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**King County**

# DEPARTMENT POLICIES AND PROCEDURES

Title

**EXPERT SERVICES POLICY**

Department/Issuing Agency

**DEPARTMENT OF PUBLIC DEFENSE**

Effective Date

**04/01/2021**

Approved

**Anita Khandelwal, Director**

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## I. PURPOSE

To establish clear and uniform policies and procedures for applying for and processing requests for expert services at public expense.

## II. APPLICABILITY

This policy is applicable to attorneys requesting expert services at public expense for their indigent clients and to defendants who have been granted the right to represent themselves (proceed *Pro Se*). All references to “Attorneys” shall include *Pro Se* defendants, as under the law they are held to the same standards as attorneys.

The King County Department of Public Defense (DPD) may approve requests for payment for experts and investigators at public expense for indigent persons in adult and juvenile criminal cases and for child representation in family defense cases. Requests in Involuntary Treatment Act (ITA) cases are approved by the ITA Commissioner. Requests in Special Commitment Unit and adult Family Defense cases are approved by the Washington State Office of Public Defense. Expert service requests for Seattle Municipal Court (SMC) shall be submitted pursuant to SMC expert policies. DPD does not process or pay expert service requests for SMC.

## III. REFERENCES

Revised Code of Washington Chapter 10.101 ([RCW 10.101](#))

King County Code Chapter 2.60 ([KCC 2.60](#))

Washington State Court Criminal Rule 3.1(f) ([CrR 3.1\(f\)](#))

King County Superior Court Local Criminal Rules 3.1(f) ([LCrR 3.1\(f\)](#))

King County Superior Court Criminal Department [Manual](#), Section 10

Washington State Court Rules for Professional Conduct 1.8(m)(1)(ii) ([RPC 1.8\(m\)\(1\)\(ii\)](#))

Washington State Bar Association (“WSBA”) [Standards](#) for Indigent Defense Services, Standard Four (approved September 22, 2011)

## IV. DEFINITIONS

**Order/ORES:** Order Authorizing Expert Services at Public Expense

**Expert Authorization:** Expert Service Authorization and Request for Payment Form (aka expert billing affidavit)

**Expert Services Administrative Attorney (ESAA):** Expert Services Administrative Attorney is a qualified attorney contracted by DPD to review all expert service requests and determine whether investigative, expert, or other services are necessary to an adequate defense, pursuant to authority delegated to DPD under LCrR 3.1(f)

## V. EXPERT SERVICE REQUESTS

### A. General Provisions

- 1. Expert Services Must be Approved Before the Expert Begins Work:** Requests must be submitted to DPD prior to the expenditure of funds. DPD is not responsible for payment for services rendered before such approval except as otherwise provided. If services begin prior to approval or authorization, payment for services rendered before approval may be authorized, on a case-by-case basis, by the Expert Services Administrative Attorney (ESAA) reviewing the subsequent expert services request. Assigned Counsel who engage expert services which commence before authorization may be subject to termination from the Assigned Counsel Panel. DPD Division attorneys who engage expert services which commence before authorization will be subject to appropriate corrective action by DPD. Information which must be included in expert services requests made after commencement of work can be found in Section V. E.
- 2. Expert Services Request Must Contain Sufficient Information Regarding the Reasonable Necessity of the Expert:** The declaration submitted in support of the request must establish that the requested services are reasonably necessary for the representation of the client. Conclusory statements that the work is necessary are insufficient. For instance, stating that a client “has mental health issues” is insufficient by itself to justify the necessity of a psychologist. You must explain the diagnosis or if there is no current diagnosis, explain the symptoms and provide the information that leads you to the conclusion that the appointment of a psychologist is reasonably necessary to the representation.
- 3. Expert Services Administrative Attorneys (ESAA) act independently of DPD:** All ESAA decisions on approval or denial of experts are not reviewable by DPD. The ESAA reviews expert service requests for reasonable necessity for effective representation and whether the request is within DPD fee guidelines. They also consider whether the expert is qualified to perform the work requested.
- 4. Expert Fee Guidelines Must be Consulted Prior to Requesting Expert Services:** The authorization of expert services at public expense are subject to the DPD Expert Fee Guidelines (Appendix A). These guidelines are based upon normal and customary

market-based rates and are subject to change over time. These guidelines may be exceeded but only with detailed justification set forth in the declaration. Information which must be included in expert services requests that exceed the fee guidelines can be found in section V. F. Any experts in areas of expertise not listed in the guidelines will be considered on a case-by-case basis by the ESAAs.

5. **A Defendant is Not Entitled to the “best” Expert Available:** Every defendant has the right to have an expert with the necessary skills and qualifications appointed at public expense to their case if the defendant can demonstrate that the expert’s work is necessary to support their defense. There is a presumption that there exists a qualified local expert that can perform the necessary work within DPD’s expert fee guidelines. An expert whose fees exceed the guidelines, or who is not local, will only be appointed to a case if that expert possesses a skill set or expertise that no local expert possesses. The motion for such an expert must also demonstrate that no local expert with the required skill set or qualifications is available. The exceptional quality, experience or reputation of an expert is not, in and of itself, a basis for exceeding the DPD expert fee guidelines or appointing an out-of-state expert.
  
6. **Trial Court May Grant an Expert Services Request During Trial:** Trial judges can authorize expert services during a trial up to a maximum of \$250.00 per individual expert. Authorization for these services will be granted only if the urgency of the request is demonstrated. The judge’s Order Authorizing Expert Services at Public Expense (ORES) must be submitted to DPD.

## B. Submission of Materials

1. **Electronic Submission of Materials is Required:** Except for *Pro Se* defendants in custody, all submissions must be in electronic form. Submissions without an Order to Seal and/or Protective Order should be sent in PDF format by email to [DPD-ExpertRequests@kingcounty.gov](mailto:DPD-ExpertRequests@kingcounty.gov).
  
2. **DPD Standard Forms Must be Used:** Attorneys must use the forms posted on DPD’s Expert Services website for the following pleadings (available for King County Superior Court and King County District Court [here](#)):
  - i. Order Authorizing Expert Services at Public Expense (ORES)
  - ii. Motion and Certification for Expert Services at Public Expense
  - iii. Motion and Order to Seal Documents (CrR 3.1)
  - iv. Motion and Protective Order for Expert Witness and Services Funding Request

- v. Order Appointing Independent Expert or Professional Person and Directing Payment to be Reimbursed by DSHS

### C. Sealed Submissions

1. **Superior Court:** In Superior Court, all expert service requests including a Motion and Order to Seal Documents and/or a Motion and Protective Order for Expert Witness and Services Funding Request must be submitted via email to the Seattle Superior Court Chief Criminal Judge at [seacriminalmotions@kingcounty.gov](mailto:seacriminalmotions@kingcounty.gov) or to the Chief Juvenile Court Judge. A directory of Superior Court Judges may be found [here](#).
  - a. If the court approves the Motion and Order to Seal and/or Motion and Protective Order for Expert Witness, the court will email the expert service request pleadings to DPD Expert Services for review and processing.
  - b. If the court denies the Motion and Order to Seal and/or Motion and Protective Order for Expert Witness, the court will email the denial to the attorney. The attorney may choose to submit the request to DPD without sealing or to move the court for reconsideration.
2. **District Court:** In District Court, all expert service requests including a Motion and Order to Seal Documents and/or a Motion and Protective Order for Expert Witness and Services Funding Request must be directly emailed to [DPD-ExpertRequests@kingcounty.gov](mailto:DPD-ExpertRequests@kingcounty.gov). Following approval of the funding request by the ESAAs, the entire pleadings along with the motion to seal and protective order will be forwarded by DPD staff to the presiding District Court Judge for a ruling on the sealing/protective order.
  - a. If the court approves the Motion and Order to Seal and/or Motion and Protective Order for Expert Witness, the documents will be filed by the Presiding judge under seal with the clerk's office.
  - b. If the court denies the Motion and Order to Seal and/or Motion and Protective Order for Expert Witness, the materials will be returned to the attorney by the court. The decision to file an unsealed Order Authorizing Expert Services rests with counsel. Orders Authorizing Expert Services must be filed in order to be valid.
  - c. If counsel declines to file an unsealed Order Authorizing Expert Services, the ORES is void and will not be honored by DPD.

## D. Motion and Certification for Expert Services at Public Expense

1. **Required Contents:** The Motion and Certification for Expert Services at Public Expense must include the following:
  - a. A statement of the facts of the case
  - b. A copy of the Certification for Determination of Probable Cause.
  - c. The relevant facts/legal issue supporting the need for the expert. For example, it is insufficient to simply state the client has mental health issues and therefore needs a psychological assessment. Explain the client's history, observations you have made of the client, specific facts from police reports, reports by family members or other salient facts that support your conclusion. Answer the specific question of why your expert is reasonably necessary to the representation. What specific goal will they accomplish with their work that is necessary for your client's defense.
  - d. The anticipated scope or focus of the expert's work and the issue(s) the attorney needs the expert to address.
  - e. The name of the expert's business (or, if there is no DBA "Doing Business As", the name of the expert and the expert's credentials)
2. **Hourly Rates:** If the services are provided at an hourly rate, the attorney must include:
  - a. Whether the rate is within DPD's expert fee guidelines. If the rate exceeds the guidelines, the declaration should indicate why the higher rate is necessary, or why other experts who could provide the services within the guidelines are not appropriate.
  - b. The estimated number of hours the expert will need to complete the work, including a breakdown of each task (e.g. interview client, write report) and how many hours each task will take.
3. **Flat Rates:** Services provided at flat rates will generally only be approved in rare circumstances such as sexual deviancy evaluations and polygraphs. If a request is approved for a flat rate, no supplemental funding requests will be approved for that work.

4. **Requests for Testimony:** A request for testimony for an expert previously approved must indicate the number of hours of anticipated testimony and the hourly rate for testimony. An interview by opposing counsel will be paid at the same rate as testimony.

## E. Supplemental Requests

1. **Required Contents:** Supplemental Requests for funding for expert work previously approved requires the following:
  - a. A clear initial statement that this request supplements a previous request(s) for this expert with the date the prior request was filed.
  - b. A brief summary of the case with a complete description of the expert work performed to date which was covered by the initial ORES, including, if relevant, the number of hours the expert worked on each task.
  - c. A statement that the total pretrial hours requested for this expert do not exceed the DPD Expert Fee Guidelines or if so, a thorough explanation of the exceptional circumstances which justify exceeding the guidelines. Trial preparation and testimony hours that exceed the guidelines do not require exceptional circumstances but must be reasonable.
  - d. An explanation of what work the expert still needs to complete and the hours it will take to complete that work.
  - e. If the supplemental request is necessary as the result of the expert exceeding the approved amount in the original request, the attorney must provide a thorough explanation of why this occurred to justify the additional funding. Attorneys should document any communications directing the expert not to exceed the approved funding to support this request.
  - f. If the supplemental request is necessary as the result of the client missing an appointment with the expert, the attorney must specifically provide good cause for the missed appointment(s) and explain the exceptional factual circumstances in the supplemental request.

## F. Requests for Work Already Performed by an Expert

**1. Exceptional Circumstances Justifying Work Already Performed:** Expert hours generally must always be approved in advance. Only those circumstances where the expert work must be performed immediately to prevent irreparable harm to the representation of the case and the client's legal interests will funding be approved after the fact.

- i. An expert spending more time than anticipated testifying during trial or unforeseen trial delays that result in additional expert hours;
- ii. Expert work necessary to prevent the loss or destruction of evidence;
- iii. Preservation of video or recorded evidence;
- iv. Photographs of injuries;
- v. Collection of physical evidence that will be scientifically tested or examined later;
- vi. Unexpected transcription requests that arise during trial;
- vii. Other emergency circumstances that justify not seeking prior approval.

**2. Examples of Work That Do Not Qualify for this Exception:**

- i. Witness interviews that can be conducted later;
- ii. Mental health or substance abuse evaluations;
- iii. Routine investigation in the course of a case;
- iv. Experts exceeding the original authorization amounts after being notified by counsel not to do so.

## G. Exceeding Fee Guidelines

**1. Required Contents:** Expert service requests that exceed the DPD Fee Guidelines must include information demonstrating case specific exceptional circumstances that justify the request. The attorney must demonstrate there is not a qualified expert available that can perform the work necessary for the case within the fee guidelines. A request that exceeds the fee guidelines must contain the following:

- a. The specific basis for exceeding the fee guidelines;
- b. The extraordinary needs, expertise, or demands of the case/client;
- c. Explanation why services within the guidelines are not available within the community; and

- d. List of multiple local experts that were consulted and explain why they cannot accomplish the same goal within the fee guidelines.
2. **Prior Expert Authorization Above the Fee Guidelines:** The fact that the amount exceeding the guidelines has been authorized in the past by the ESAA in another case is not a basis to exceed them again. Assertions in the declaration that the expert was approved for the higher rate on another case cannot be considered by the ESAA and should not be included in your request.

## H. Out of State Experts

1. **Required Contents:** An attorney requesting an out-of-state expert must detail in the declaration which local Washington experts were contacted and why those local providers are not appropriate or available for the case. The attorney must also contact experts in neighboring states and explain why they are not appropriate or available. Neighboring states include Oregon, Idaho, and British Columbia. There is a presumption that there exists a qualified local expert that can perform the necessary work within DPD's expert fee guidelines.

## I. Approval Process

1. **DPD Submission to the ESAA:** DPD sends expert service requests to the ESAAs, who generally review submissions within one (1) business day. Additional information may be requested by the ESAAs via telephone or email and a timely response will allow the processing of a submission to be completed. In some cases, a supplemental declaration may be requested. These email communications are covered by the order to seal and protective orders signed by Superior Court and considered supplements to the declaration.
2. **RUSH Requests:** If an attorney believes a request should be expedited, the attorney should indicate it is RUSH request in the email subject line and include the trial date or other court deadline on the front of the ORES. The attorney should also indicate in the declaration the reason for the expedited request. The RUSH designation should be used only when necessary. It moves the request to the top of the line, which can cause potential delays for requests that were submitted prior to the RUSH.
3. **ESAA Responses:** The ESAAs may approve the ORES as requested, approve but modify the Order, or deny the Order. DPD will notify the attorney once the expert service request has been processed and return the Order only via email.

- a. **Approved Orders:** If the Order is approved, DPD will also email the attorney the Expert Service Authorization and Request for Payment form, which attorneys must return to DPD with the expert's invoice for payment.
- b. **Denied Orders:** If the Order is denied, the ESAs will provide a written reason for their decision either contained in, or attached, to the signed ORES. The signed ORES along with the ESAA written statement must be attached to any appeal submitted to the Court.

## J. Appealing a Denial or Modification

1. **Requirements of the Appeal:** If a request has been modified or denied, that decision can be appealed to the Chief Criminal Judge in Seattle or the Chief MRJC Judge pursuant to the King County Superior Court Criminal Department Manual, Section 10, and local criminal rules.
  - a. **Must Include the ESAA's Written Ruling:** The appeal submission must include the ESAA's written ruling denying the request. An email from the ESAA is not a valid written denial. An email from the ESAA is a valid written modification.
  - b. **Must Provide Copy of the Appeal to the ESAA:** The attorney must also provide a copy of the appeal to the ESAA who reviewed the expert service request.
  - c. **Appeal Must Mirror the Original Request:** The request in the appeal must be for the same expert, the same amount of funding and for the same work contained in the original request that was denied or modified by the ESAA.
  - d. **DPD Staff Attorneys Should Consult Their Supervisor:** If the appeal is by a DPD staff attorney, the attorney should consult with their supervisor prior to filing the appeal.
2. **Court's Decision:** If the court approves the expert service request, the attorney must provide a signed copy of the Order to the DPD Director's Office. The Director's Office will then issue an Expert Service Authorization and Request for Payment form. If the court denies the appeal, a copy should be provided to the DPD Director's Office to close the request.

## K. Payment of Experts

- 1. Expert Authorization Form:** The Director's Office will send attorneys an Expert Service Authorization and Request for Payment form via email with each approved Order.
- 2. Expert Bill Payment:** Once services have been rendered and an invoice received from the expert, the attorney must sign and return the Expert Authorization together with the expert's invoice to [DPD-ExpertBilling@kingcounty.gov](mailto:DPD-ExpertBilling@kingcounty.gov). Attorneys are responsible for the accuracy of the invoices submitted for payment. Inquiries concerning payment status or Expert Authorizations should be emailed to [DPD-ExpertBilling@kingcounty.gov](mailto:DPD-ExpertBilling@kingcounty.gov).

## L. Alternative Process for DPD Dependency Expert Service Requests

- 1. Child Representation Cases Assigned By DPD:** The following process may be used for requesting expert services for dependency child representation cases assigned by DPD.
- 2. Travel Requests:** For travel funding requests, see section VIII for information that should be contained in your request.
- 3. Required Contents:** The dependency attorney should email [DPD-ExpertRequests@kingcounty.gov](mailto:DPD-ExpertRequests@kingcounty.gov) with the following information:
  - a. The expert's name, email address, phone number, and mailing address.
  - b. The expert's DPD-issued vendor number to expedite direct payment to the expert. Contact [DPD-ExpertRequests@kingcounty.gov](mailto:DPD-ExpertRequests@kingcounty.gov) if the expert does not have a current vendor number.
  - c. Do not include client name or case number or other client-identifying information in your request.
  - d. A brief case background as to why the expert is necessary and brief description of the services to be provided.
  - e. The estimated cost for services including the hourly rate, an estimate of total hours to complete the work, and a breakdown of hours by activity. If the

services are provided at a flat rate, state the fee and the specific services to be provided. Include any other necessary expenses such as travel expenses.

- f. A certification from the attorney indicating whether other expert services have been authorized for that client and, if so, the name of the expert and the amount authorized.
- g. Sample forms for these requests may be obtained by emailing [DPD-Paralegal@kingcounty.gov](mailto:DPD-Paralegal@kingcounty.gov).

**4. DPD Approval:** The attorney will be notified via email when the request has been processed. The Assigned Counsel Coordinator will act as the ESAA in reviewing the request.

- a. If the request is approved, the attorney will be notified via an email stating the nature of services and the financial scope of the authorization. If the request is denied, the attorney will be notified via email to explain the basis for the denial. The attorney may seek expert services approval directly from the Court or through OCLA.

**5. Expert Bill Payment:** Once services have been rendered and an invoice received from the expert, the attorney must sign and return the Expert Authorization together with the expert's invoice to [DPD-ExpertBilling@kingcounty.gov](mailto:DPD-ExpertBilling@kingcounty.gov). Attorneys are responsible for the accuracy of the invoices submitted for payment.

- a. Write the Request ID number on the invoice and redact any client-identifying information before sending the invoice to DPD.

## VI. COMMON EXPERT SERVICES REQUESTS

### A. Forensic Psychological Evaluations

**1. Required Content:** Psychological evaluations may be authorized in cases where a professional assessment is reasonably necessary to support a legal defense and/or assist in mitigation for negotiations or sentencing. For a mental health expert to be approved, there must be some combination of the following:

- a. A history of mental health diagnosis and/or treatment;
- b. A history of prescribed mental health medication;

- c. Reports from family or friends that client suffers from a mental health condition or has a history of abnormal behavior;
- d. The existence of school or health records indicative of cognitive or behavioral difficulties or mental health issues or needs;
- e. Case facts such as witness or law enforcement observations indicating suspected mental health issues;
- f. Placement in a mental health unit within the jail;
- g. Defense team observations of behavior indicative of a mental health disorder, particularly input from social worker, mitigation specialists, or supervisor;
- h. Proposed expert's preliminary assessment of possible mental health issues or needs;
- i. Credible self-reports from client of symptoms evidencing mental illness or prior treatment or hospitalizations (should be corroborated with the above factors if reasonably possible); and/or
- j. A careful recitation of other particular facts of the case giving rise to the belief that such an issue is present.

## B. NGRI/Competency

1. **Mandatory DSHS Order:** A request for an NGRI or competency evaluations must include a proposed Order Appointing Independent Expert or Professional Person and Directing Payment to be Reimbursed by DSHS in addition to the ORES. Only one order needs to be submitted per case for the same expert. Supplemental requests and testimony funding requests do not require you to resubmit this order.

## C. Polygraphs

1. **Required Contents:** Expert service requests for independent polygraphs must include information demonstrating case-specific exceptional circumstances that justify the request given their inadmissibility. A request for a polygraph should include those facts which show the need for such examination. For independent polygraphs to be approved there must be some combination of the following:

- a. The prosecuting attorney has agreed to consider such an examination in negotiations for a reduction in charges (or has demonstrated a willingness to consider successful examinations for reductions in similar cases in the past);
  - b. There is an assertion of actual innocence, self-defense or an affirmative defense and there exists substantial corroborating evidence in the case that supports innocence, self-defense or an affirmative defense;
  - c. There is an assertion of actual innocence and the evidence to be presented by the state consists solely of testimonial evidence of a criminal act by a complaining witness unsupported by any physical or other corroborating evidence;
  - d. A plea offer has been extended that significantly reduces client's exposure and the attorney can assert a good faith basis to believe such an examination is necessary for meaningful and productive communications with the client in order to provide effective assistance of counsel;
  - e. It is a request for an ultimate issue polygraph involving a juvenile sex offense and the attorney can assert a good faith basis to believe participation in the polygraph will lead to the client participating in a subsequent sexual deviancy evaluation.
- 2. Sexual Deviancy Polygraphs:** Requests for polygraphs in conjunction with psychosexual deviancy evaluations may be included with the original request if included in costs from your expert. These may also be submitted by separate request for the individual polygrapher. Either request should include a statement that the psychosexual deviancy expert is requiring or requesting such an examination in order to complete the evaluation or to provide an expert opinion.

#### D. Transcripts

- 1. Audio/Video Recordings:** A request for a transcript of either an audio or video-recorded hearing or an interview must include at a minimum:
  - a. Clear reasons that establish the necessity of the transcription;
  - b. Either the length of time it will take to prepare the transcript and the hourly rate, or an estimate of the number of pages and the rate per page;

- c. The timeframe in which the transcript is needed;
  - d. The length of the interview and whether it would be more efficient for the attorney to listen to the tape rather than have it transcribed; and/or
  - e. The charge, the number of witnesses in the case, and the centrality of the witness who was interviewed.
2. **DPD Attorneys:** DPD staff attorneys must follow internal DPD procedures for requesting audio transcription work. Managing Attorneys authorize transcription requests within each division. DPD staff attorneys do not need to submit an expert services request if the Managing Attorney approves the request. The same standards apply to consideration of a request for transcription within the divisions as any expert service request. Transcript requests must be tracked in compliance with DPD's internal Transcription and Records Requests Policy.
  3. **Non-DPD Staff Attorneys:** Assigned Counsel must request transcription costs by expert service request if the amount is over \$250.00. If the amount is under \$250.00, it can be listed as an expense on the attorney's billing.

#### E. Medical and Mental Health Records

1. **DPD Attorneys:** DPD staff attorneys will follow internal DPD procedures for ordering copies of medical and mental health records, with the exception of hospitals and other institutions which do not accept the P-card and are not King County Public Health, which must be requested via expert service request. Records requests must be tracked in compliance with DPD's internal Transcription and Records Requests Policy.
2. **Non-DPD Staff Attorneys:** Assigned Counsel must request medical and mental health record costs by expert service request if the amount is over \$250.00. If the amount is under \$250.00, it can be listed as an expense on the attorney's billing.

#### F. Court Reporters, Stenographers and Depositions

1. **Required Contents:** An attorney who needs the services of a court reporter or stenographer to be present for a deposition or to create a written transcript from a hearing or trial, must submit an expert services request.
  - a. A request for a court reporter for the purposes of a deposition or for the purposes of transcribing existing notes of a deposition or hearing must include:

- i. Clear reasons that establish the necessity of the transcription or deposition;
  - ii. The hourly rate for the court reporter and the costs of transcription.
2. **Non-DPD Staff Attorney:** Assigned Counsel attorneys must request court reporter deposition and transcription costs by expert service request if the amount is over \$250.00. If the amount is under \$250.00, it can be listed as an expense on the attorney's monthly billing.

## G. Language Interpretation and Translation

1. **Required Contents:** An attorney who needs the services of a language interpreter should contact the King County Office of Interpreter Services (OIS). For interpreter services that OIS declines to provide, defense counsel may submit an expert services request for case related work that requires the use of an interpreter or translator. Attorneys must use Washington State Court Certified interpreters whenever possible for such work. Audio translation should be billed per hour. Translation of written materials should be billed per word.
2. **Non-DPD Staff Attorney:** Assigned Counsel must request interpreter and translation services costs by expert service request, if not provided by OIS, if the amount is over \$250.00. If the amount is under \$250.00, it can be listed as an expense on the attorney's billing.

## VII. SUBSTITUTION OF NEW COUNSEL OR NEW EXPERT

### A. Withdrawing Counsel

1. **Required Obligations:** In the event an expert services request has been granted on a pending case, withdrawing counsel must contact all experts previously approved that have not completed their work and advise them to stop work until or unless they hear from new counsel. The expert shall be informed that if they do not hear from new counsel, they should submit a final bill to the withdrawing attorney for payment within 60 days of receiving notice from withdrawing counsel.

### B. Substituting Counsel

1. **Required Obligations:** Substituting counsel should seek release from the client to communicate with prior counsel to determine what experts were retained on the case, what work has been completed, and what expert work is still outstanding.

2. **Discretion of Substituting Counsel:** It is within the professional judgment of new counsel whether to authorize continued work for a previously approved expert, to order the expert to stop work and submit a final bill, or to submit a request for a new expert.
  - a. If new counsel authorizes the previously approved expert to continue work, the previous Order to Seal and Protective Order follow the case and remain in full effect along with the prior expert approval.
  - b. If new counsel makes a request for a new expert to do work previously authorized by prior request, there must be a justification for the change in experts, taking into account the strong preference not to authorize duplication of work that has already been performed.

### C. Substitution of New Expert

1. **Termination of Expert:** An attorney should make every attempt to thoroughly discuss what work they wish the expert to perform prior to the submission of the request to avoid confusion and unusable work product. In the event an attorney wishes to terminate the work of an approved expert for any reason, they shall inform the expert to stop work immediately and submit a final bill to DPD providing an account of what work was completed.
2. **Required Contents:** If the attorney wishes to engage a new expert for the same or substantially similar work, the attorney must submit a new expert service request explaining the following:
  - a. What work the previous expert completed;
  - b. If the work product produced is unusable and why;
  - c. The reasons for terminating the work of the prior expert; and
  - d. A thorough explanation justifying the potentially duplicative work.

*A new expert will not be approved based upon the attorney disagreeing with the opinion, findings, or potential testimony of the previously retained expert.*

## VIII. TRAVEL

### A. Travel Expenses

- 1. Required Content:** Expert Services requests must be submitted for case-related travel expenses for the attorney, staff, or an expert. Family defense travel funding requests may use the alternative process contained in section V. L. The request for travel must include the case-related reasons for the travel along with a proposed/pending travel itinerary including:
  - a. Dates necessary for travel;
  - b. Method of travel (air, car etc.);
  - c. If travel is by air, please include airline change fees in the request;
  - d. Hotel needs;
  - e. Car rental, if necessary; and
  - f. An estimate of the total cost which must be obtained through King County's contracted travel agency. See section VIII. B. 1.
- 2. Expert Travel:** All requests for funds for travel by an expert must be submitted as an expert services request. Attorneys are encouraged to discuss the willingness of an expert to accept a reduced rate for travel time prior to submitting the request. The request must separate expert travel time from expert travel expenses in the ORES.
- 3. Reimbursable Costs:** Lodging, meals, and mileage costs are reimbursable at the federal per diem rate (available at [www.gsa.gov/perdiem](http://www.gsa.gov/perdiem)). These expenses must be itemized when submitted.
  - a. Receipts must be submitted with request for reimbursement; however, receipts are not necessary for reimbursement for meals, which are covered by the federal per diem rate.
  - b. DPD does not reimburse for tips, alcohol, interest, or late charges.
  - c. For mileage, the request should list the cities of origin and destination, and the total miles as determined from a map application, the GSA rate and the total.

d. DPD employees submit mileage reimbursement through internal DPD procedures.

- 4. Travel Not Requiring Expert Services Requests:** An expert service request is not necessary for travel expenses for DPD employees or Assigned Counsel where the travel is not overnight travel, is not by air, and the estimated cost is less than \$250.00 or approved by a Managing Attorney. DPD attorneys and staff must follow internal DPD procedures for pay for this travel. Assigned Counsel may include these expenses in their billing affidavit.

## B. Travel Arrangements and Agency

1. **Required Travel Arrangements:** Upon approval of an expert service request for travel by the ESAA, counsel should contact [DPDTravel@kingcounty.gov](mailto:DPDTravel@kingcounty.gov) to confirm travel arrangements. Counsel must include:
- a. Dates and times for the travel;
  - b. Preference for direct flight or if connecting flights are acceptable;
  - c. Originating city;
  - d. Dietary restrictions;
  - e. Transportation needs to/from airport, and;
  - f. Hotel preferences.
2. **Travel Agency:** Please contact King County's contracted travel agency for all travel estimates to include in your expert services request:

### **Tangerine Travel**

Tangerine Travel Help Desk: [concur@tangerinetravel.com](mailto:concur@tangerinetravel.com)

Immediate Assistance 24/7: 425-822-2333

## C. Material Witness Travel Expenses

1. **Required Court Order:** Material witness travel expenses can be requested by expert service request. Counsel must obtain and attach a copy of a Court Order finding the witness material.

- a. Depending on the actual cost of the material witness to appear and the ability of the witness to travel, appear at court, and return home in the same day, the ESAAs will consider a request for funds to cover the cost of travel in excess of that provided by the court.

## IX. ASSIGNED COUNSEL, RETAINED COUNSEL & PRO SE DEFENDANTS

### A. Privately Retained Attorneys with Indigent Clients

1. **Rights of Indigent Clients:** An attorney who has been retained to represent a defendant may seek funding for expert services for their client at public expense, pursuant to CrR 3.1 and *State v. Punsalan*, 156 Wn.2d 875 (2006).
2. **Client Must Be Screened by DPD:** Prior to the authorization of any requests for expert services, the defendant shall undergo DPD's financial screening process to establish indigency. Instructions on DPD's financial screening can be found on the King County Department of Public Defense website.
3. **Obligations of Counsel:** The attorney must follow the procedures outlined in this policy. Counsel must also submit a copy of the retainer agreement, including agreements signed by the defendant and any third-party guarantors to said agreement.
4. **Client Contribution to Costs:** In some cases, DPD will require the defendant or a third-party guarantor to sign a promissory note to repay some or all the funds authorized and paid for expert services. After expert services have been provided and invoiced, if the invoiced amount is less than the promissory note, counsel should contact the Chief Financial Officer at DPD to adjust the promissory note amount.

### B. Pro Se Defendants/Standby Counsel

1. **Rights of Pro Se Defendants:** A defendant, authorized by the court to proceed *Pro Se* pursuant to *Faretta v. California*, 95 S. Ct. 2525 (1975), seeking expert services is responsible for finding an expert and submitting the required documents. The DPD Expert Services Administrator or standby counsel, if one is appointed, will be responsible for providing the defendant with the necessary forms.
2. **Approval of Requests:** The Assigned Counsel Coordinator acts as Expert Services Administrative Attorney for expert service requests from *Pro Se* defendants.

### C. Investigators for Assigned Counsel, Retained Counsel, and *Pro Se* Defendants

1. **Required Contents:** Attorneys must include the charge and brief investigative plan when requesting investigator funding, such as:
  - a. The number of civilian and police witnesses to be interviewed;
  - b. Other investigative tasks to be performed;
  - c. The amount of time reasonably anticipated to be necessary to accomplish these tasks.
2. **Standard Hours:** The number of hours authorized will depend on the facts and circumstances of the case. DPD will authorize up to 75 hours per class A felony request and up to 50 hours for all other requests.
3. **Investigator Requirements:** For investigation conducted in the State of Washington, attorneys may seek authorization only for investigators licensed pursuant to RCW 18.165.030 and must provide DPD with a copy of the investigator's license.
4. **DPD Staff Investigators:** DPD will not appoint investigators employed by DPD to assist in any case in which the client is not represented by a DPD staff attorney, including *Pro Se* litigants or appointed counsel.

### D. Mitigation Specialists for Assigned Counsel, Retained Counsel and *Pro Se* Defendants

1. **Required Content:** Attorneys must demonstrate case and client-specific facts justifying the need for mitigation work and whether the work product will be used for a motion for release, negotiation, or a sentencing presentation. The following factors should be addressed in the request:
  - a. Complexity of the social or mental history of the particular client that is outside the typical economic, familial, or social barriers faced by those we represent;
  - b. Assertion that the State has expressed a desire and willingness to consider a formal mitigation packet in negotiations regarding reduction of charges which will often relate to the nature of the charge such as homicides, sex offenses, and serious assaults involving youthful defendants;

- c. If the focus of the work will be interviewing witnesses for the preparation of a psychosocial history as part of a larger mitigation packet; and
  - d. Demonstration in the declaration of why the proposed work cannot be completed by an investigator or attorney and requires particular expertise in assessing and interpreting psychosocial histories that would be presented through persuasive mitigation reports to be used in negotiations or sentencing/disposition hearings.
- 2. DPD Staff Mitigation Specialists:** Requests by DPD staff attorneys for privately retained mitigation specialists will not be approved as attorneys must utilize the work of DPD staff Mitigation Specialists.

Appendix A: DPD Expert Fee Guidelines

**DPD Expert Fee Guidelines**

Updated 04/01/2021

	Expert Services	Required Credentials	Financial Guidelines	Hourly Guidelines	Testimony Guidelines
Crime Scene / Evidence Analysis	DNA	B.S. in Biology, Molecular Biology, Genetics, Biochemistry, Zoology, or related fields	\$250/hr. max.	20 hrs.	
	Fingerprints	Specialized training in fingerprint ID	\$300/hr. max.	8 hrs.	
	Crime Scene / Trace Evidence / Firearms / Ballistics	B.S./B.A. in Chemistry, Biology, Microbiology, Forensic Science, or other related fields	\$275/hr. max.		
	Documents	Specialized training in document examination	\$200/hr. max.		
	Arson	Specialized training in fire investigation <u>AND</u> certification from the National Association of Fire Investigators or Fire and Arson Training from the National Fire Academy	\$200/hr. max.		
	Accident Reconstruction	B.A. in Engineering and/or specialized training in accident reconstruction	\$275/hr. max.	30 hrs.	
	Eyewitness / Memory / Perception	Ph.D. in Psychology or other related fields <u>AND</u> significant research in the fields of memory, perception, or eyewitness identification	\$250/hr. max.		
	Accounting	B.A. in Accounting or related field <u>AND</u> CPA	\$250/hr. max.		
Depositions / Transcription	Transcription	Authorized transcriptionist pursuant to General Rule 35	\$4.50/page max.		
	Depositions	For testimony preservation or witness interview refusal	\$125/hr. max.		
Interpretation & Translation	Interpretation	Washington State Court Certified interpreters	\$80/hr. max, Half-day rate is \$226		
	Document Translation	For translation of written documents	16.5 cents per word		

Guidelines may be exceed if the Declaration in Support of Expert Services demonstrates that the additional expense is justified by the unique facts and circumstances of the case.

Appendix A: DPD Expert Fee Guidelines

**DPD Expert Fee Guidelines**  
Updated 04/01/2021

	Expert Services	Required Credentials	Financial Guidelines	Hourly Guidelines	Testimony Guidelines
Digital / Computer	Audio/Video Enhancement	Significant training and experience in forensic audio/video enhancement	\$200/hr. max.		
	Cell Phone Tower	Significant training and experience in forensic cell phone/cell tower analysis	\$225/hr. max.		
	Computer Analysis	B.S. in Computer Science or other related fields <u>OR</u> significant training and experience in forensic computer analysis	\$175/hr. max.		
Mental Evaluation	Neuropsychological	Ph.D., Psy.D., or Ed.D. in Psychology / Neuropsychology <u>AND</u> member of the International Neurological Society or National Academy of Neuropsychology	\$325/hr. max. Up to \$350/hr. for specialized expertise (e.g. FASD, bilingual, cross-cultural, etc.)	25 hrs.	Not to exceed 30% of hourly services rate
	Psychiatric	Board-certified psychiatrist	\$375/hr. max. Up to \$425/hr. for specialized expertise (e.g. FASD, bilingual, cross-cultural, etc.)	25 hrs.	Not to exceed 30% of hourly services rate
	Psychological	Ph.D., Psy.D., or Ed.D. in Psychological <u>OR</u> Board-certified Nurse Practitioner with Ph.D.	\$300/hr. max. Up to \$325/hr. for specialized expertise (e.g. FASD, bilingual, cross-cultural, etc.)	25 hrs.	Not to exceed 30% of hourly services rate
Sexual Deviancy / Substance Abuse Evaluation	Sexual Deviancy Evaluation (Master's degree)	M.A. in Psychology, Counseling, or Social Work <u>AND</u> Certified Sex Offender Treatment Provider	\$200/hr. max. <u>OR</u> up to \$3,000 flat fee	16 hrs. (16 hrs. x \$200 = \$3,200 max hourly fee)	
	Sexual Deviancy Evaluation (Ph.D.)	Psychiatrist/Psychologist <u>AND</u> Certified Sex Offender Treatment Provider	\$250/hr. max. <u>OR</u> up to \$3,850 flat fee	16 hrs. (16 hrs. x \$250 = \$4,000 max hourly fee)	
	Sexual Deviancy Evaluation Polygraph	Nationally-certified polygraph examiner or equivalent education	Up to \$350 flat fee		
	Substance Abuse Assessment	Washington State Chemical Dependency Professional Certification	\$150/hr. max. <u>OR</u> up to \$400 flat fee		

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Appendix A: DPD Expert Fee Guidelines

**DPD Expert Fee Guidelines**  
Updated 04/01/2021

	Expert Services	Required Credentials	Financial Guidelines	Hourly Guidelines	Testimony Guidelines
<b>Medical / Toxicology</b>	Medical or Dental Consultant	M.D., O.D., D.D.S., or D.M.D.	\$425/hr. max.		
	Pathologist	M.D. <u>AND</u> Board-certified forensic pathologist or equivalent certification	\$450/hr. max.		
	Pharmacology	Ph.D. in Pharmacology <u>OR</u> M.D. with training or expertise in the field	\$375/hr. max.		
	Toxicology	B.S./B.A. in Chemistry, Toxicology, or Pharmaceutical Science or other related fields	Non-DUI: \$350/hr. max.	Non-DUI: 10 hrs.	
			DUI: \$250/hr. max.	DUI: 7 hrs.	DUI: 3 hrs.
	Toxicology - DUI Breath Testing	Specialized training in relevant breath test machine and effects of alcohol	Up to \$1,600 flat fee		
\$250/hr. max for pretrial workup			4 hrs.	\$250/hr. 3 hrs.	
\$300/hr. max for pretrial workup - Ph.D.			4 hrs.	\$300/hr. 3 hrs.	
<b>Case Support</b>	Admin. Support (authorization limited to complex cases/ cases with voluminous discovery)	Experience in document and data review and file management, routine document or data review (video/audio recordings), document redaction, and routine data management	\$20/hr. max.	Max. 50 hrs. per request	
	Paralegal (limited to complex cases / cases with voluminous discovery)	Experience in data management and expertise in complex cases; exercises discretion in case prep. Paralegal certification advised but not required	\$40/hr. max.	Max. 50 hrs. per request	
	Investigation	Investigator's License pursuant to RCW 18.165.030	\$40/hr. max.	Non-Class A: max. 50 hrs. per request Class A: max. 75 hrs. per request	\$40/hr.
	Mitigation Specialist	Degree in Social Work or other related fields <u>AND/OR</u> significant training, education, and experience in forensic psychology, social work, or other related fields	\$100/hr. max. \$40/hr. max. for records collection, doc/disc review, travel, locating witnesses	Max. 45 hrs. per request / 90 hrs. per case	

Guidelines may be exceed if the Declaration in Support of Expert Services demonstrates that the additional expense is justified by the unique facts and circumstances of the case.