

Policy Description

BCOPD recognizes that in certain cases, the services of investigators are necessary for the effective representation of persons to whom appointed counsel is afforded and mandated by law. In order to preserve this funding however, BCOPD must ensure that only cases actually requiring the use of an investigator receive such funding, and also that the limited available financial resources available for investigative services are utilized in a responsible and appropriate manner.

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*. This includes cases in Superior Court (including the Juvenile Division) and District Court.

Guidelines

1. The proposed investigation must be conducted **at the direction of the attorney of record**. The practice of requesting an investigator simply because the attorney of record feels the need for some assistance, and then allowing the investigator to conduct the investigation more or less at his or her discretion is not an acceptable one.
2. Investigators may not be retained for the sole (or virtually sole) purpose of speaking with the client/defendant to determine whether there is a need for investigation. The duty to make such an inquiry is on the attorney of record.
3. The attorney of record shall not provide discovery directly to investigators prior to requesting and receiving funding authorization for investigative services on the case, if it is done with the purpose of soliciting the investigator's opinion about the necessity of investigative services on the case.
4. Investigators may not be utilized for functions that are properly the duty of the attorney of record. Such functions include: 1) visiting with incarcerated clients to advise them of developments in their cases; 2) reviewing legal document, including search

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warrants, for sufficiency or defensibility; and 3) administrative support functions that would ordinarily be performed by the attorney of record's office staff. For cases where the attorney of record is being paid on an hourly basis however, at his/her discretion investigators may be utilized for routinely contacting and advising incarcerated clients and for administrative support functions to prepare for trial or to manage evidence, if in doing so, the attorney of record is correspondingly reducing his/her involvement in, and billing for, the same functions.

5. Only investigators who have signed contracts with Benton County to provide indigent defense investigative work, can be assigned to cases unless all such investigators have a conflict of interest in a given case. If all such available investigators have a conflict of interest in a given case, then the Public Defense Manager or designee will make the appropriate arrangements to locate and procure the services of an alternate investigator or investigative services firm.

Procedures

1. Once the attorney of record in any given case determines that the need for investigative services exists, a request shall be forwarded to the Public Defense Manager requesting funding for such services.

2. Requests shall be submitted in the form of an email addressed to: opdauthorizations@co.benton.wa.us. If an attorney has concerns about preserving confidentiality of information that needs to be provided in the context of a request, the email may be supplemented by a telephone call or personal meeting with the Public Defense Manager.

3. In every request, the attorney of record may include a request for a particular investigator. In requests for investigation funding in any case where a Class A Felony has been charged, the attorney of record shall include a request for a particular investigator. Particular investigator requests will always be honored in Class A Felony cases. Every effort will be made to honor particular investigator requests in all other cases, but sometimes the need to over-ride the request and assign a different investigator than requested, will be present.

4. The request shall contain the following information:

a) The first and last name and cause number of the case in question

b) The charges

c) A brief description of the facts

d) A justification for why investigative services are necessary. This justification cannot be generic (ie "need investigative to talk to witnesses") but must be, instead,

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detailed enough to demonstrate that the attorney has reviewed the case, has made a reasonable determination that investigative services are necessary, and has devised an investigative plan

- e) The anticipated scope of work
- f) A broken-down estimate of how much the scope of work will cost

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. If an urgent need for funding arises, then the request should be marked “urgent” which will cause it to be automatically detected and moved forward in the queue. Attorneys can expect “urgent” requests to be reviewed within 48 business hours (if properly marked).

7. Decisions about investigator funding will be made, at the discretion of the Public Defense Manager or designee, based on CrR 3.1(f)(2) and CrRLJ(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.**

Funding Limits

1. Once a particular request has been granted, then an Initial Funding Limit will be assigned. This limit is not to be exceeded without an approval for additional funding, unless a *bona fide emergency* situation where investigative services are needed urgently and cannot be approved within the approval timeframe guidelines contained herein. If services are provided in such an emergency situation, then a Post Services Authorization request shall be made as soon as possible (see OP 5.4, Post-Services Authorization Requests) for additional information.

2. The attorney of record and the assigned investigator in any given case are jointly responsible for planning, and in some cases triaging, investigative strategies and resources in light of the Funding Guidelines listed herein.

3. As an investigator assigned to a case starts to approach the Initial Funding Limit, then he or she is responsible for conferring with the attorney of record about any further

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investigation necessary that may bring required funding above the Initial Funding Limit. Requests for Additional Funding shall be made in the same manner as with original requests for investigator funding. However, these requests shall contain a short and concise description of what work has been done so far, how much of the approved funding has been depleted, how much additional funding is estimated to be necessary (mindful of Funding Guidelines) and what these additional requested funds are to be used for.

Funding Guidelines

Except for under extraordinary circumstances, the following funding guidelines will be observed:

| Category | Initial Funding Limit | Overall Funding Ceiling | Comments |
|--|-----------------------|-------------------------|--|
| Possession Offenses | \$250.00 | \$250.00 | Must articulate need for investigation in individual case |
| Serious Drug Offenses (distribution, manufacturing) | \$250.00 | \$750.00 | |
| Property Offenses (Theft, Mal Misch, simple Fraud) | \$350.00 | \$350.00 | |
| Complex/serious Property Offenses (complex Fraud, Burglary, etc) | \$500.00 | \$750.00 | |
| Class C Person Crime | \$500.00 | \$750.00 | |
| Class A/B Person Crime | \$500.00 | \$1,500.00 | |
| Sex Crimes | \$750.00 | \$1,750.00 | |
| Persistent Offender Case | \$750.00 | \$2,500.00 | Ceiling is a "soft ceiling" ie can exceed with some articulated justification for additional funding |
| Homicide | \$1,000.00 | | |
| Attempted/Soliciting Homicide | \$750.00 | | |

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