your Division's usual in-house procedures. However, all counsel must submit an expert service request for attorney travel in the following cases:

- Total expenses will be over \$200.00
- Travel will **not** be by car, but instead by air, rail, etc.
- Expenses will include overnight lodging

# Sealing, Protective Orders, and Court Submissions

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Orders to Seal vs. Protective Orders, and how to submit expert service requests for sealing to Superior Court and District Court

# Order to Seal vs. Protective Order

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## Order to Seal

Court documents prepared and maintained by the Court can be accessed by the public via ECR. This includes Motions and Orders on Expert Services at Public Expense An Order to Seal means that the expert service request is no longer viewable by the public (or the state) via ECR without further order of the Court.

## Protective Order

Court documents prepared and maintained by the Court are not subject to disclosure under the PRA. However, when transferred to nonjudicial county entities, Court docs become subject to the PRA unless they are also subject to a protective order. Protective orders cover documents released to other county agencies, WA State Auditor, IRS, any state or county financial institutions, and KCPAO or any other government agency responsible for prosecution of defendant.

# Submissions Without Sealing

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- Send directly to [DPD-ExpertRequests@kingcounty.gov](mailto:DPD-ExpertRequests@kingcounty.gov)
- DPD staff processes and forwards to ESAA for review
- If approved, copies of signed Order, pleadings, and Expert Billing Affidavit are emailed to attorney
- Originals are filed by DPD with the Court

# Sealing in King County Superior Court

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- Submit all expert services pleadings along with the Motion and Order to Seal Documents and the Motion and Protective Order to the Chief Criminal Presiding Judge per the King County Superior Court Manual Section 10.2: <https://www.kingcounty.gov/~/media/courts/superior-court/docs/criminal/criminal-manual.ashx?la=en>
- The Chief Criminal Presiding Judge reviews and signs the Order to Seal and Protective Order and forwards all pleadings to DPD.
- DPD processes and forwards all pleadings to ESAs for review.

# Sealing in King County District Court

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- Submit all expert services pleadings along with the Motion and Order to Seal Documents and the Motion and Protective Order directly to [DPD-ExpertRequests@kingcounty.gov](mailto:DPD-ExpertRequests@kingcounty.gov). All pleadings will be returned to counsel after ruling by ESAs.
- Attorney must seek sealing directly from District Court.
  - If the Order to Seal is denied, the attorney must choose whether to file the unsealed expert service request with District Court. If an approved ORES is not filed with the Court, it is void and will not be honored by DPD.

# Paying the Expert

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Filling out and submitting the expert billing affidavit

# Completing the Expert Billing Affidavit

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The expert billing affidavit is sent to the attorney with the signed ORES and other pleadings after approval by the ESAA. Both attorney and expert must provide a signature (s/ is okay!) confirming services have been completed/provided.

The billing affidavit comes with detailed instructions on how to complete it. It's an easy-to-use form with drop-down menus and auto-calculations for expenses. **The billing affidavit MUST include the date range for when the service was performed.**

# Submitting the Expert Billing Affidavit

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DPD pays experts directly upon receipt of a signed complete billing affidavit (which is why it's so important to provide an accurate DBA!).

- Most expert services do not require invoices.

Submit the expert billing affidavit to [DPD-ExpertBilling@kingcounty.gov](mailto:DPD-ExpertBilling@kingcounty.gov). Questions about previously submitted expert billing affidavits should also be directed to [DPD-ExpertBilling@kingcounty.gov](mailto:DPD-ExpertBilling@kingcounty.gov).

# Expert Service Resources

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Online resources and other contact information

# DPD Website

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DPD maintains an Expert Services website containing many useful resources, including:

- DPD's Expert Services Policy and other helpful guides
- Expert Services Checklist
- Blank forms for motions and orders
- Examples of successful expert service requests

<https://www.kingcounty.gov/depts/public-defense/Assigned-Counsel-and-Expert-Service-Requests/Expert%20Services.aspx>

# Questions? We're here to help!

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We like to answer your questions to help your requests and payments go as smoothly as possible.

- Scott Ketterling, Assigned Counsel Coordinator – [scott.ketterling@kingcounty.gov](mailto:scott.ketterling@kingcounty.gov)
- Krystyna Weberg, Administrator – [kweberg@kingcounty.gov](mailto:kweberg@kingcounty.gov)
  - Krystyna can help with locating your expert service request and can provide DPD's expert contact list. She can also help you direct any questions to the appropriate Director's Office staff.
- Wanzi Pretlow, Expert Services Fiscal Specialist – [wpretlow@kingcounty.gov](mailto:wpretlow@kingcounty.gov)
  - Wanzi can help with tracking your expert payments and resolving any issues with submitted expert billing affidavits. She can also answer questions about completing and submitting expert billing affidavits.
- Christina Alburas, Exec. Asst. to DPD Director – [christina.alburas@kingcounty.gov](mailto:christina.alburas@kingcounty.gov)
- [DPD-Paralegal@kingcounty.gov](mailto:DPD-Paralegal@kingcounty.gov)