

**CLARK COUNTY INDIGENT DEFENSE
POLICY AND PROCEDURE**

Number:	2017-2
Title:	Use of Experts/Requests for Preauthorization of Expert Services
Effective Date:	June 1, 2017

1. APPLICABLE COURT RULES, STANDARDS, AND LAWS

Washington State *Rules of Professional Conduct*

Washington State Supreme Court *Standards for Indigent Defense*

State and Local Court Rules CrR 3.1, JuCR 9.3 and CrRLJ 3.1

Washington State Bar Association *Performance Guidelines for Criminal Defense Representation*

RCW Chapter 10.101.030

2. PURPOSE

Clark County Indigent Defense (CCID) recognizes the services of an expert are necessary in certain cases in order to provide effective assistance of counsel. CCID is entrusted with limited financial resources and must make certain those resources are utilized in a cost-effective manner in the selection and compensation of experts. For purposes of this policy an expert is an individual with specialized training and knowledge of a forensic or scientific discipline. This policy does not apply to investigators.

This policy and procedure applies to all requests for funding for and payment of expert services. This policy must be read in conjunction with the CCID policy on “Non-Attorney Compensation and Reimbursement.”

This policy should in no way be construed to instruct or encourage any attorney to breach his or her ethical obligations.

IMPORTANT NOTE: CCID will only pay for expert services that have been preauthorized pursuant to this policy and procedure. Compensation for experts retained by attorneys on any case where preauthorization has not been granted will be a matter to be resolved between the attorney and expert in question. If a service invoice exceeds the amount preauthorized, CCID will only pay the amount preauthorized. The only exception allowed is “in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization”, as limited under the above court rules.

3. GUIDELINES: USE OF EXPERTS

- 3.1 Use of an expert should be considered by the attorney for one or more of the following three purposes: to assist in the preparation of the Defense case; to assist the attorney in understanding the Prosecution's case; or to rebut the Prosecution's case.
- 3.2 An expert should be considered by the attorney as a resource relied upon when there is no other means to effectively represent the client.
- 3.3 Oversight of a retained expert is the responsibility of the attorney. The attorney must have a clear agreement with the expert about what will be accomplished with the funds preauthorized for the expert's services.
- 3.4 The attorney shall limit the amount of discovery an expert reviews to the discovery that is pertinent to the task for which the expert is retained. An expert should not be given all of the discovery in a case, as a matter of course.
- 3.5 Whenever there is any doubt as to the subsequent need of an expert to perform a full examination or render a full opinion on a matter, attorneys should retain the services of an expert in a limited, consulting, capacity before deciding whether such a full examination or full opinion is actually necessary.
- 3.6 An expert may not be retained, at county expense, for the sole (or virtually sole) purpose of re-testing evidence the prosecution has already tested. A request for preauthorization for funding for expert services may include a request for re-testing if there is an articulated basis to believe the prosecution's testing is unreliable or incomplete.
- 3.7 An expert may not be retained merely because the Prosecution intends to call an expert witness.
- 3.8 Absent exceptional circumstances, an expert may not be retained solely for purposes of mitigation.
- 3.9 Absent exceptional circumstances, an expert may not be retained for the purpose of administering a polygraph, except for SSOSA purposes.
- 3.10 Absent exceptional circumstances, multiple experts may not be retained on a single case.
- 3.11 While CCID understands that an expert witness must be made available to the prosecution for purposes of an interview. This time should be limited to one hour. If more than one hour is necessary, CCID requires prior, express approval.
- 3.12 Stipulation or court order for telephonic or electronic (Skype) testimony of experts at state interviews, hearings and trials shall be sought whenever possible and evidence of

denial of such shall be submitted before funding for in-person testimony is authorized.

- 3.13 Travel time and expenses for experts, when necessary, shall be separately requested for preauthorization.

4. PROCEDURES: REQUESTS FOR PREAUTHORIZATION

- 4.1 Once the attorney determines the need for an expert exists, a Request for preauthorization of funds for expert services shall be filed with the Clerk/Court.
- 4.2 If the expert the attorney requests has not previously worked with CCID, it is the preference of CCID that the attorney provide CCID a CV and fee schedule in advance of filing the request for preauthorization of funds.
- 4.3 Out-of-area experts will not be approved if there is a comparable local expert who can provide comparable services. When out-of-area experts are requested, experts from outside of the West Coast states will not be approved if there is a comparable expert within the West Coast area who can provide comparable services. Exceptions may be granted upon articulation of the need for a particular expertise or to address particular issues that necessitates a particular expert. However, the fact that an expert is recognized in their field, is better than other experts, or is easier to work with will not be sufficient to grant such an exception.
- 4.4 Once the attorney has filed a Request for preauthorization of funding with the Clerk/Court, a copy of that Request, that shows it has been filed, shall be emailed to cnty.indigentdefense@clark.wa.gov
- 4.5 Absent prior approval, hard copy requests will not be accepted by CCID.
- 4.6 Requests for authorization that have not been filed with the Clerk/Court will not be accepted.
- 4.7 If a request is subject to a court order sealing requests and authorizations, please state that fact within the subject line of the email to CCID and make sure the Request includes "Subject to Court Order Sealing" in the caption.
- 4.8 The request shall contain the following information:
- a. Whether counsel is court-appointed or the Court has determined that client is indigent despite counsel being retained;
 - b. The date of attorney's appointment or the date of the court order finding client is indigent, in retained cases;

- c. The number of the Request; i.e., first, second, etc.;
 - d. The charges;
 - e. A brief description of the procedural posture of the case; for example, client's case is set for trial on 1/1/19;
 - f. Name of the expert and the expert's business name;
 - g. Description of the area of expertise and credentials;
 - h. Justification for the request --
 - (1) An initial request must include a justification for why the Defense is seeking to hire this particular expert and what task the expert will accomplish with the funding, should the request be approved. To be clear, this justification should not include confidential information.
 - (2) Any subsequent request for additional funding on a case where an expert has already been preauthorized must include a justification why the additional time is necessary. To be clear, this justification should not include confidential information.
 - (3) If an attorney determines that a written justification is not in the client's best interest, the attorney may contact CCID and provide the information verbally. In such instances, the conversation must occur prior to the filing of the request for preauthorization.
 - i. Number of hours requested, hourly rate and the amount of funds the expert's services "will not exceed."
- 4.9 Decisions about preauthorization or denial of expert funding will be made as soon as possible. Under usual circumstances, the decision will be made no later than three business days from when all needed information is provided to CCID. Incomplete requests and any request that requires CCID to obtain additional information may result in delays beyond three business days.
- 4.10 If an urgent need for preauthorization exists, it is the responsibility of the attorney to communicate the urgency to CCID. Absent **actual notice** of urgency to CCID, all requests will be treated as described above.
- 4.11 Preapproval of experts will not be considered on a provisional basis.

- 4.12 Decisions about expert funding will be made, at the discretion of CCID, based on CrR 3.1(f)(1) and (2), JuCR 9.3(a) and CrRLJ(f)(1) and (2). CCID reserves the right to provide partial approval of requests.
- 4.13 If the request for funding is denied. The attorney may seek CCID reconsideration, so long as the attorney provides information not previously disclosed to CCID. The attorney may also seek the review of a judge, by motion to the court and notice of that motion to CCID once the local court rule is amended.
- 4.14 CCID reserves the right to refuse to pay for services that are not preauthorized or that exceed the preauthorized amount.