

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

WASHINGTON, D.C. 20001

**GUIDELINES FOR INVESTIGATORS
IN THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Defense investigation is an essential aspect of competent representation. It is through investigation that the attorney may learn necessary and relevant information about the case and preserve the client's rights. It is hoped that the requirements set forth in these Guidelines will provide the investigator with practical tools and information to competently carry out his or her duties. As such, investigators who seek payment under the District of Columbia Criminal Justice Act (CJA), D.C. Code, Sec. 11-2605 (Supp. 2011), or the Counsel for Child Abuse and Neglect (CCAN) Program, D.C. Code, Sec. 16-2326.01(g) and (h) (Supp. 2011), must comply with the following guidelines.

I. CJA/CCAN Investigator Panels

Every individual intending to seek CJA or CCAN payment for investigative services must be certified for placement on the CJA/CCAN Investigator Panel by the Chief Judge of D.C. Superior Court. An individual's certification for placement on the Investigator Panel is not a matter of right, but will be determined with due regard to the individual's experience and qualifications, the recommendations of the CJA/CCAN Investigator Advisory Committee (Investigator Advisory Committee), and the needs of the court. Certification of an individual as a CJA/CCAN investigator shall remain within the sole discretion of the Chief Judge. The Investigator Advisory Committee, whose members are appointed by the Chief Judge, will review and otherwise respond to non-disciplinary inquiries related to CJA and/or CCAN investigators. All matters related to disciplinary issues will be referred to the CJA Panel Implementation Committee's Subcommittee on Investigators, which is comprised of judges appointed by the Chief Judge.

II. Application Process and General Requirements

All interested candidates must file a completed application with the Defender Services Branch in the D.C. Superior Court Budget and Finance Division which is located at 616 H Street NW (Gallery Place) on the 6th Floor. The Investigator Advisory Committee will receive and evaluate applications on a rolling basis, during the time between the periodic reestablishment of the CJA/CCAN Investigator Panel. Any investigator who filed an application to be considered for the CJA/CCAN Investigator Panel but was **not** selected, must wait at least eighteen (18) months from the date of next Appointment Order or Establishment Order.

Each applicant must obtain and include with the application a certified printout from the D.C. Metropolitan Police Department showing the results of a local criminal background check. Additionally, all applicants must consent to a Federal Bureau of Investigation (FBI) fingerprint criminal background check. Applicants will be required to use the FBI form FD-258 to make a request for a background check and request that the results be returned directly to the D.C. Public Defender Service, 633 Indiana Ave, N.W., Washington D.C. 20004, Attn: Claire Roth, Special Counsel. Additionally, applicants are directed to the FBI website at <http://www.fbi.gov/hq/cjisd/fprequest.htm> for more details. Costs associated with background checks will be assumed by the applicant.

In accordance with the Court's needs for investigators, all candidates whose paperwork is complete will be vetted by the Investigator Advisory Committee, and those found to be most qualified will be notified by the Defender Services Branch in the D.C. Superior Court Budget and Finance Division that they may enroll in the Investigator Certification Class offered by the Public Defender Service (PDS). Eligible candidates must successfully complete the Investigator Certification Course provided by PDS, the details of which are set forth in Section III of the Guidelines. Applicants who have failed to comply with the aforementioned requirements will not be permitted to enroll in the Investigator Certification Class. Upon successful completion of the class, the Investigator Advisory Committee will provide the Chief Judge with a list of candidates recommended for certification by the Chief Judge for placement on the CJA/CCAN Investigator Panel.

In addition to any other qualifications required by law, an applicant must be at least eighteen years of age. Each applicant must provide proof of a high school diploma, its equivalent, or a demonstrated experience/competence as an investigator. Persons who are already members of the investigator panel should include any relevant continuing education training courses taken since becoming an investigator. The applicants should furnish references for all relevant work and/or academic accomplishments. All applicants should be committed to being assigned at least 4 cases per year, and pursuing continuing educational opportunities. Applicants must comply with all applicable Administrative Orders, plans and guidelines regarding service and compensation. Once an application has been filed/received, no additional information will be provided. All inquiries should be submitted in writing to the Investigator Advisory Committee at IAC@dcsc.gov. Responses to inquiries will be limited to the application process, credential issuance and expiration, and the re-establishment process.

III. Investigator Certification and Training Requirements

A. Applicants

Each eligible applicant must successfully complete the Investigator Certification Course provided by PDS. The course will be free of charge and training materials will be provided at cost. Dates and times for the course will be posted at PDS and the Defender Services Branch of the Superior Court's Budget and Finance Division.

PDS will offer investigator training on an as needed basis to all qualified first time applicants, but will offer training to new applicants at least one time in the summer of each year, and will train up to 30 applicants at any given time. PDS will have the sole discretion to determine the nature and length of its investigative training course. However, PDS shall collaborate with members of the Superior Court Trial Lawyers' Association (SCTLA) and the District of Columbia Association of Criminal Defense Lawyers (DCACDL) to determine the effectiveness of its course materials.

PDS's training will consist of at least 20 hours of course work with additional homework, field exercises, and exams. At least one two-hour session shall be devoted to ethics for investigators working in the field. PDS shall evaluate each individual's performance in the training course and forward its evaluations to the Investigator Advisory Committee within two weeks of completing the course.

B. Continued Training for Certified Investigators

PDS will provide annual training to certified CJA/CCAN investigators, such hours of training as may be determined appropriate by PDS to maintain the investigator's certification. However, each certified investigator will be required to complete at minimum 9 hours of investigator training each year commencing after the first year of placement on the Investigator Panel. Dates and times for these courses will be posted on PDS's web site at <http://www.pdsdc.org/> and <https://www.cjadc.org/>. PDS will inform the Investigator Advisory Committee of which investigators have and have not completed the annual training requirements. An investigator who fails to keep current with his or her investigator training will be required to seek recertification in accordance with Sections II and III of these Guidelines.

C. Reconstitution of CJA/CCAN Investigator Panel

The Court will re-establish the CJA/CCAN Investigator Panel every four (4) years, beginning October 1, 2010, regardless of the date an investigator was placed on the panel. All investigators placed on the CJA/CCAN Investigator Panel will need to reapply to the panel every four years, and will be required to follow the application process and general requirements set forth in Section II and Section IV of these Guidelines. Prior disciplinary actions taken against the investigator will be considered during this process. However, existing panel investigators will not be required to repeat the 20 hour Investigator Certification Course. Applications must be submitted to the Defender Services Branch in the D.C. Superior Court Budget and Finance Division no later than September 15th in the year of reconstitution. As set forth in Section IV of these Guidelines, the requirement of a renewed FBI background check will be satisfied as part of the renewal process for court issued identification credentials. Please note that any request for a criminal background check must be submitted to the FBI by July 15th in the year of panel reconstitution to ensure a timely response.

IV. Certified Investigator Identification Credentials

The Court will create and administer identification credentials for qualified CJA/CCAN Panel investigators. Court-issued identification credentials shall expire every two years on September 30th, beginning September 30, 2012, regardless of the date an investigator was placed on the panel. Court-issued identification credentials must be renewed within thirty (30) days of the credentials' expiration but no later than October 1st in the year of renewal. Certified investigators must submit a Federal Bureau of Investigation (FBI) fingerprint background check every two (2) years as a condition for reissuance of investigator identification credentials. Candidates who are disqualified due to a criminal background investigation will not be entitled to renewal of CJA/CCAN Investigator Identification credentials. Costs associated with the fingerprint check will be assumed by the investigator.

Certified investigators requesting an FBI background check are required to use the FBI form FD-258, and to request that the results be returned directly to the D.C. Public Defender Service, 633 Indiana Ave., N.W., Washington, D.C. 20004, and Attn: Claire Roth, Special Counsel. Please note that the results of an FBI background check may take up to ten (10) weeks, and it is recommended that submission be made by July 15th in the year of renewal to ensure a timely response. **If the court issued identification credentials expire before receipt of the FBI background check results, it will result in automatic removal from the Investigator Panel.** No exception will be made unless the delay is due to the FBI's failure to return a background check before October 1st in the year of renewal, and the panel investigator presents documentary proof that the request for an FBI background check was made no later than July 15th in the renewal year. Documented proof may consist of an electronic submission receipt, or certified mail submission receipt.

V. Removal from CJA/CCAN Investigator Panel

Any person with cause to believe that a certified investigator should be removed from the CJA/CCAN Investigator Panel, or disciplined in any other manner, must forward such concerns and the reasons therefore, in writing, to the CJA Panel Implementation Committee's Subcommittee on Investigators for review. The Subcommittee on Investigators will provide an investigator with an opportunity for a hearing before the Subcommittee should the circumstances merit it before suspension or removal from the panel.

In addition to any other penalty provided by law, material misstatement(s) or omission(s) on an application shall result in nonpayment for any CJA or CCAN investigative services rendered by the investigator as well as disqualification from the CJA/CCAN Investigator Panel. Applications must be supplemented or revised if there are material changes in the information thereon. **An investigator who is arrested and/or charged with a criminal offense in any jurisdiction must provide notice to the Subcommittee on Investigators within five (5) business days of their arrest or charge.** The notice should be sent in writing to the Subcommittee on Investigators, 616 H Street,

N.W., Suite 600, Washington, D.C. 20001. In addition, the investigator must immediately provide notice of the arrest and/or charge of a criminal offense to any attorney who has retained, or seeks to retain, the investigator's service for a pending case. If the arrest or criminal charge leads to a conviction, or constitutes conduct unbecoming of an investigator, the investigator will be removed from the investigator panel. Failure to provide timely notice of material changes in the application, including an arrest or criminal offense charge, may result in the Court seeking repayment of funds received, refusing payment for services rendered, denying certification and/or removing the investigator from the CJA/CCAN Investigator Panel. Other grounds for removal shall include, but are not limited to improper use of the court-issued CJA investigator identification credentials and/or misrepresentation of investigator credentials; and if such grounds are established to the satisfaction of the Subcommittee on Investigators, the investigator will be subject to disciplinary action, such disciplinary action to include suspension or removal of the investigator's certification as a CJA/CCAN panel member, and confiscation of the court-issued identification credentials.

VI. Payment Procedures

A. Documents Required for Payment

An investigator seeking payment must complete the Electronic Appointment and Voucher for Expert Services form completely. This electronic document consists of four (4) pages. The pages are identified as follows:

Electronic Voucher Page #1 - The "Appointment and Voucher for Expert Services Main" page contains all the pre-printed information pertaining to the case your services are solicited for and are directly connected to the legal voucher for the appointed counsel. The appointed counsel is required to generate this voucher for all expert (e.g., Investigators; Psychiatrist, etc.) service providers prior to contacting the expert to perform services. Upon completion of the required services, the investigator should enter all services rendered as they relate to each case separately. The investigator is required to verify all data entered for correctness and accuracy. Once the voucher data has been reviewed, the investigator will submit the voucher to the appointed counsel for review and certification of the services rendered. Appointed counsel must ensure that all the services are entered accurately before sending the completed expert voucher to the presiding judge for review and approval.

Electronic Voucher Page #2 - The "Explanation of Claims and Services" page contains general information and hyperlinks to pages 3 and 4."

Electronic Voucher Page #3 - The "Billing" page has space for recording interviews, travel time, and other services. Dates, times, and locations must be specified.

Electronic Voucher Page #4 - The "Itemized Expense" page relates to mileage and itemized expenses incurred in the course of performing services. Itemized Expense must be recorded in the "Itemized Billing Area" page only. The tenth of an hour format is utilized for

all billing accounting entries. There is a “Pop-up” window available to display the conversion format; it is located at the top of the voucher pages.

The entire voucher claim is subject to both pre-payment examination and post-payment audits on an “as required” basis by the Budget & Finance Division. All electronic vouchers are retained within the web vouchers system and are available for viewing in a read only format after payment has been made. All financial records are maintained for a six (6) year record retention period and are subject to later audit examinations.

B. Prior Approval

Prior approval for investigative services may be obtained from the judge to whom the case is assigned or who has retained jurisdiction. If no judge has been assigned to the case, requests for prior approval should be submitted to the Judge-in-Chambers. Any request to authorize investigative services exceeding the amount allowed without prior authorization in Administrative Order 09-06, or its successor, will not be approved unless counsel’s written explanation justifying more hours is attached to the electronic voucher preapproval request.

Expenditures for services obtained without prior approval are not favored. When counsel seeks ratification of expenditures for which there was no prior authorization, the request for payment must be accompanied by a full explanation by counsel. Counsel must state (1) that the defendant has been certified eligible for court appointed counsel, (2) that the expenditures were necessary for an adequate defense, and (3) the reason why prior authorization could not have been obtained. This explanation should be provided to the presiding judge in on the electronic voucher in the “over-the-estimated amount letter” area. A certification of the circumstances requiring immediate action to ensure adequate representation may be substituted for item (3). A request for ratification of expenditures for which there was no prior approval shall be submitted to the judge to whom the case is assigned for ex parte review. If no judge was assigned to the case, the request should be submitted to the Judge-in-Chambers.

C. General Considerations

Compensation for investigative services may not exceed the maximum hourly rate established by D.C. Code §11-2605, as such statute may from time to time be amended. Compensation will not be paid for services performed earlier than the first conference between the investigator and counsel concerning the case. It is counsel’s responsibility to ensure that reimbursement is sought only for necessary services and expenses; reimbursement for unnecessary services or expenses will not be approved. Payment for investigative services with prior authorization may not exceed the limits identified in Administrative Order 09-06, or a successor order, unless counsel provides written explanation why the excess payment is necessary to provide fair compensation for services of an unusual character or duration and such excess payment is approved by the presiding judge in the case.

No investigator shall use any identification or card which includes the name “D.C. Superior Court” or any variation thereof, nor shall any investigator state or imply that he or she has been appointed by the Court to investigate cases. Violation of this prohibition may result in forfeiture of compensation in any case in which the violation occurs, suspension or removal of the investigator’s certification as a CJA/CCAN panel investigator, and/or confiscation of the court-issued identification credentials. Investigators are independent contractors and not employees of DC Courts, and at no time should they misrepresent themselves as such.

D. Filing the Voucher for Payment

In most instances, vouchers for payment will be filed after all investigative services have been completed. If a case is lengthy or there are unusual circumstances, an interim claim may be filed and supplemental claims filed later. Any supplemental claim must indicate the amounts that have been approved for payment from any previous submissions.

Any voucher submitted that exceeds the amount that was previously approved must be accompanied by a written request by counsel setting forth justification for the additional services. If such a request is not provided the excess compensation will not be paid.

Each voucher submitted for payment must include an assertion by the attorney who engaged the services of the investigator that “services as stated have been satisfactorily rendered.” That assertion will be considered as an acknowledgement by counsel that the services were performed at her/his direction and that the services were in fact provided as claimed.

All vouchers must be electronically filed through the Web Voucher System (WVS) at <https://www.dccourts.gov/secure/wvs/index.do>. Vague or questionable claims will be disallowed.

E. Guidelines for Specific Items

1. Interviews

Investigator “interviews” with the defendant’s or respondent’s attorney and with the defendant or respondent will be evaluated for excessive duplication of counsel’s primary responsibilities in a case.

2. Travel

Investigators will not be reimbursed for travel from home to office or office to home, from home or office to the courthouse, police headquarters, U.S. Attorney’s Office, or defense attorney’s office or the reverse. If an investigator’s home or office is located in the District of Columbia, travel to such locations as the crime scene, witness’s home, etc., will be approved. If an investigator’s home or office is outside the District of Columbia, however, reimbursement for such travel will be allowed only at the time and distance from that home

or office address or the D.C. Courthouse, whichever is less. To determine proper compensation for travel, the investigator must list a street address and city on the voucher; a post office box number is not sufficient. If the street address and city are not provided, travel time and expense will not be reimbursed.

The most efficient means of transportation must be used. For example, one hour travel by metro bus will not be approved at the allowable hourly rate plus fare if the trip could have been made by taxicab in fifteen minutes for a total expenditure less than that incurred by traveling by bus. Travel for unreasonable distances for routine matters will not be approved. For example, film purchasing and developing and any other similar services should be accomplished at a location close to the investigator's home or office to avoid excessive travel time.

Investigators must also organize their travel efficiently and whenever possible service several cases at the same time. Travel and/or document retrieval or review on more than one case must be apportioned. For example, one trip to police headquarters should allow pick-up or records in several cases and should be apportioned among those cases on each voucher for reimbursement.

Travel addresses listed on the billing page of any electronic voucher must include a brief identification of their relation to the case, e.g., "witness's home," "crime scene," "defendant's home," etc. Complete addresses for such familiar locations as the "Courthouse," "Police headquarters," "D.C. Jail," etc., need not be specified.

There will be no reimbursement for any travel outside of the Washington Metropolitan area unless prior approval has been obtained from the presiding judge on the case.

3. Other Services

Investigators are not permitted to charge for legal research of "memoranda of law" of any kind.

Time spent waiting for an attorney or for court proceedings will not be reimbursed. If an investigator must testify, a witness fee shall be the exclusive means of compensation, including waiting time.¹

An investigator may not be reimbursed for "assisting" an attorney at trial (e.g., notetaking) or "hand-holding" witnesses at trial except as may be exceptionally necessary for the orderly conduct of the trial. In no event will such services be compensated without the express prior approval of the trial judge. Time necessarily spent waiting for a witness or

¹ Witness fee payments and voucher payments will be periodically cross-referenced in post-payment audits to determine whether compensation has been received from both sources for the same appearance. Double payments will require re-payment and those knowingly receiving double payment will be denied future compensation and be removed from the Investigator Panel.

defendant to be brought up at the detention facility shall be compensable, as shall a reasonable period of time spent waiting for a witness elsewhere.

Service of subpoenas will be compensated only at the investigator hourly rate and should always be billed separately on a process server voucher. Flat fees for service of subpoenas will not be paid.

4. Expenses

Parking expenses in the vicinity of the courthouse, the investigator's office, or an attorney's office will not be reimbursed. Claims for other parking expenses (both receipted and at parking meters) must specify the place where the expense was incurred.

Local telephone calls will not be reimbursed.

Ordinary postage expenses will not be reimbursed.

Xerox costs will not be reimbursed in excess of 25 cents per page.

Office overhead expenses or other normal costs of doing business will not be reimbursed.

F. The Audit and Payment Process

Electronic vouchers for investigative services must be filed online through the DC Courts' Web Voucher System. All completed vouchers will be sent to the appointed counsel for certification; upon certifying the appointed counsel will send the expert voucher to the presiding judge for review. When a completed voucher is presented for payment, pre-audits are conducted within the programming software to check for mathematical accuracy, obvious overlap of time, claims which are not allowable and any unusual items. It is the investigator's responsibility to ensure all data is correct on the voucher prior to sending the voucher to the appointed counsel for certification of services rendered. At the time the investigator selects "Submit to Court" the online electronic voucher will move directly to the appointed counsel for review and certification of services rendered. The appointed counsel will then send the voucher to the presiding judge for review and approval. Vouchers cannot be paid without judicial approval. After the presiding judge reviews the voucher and approves payment, the next step in the electronic workflow process will move the approved voucher to the Defender Services Branch's (DSB). Only vouchers that do not exceed the limit set in Administrative Order 09-06, or its successor, will follow this workflow. In all cases where the final amount for payment exceeds that limit, those vouchers will also require approval from the Chief Judge. All approved vouchers received by the DSB are prepared weekly for batching and subsequently scheduled for the next available payroll cycle. Actual payment is made by the General Services Administration (GSA) through its Bulkload Payment System. The Web Voucher System (WVS) therefore cannot guarantee payment on a particular date. Investigator vouchers are subject to post-payment audits. Such audits are intended to detect

time overlap between cases or any items not discovered during pre-payment audits. Questions regarding the processing of CJA and CCAN payments should be directed to the Defender Services Branch, at 202-879-4210.

At the end of the calendar year, each participating investigator will receive a Form 1099 from the General Services Administration summarizing payments received during the calendar year and information submitted to the Internal Revenue Service in accordance with IRS regulations. Investigators should keep the Defender Services Branch apprised of any change in record mailing address or mailing receipt address (e.g., P.O. Box) immediately following any changes.

VII. Effective Date

These CJA/CCAN Investigator Guidelines were adopted by Administrative Order 12-17 and will take effect on November 29, 2012.