

**CLARK COUNTY INDIGENT DEFENSE
POLICY AND PROCEDURE**

Number:	2017-1
Title:	Use of Investigators/Requests for Preauthorization of Investigation 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) endorses client-centered representation. To that end, CCID recognizes that criminal defense attorneys have a duty to conduct an independent investigation. Investigation is the means by which the Defense tests the quality and substance of the Government’s accusations against the client. CCID recognizes that in order to fulfill the obligation of independent investigation an attorney will often require the services of a professionally licensed private investigator. CCID strives to make these resources available while at the same time ensuring that the resources it manages are expended in the most effective and efficient manner.

This policy and procedure applies to all requests for preauthorization of funding for and payment of investigation services. This policy must be read in conjunction with the 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 not pay for services that have not or were not **pre**authorized. 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; for example, discovery provided to the attorney the weekend prior to trial that requires specific investigation services.

3. GUIDELINES: USE OF INVESTIGATORS

- 3.1 Attorneys should not seek funding for the services of an investigator simply because they have been appointed in a case. A request for preauthorization for an investigator must occur after review of discovery, based on a substantive interaction with the client, or on a specific-need basis communicated to CCID.
- 3.2 Investigators may not be retained for the sole (or virtually sole) purpose of determining whether there is a need for investigation.
- 3.3 The proposed investigation must be conducted at the direction of the attorney. Allowing an investigator to conduct an investigation more or less at his or her discretion is not acceptable. CCID encourages attorneys to develop a written investigation plan for each case that prioritizes deliverables.
- 3.4 The attorney shall not provide discovery directly to an investigator prior to requesting and receiving the initial funding authorization for investigative services on the case.
- 3.5 Investigators may not be utilized for functions that are properly the duty of the attorney. Such functions include:
 - a. contact with the client, for any substantive purpose, without the attorney present;
 - b. administrative support functions that would ordinarily be performed by the attorney or the attorney's office staff; and
 - c. as a courier.
- 3.6 Investigator time is valuable. Attorneys should make clear that investigators are not to spend more than 20 minutes waiting, for example, for a defense interview.
- 3.7 Only investigators who are licensed in Washington and who comply with all business licensing provisions and other laws may be utilized for indigent defense investigative work.

4. PROCEDURES: REQUESTS FOR PREAUTHORIZATION

- 4.1 Once the attorney determines the need for an investigator exists, a Request for preauthorization of funds for expert services shall be filed with the Clerk/Court.
- 4.2 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

- 4.3 Absent prior approval, hard copy requests will not be accepted by CCID.
- 4.4 Requests for preauthorization that have not been filed with the Clerk/Court will not be accepted.
- 4.5 If a request is subject to a court order sealing requests and authorizations for an investigator, 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.
- 4.6 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 defendant 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. Justification for the Request --
 - (1) An initial request, made for ten hours or less, need not include any further justification except for Possession cases or District Court cases. If the initial request exceeds ten hours, then the request should include a justification. To be clear, this justification should not include confidential information.
 - (2) A subsequent request for additional funding on a case where an investigator has already been preauthorized must include a justification why the additional time is necessary. An attorney’s statement that every witness in every case needs to be interviewed will not suffice. To be clear, this justification should not include confidential information.
 - (3) If an attorney determines 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.
 - g. Name of the investigator and the investigator’s business name.

- h. Number of hours requested, hourly rate and the amount of funds the investigator “will not exceed.” CCID prefers that first requests for investigation services in a case not exceed the hours listed below in “Funding Guidelines.” CCID prefers that any subsequent request include an estimate of the cost of the remaining investigation.
- 4.7 Decisions about preauthorization or denial of investigator 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.
- 4.8 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.
- 4.9 Decisions about investigator 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 provisional approval of requests and to provide partial approval of requests.
- 4.10 If a 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 denial by a judge, by motion to the court, and notice of the motion to CCID once the local court rule is amended.
- 4.11 CCID reserves the right to refuse to pay for services that are not preauthorized or that exceed the preauthorized amount.

5. FUNDING LIMITS

- 5.1 Once a particular request has been preauthorized, an amount not to be exceeded will be assigned (usually the amount included in the attorney’s request). This limit is not to be exceeded without explicit preapproval. If an emergency arises and the attorney is not able because of timing to file and submit a request for additional preauthorization, the attorney must notify CCID (by phone or email, in that order) and seek provisional preapproval. If an attorney is afforded provisional preapproval, the attorney must subsequently file and submit to CCID a Request for the services preapproved.
- 5.2 The attorney and the assigned investigator in any given case are jointly responsible for managing investigative strategies and resources in light of the Funding Guidelines listed below.

6. FUNDING GUIDELINES

CCID will use the below guidelines as a basis to respond to requests for preauthorization of investigator funds.

Category Most Serious Charge	Initial Request	Overall Funding Presumption	Comments
All Misdemeanors	5 hours	10 hours	Must articulate need for investigation in individual case
Possession Offenses	5hours	10 hours	Must articulate need for investigation in individual case
Serious Drug Offenses (delivery, manufacturing)	10 hours	20 hours	
Property Offenses	5 hours	10 hours	
Complex/Serious Property Offenses	10 hours	25 hours	
Class C Person Offense (non-sex offense)	10 hours	25 hours	
Class A or B Person Offense (non-sex offense)	10 hours	50 hours	Presumption may be exceeded with articulated justification
Sex Offense	case-by-case evaluation		
Persistent Offender	case-by-case evaluation		
“Homicide”	case-by-case evaluation		