



SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO

PENAL CODE § 987.2 APPOINTED SERVICE AND EXPENDITURE RULES, FUNDING APPLICATION and PAYMENT PROCEDURES

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Attachment: Exhibit A - PC§987.2 *Ex parte* Order Format

A. PENAL CODE § 987.2 APPOINTED SERVICE AND EXPENDITURE RULES

1. Application of Rules

All requests for services to be provided to an indigent defendant and paid at government expense must comply with the Court's Local Rules pertaining to appointed services, including Rule 1441 ("Appointed Defense Fees"), and the Court's PC§987.2 Procedures and Rules. All such appointed services and expenditures pursuant to court order shall be at the discretion of and subject to approval by the Court's designated PC§987.2 Judges.

2. Requirement for Written Approval

Prior express written approval of the Court is required for all defense appointed services of investigators, experts and others. Costs of services performed prior to the order of the Court, and costs beyond that provided for in the Court Order, will be denied.

3. No Payment without Pre-Authorization

Counsel or *in propria persona (pro per)* defendant shall not direct or incur any services or expenditures to be funded at government expense in the absence of previous written authorization of the Court's designated PC§987.2 Judge.

4. Allowable Uses of PC§987.2 Funds

Specific allowable costs, as defined by PC§987.2 and case law include:

- Investigators
- Experts (including transcription services)
- Legal Runners (for *in propria persona (pro per)* defendants only)
- Travel as authorized by the Court
- Special Expenses as authorized by the Court

5. Non-allowed Uses of PC§987.2 Funds

Specific non-allowed costs include:

- Dental plates, haircuts, tattoo removal and other expenses relating to improving the defendant's personal appearance
- Clothing
- Cleaning charges
- Cash to defendant
- Any cost reimbursable from any other source
- Attendance at conferences, conventions, seminars or workshops and cost related thereto
- Office equipment & Supplies
- Ordinary Office expenses and overhead
- Law Books and other legal resources

6. Investigator Services

In general, investigator services, when appointed by the Court, shall be limited to actual investigative work and related activities such as testifying. Appointed investigator services shall not include activities that would normally be performed by the defense counsel or defense counsel staff, or *in propria persona (pro per)* defendant, such as sorting discovery and indexing discovery notebooks, redacting discovery, ordering duplicates of photographs and tapes, preparing subpoenas and court orders, photocopying and transporting or mailing materials, motions, orders and clothing. Attendance at court will not be reimbursed unless the investigator is testifying or otherwise sufficiently justifies the appearance such as delivering exhibits, etc. Extraordinary amounts of time conferring with defense counsel or *in propria persona (pro per)* defendant will not be reimbursed unless it involves the investigator's direct services and must be justified in the billing statement.

Investigators **appointed upon request of *in propria persona (pro per)* defendants** will be authorized to redact discovery, mail legal material, motions and orders to and on behalf of the *in propria persona (pro per)* defendant, when necessary. Hand-delivery of material will be at the Court's Appointed Services Fee Schedule rate for appointed legal runners in the absence of extenuating circumstances.

Investigators will not be reimbursed for travel time or mileage more than 30 minutes or 20 miles outside the County of San Bernardino. If the investigator is required, due to the nature of the case, to travel outside the County of San Bernardino, the defendant must obtain the written authorization of the 987.2 judge in advance of the travel before the investigator may be reimbursed for that travel time or mileage.

7. Legal Runner Services

Legal runner services, when appointed by the Court, are limited to photocopying, and transporting materials, orders and motions. Visitations and phone calls to the County's detention centers must be associated with an allowable billable activity, and will be subject to the discretion of the Court. Appearances in court are not an approved activity. Appointed legal runners are subject to a background check conducted by the San Bernardino County Sheriff. Appointed legal runners should contact Indigent Defense (currently at 909-363-4423, or through the Court's Executive Office) in advance of services being performed so that the legal runners may be fully informed of requirements and limitations pertaining to appointed legal runner services.

8. Specific Use of Funds

Funds approved for a specific use may not be expended for another use without prior Court approval.

9. Court Duties Regarding PC§987.2 Funding

- 9.1 Per Local Rule 1451.2, the Presiding Judge of the Superior Court will designate primary and alternate judges to monitor and authorize fees for appointed ancillary defense funding requests under PC§987.2. The designated PC§987.2 Judges will review PC§987.2 funding applications and claims for appointed services and/or expenditures submitted pursuant to these PC§987.2 Procedures and Rules.
- 9.2 Upon receipt of a PC§987.2 funding application, the PC§987.2 Judge may review previously approved PC§987.2 orders and payments for the case (if any), will make a determination as to the reasonableness and timeliness of the requests in the new application, and determine if a hearing is necessary. When approving a PC§987.2 order, the PC§987.2 Judge will specify at the bottom of the order if the order was approved on the basis of the declaration alone, or if a hearing was conducted and a transcript prepared and sealed.
- 9.3 Upon approval or denial of a PC§987.2 funding application, the PC§987.2 Judge's judicial assistant will stamp the original and conform copies as appropriate. The original PC§987.2 order will be placed in a confidential envelope in the court case file labeled **PC§987.2**, and conformed copies will be sent to defense counsel or *in propria persona (pro per)* defendant.
- 9.4 Although the designated PC§987.2 Judges generally do not coordinate directly with the assigned judges of individual cases, the PC§987.2 Judges may on occasion seek input from a case's assigned judge.
- 9.5 Indigent Defense staff will be responsible for processing payments pursuant to court orders issued under these PC§987.2 Procedures and Rules, and track approvals and expenditures by case and vendor, and make available such information as may be requested by the PC§987.2 Judges.
- 9.6 Disputes regarding the services of the PC§987.2 Judges should be brought to the attention of the Presiding Judge of the Superior Court.

B. PENAL CODE § 987.2 FUNDING APPLICATIONS

1. Finding of Indigence

A statement of defendant's indigence, signed under penalty of perjury, shall be required in the form of a declaration at the time of the initial application for funding pursuant to these PC§987.2 Procedures. Under Penal Code §§ 987(c) and 987.8(b), and Local Rule 1441, the Court may require the defendant to file a financial statement or other financial information under

penalty of perjury with the Court or, in its discretion, order a defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay for all or a portion of the cost of appointed legal assistance or ancillary defense funding in any case.

2. Applications for PC§987.2 Funds

- 2.1 All applications for authorization of ancillary defense expenditure funding at government expense under PC§987.2 to assist in the defense of indigent defendants at the request of defense counsel or *in propria persona (pro per)* defendant shall comply with these rules and procedures, the Court's Appointed Service Fee Schedule and the Local Rules.
- 2.2 Applications for PC§987.2 funds must be submitted to the appropriate designated PC§987.2 Judge for the Court Region where the case is being heard. The Judge's courtroom judicial assistant will arrange for a hearing if necessary after the Court has reviewed the defense's Application. In the case of emergency requests for ancillary defense expenditure, the Judge's courtroom judicial assistant will arrange for a hearing of the application upon short notice.
- 2.3 All such funding applications must be supported by affidavit or supporting declaration of ultimate facts establishing that the circumstances of the case are of such a nature as to require, in the interest of justice, the services of an investigator, expert or other, and must state a billing rate consistent with the Court's Appointed Services Fee Schedule as well as the maximum amount expected to be charged for the service of the investigator, expert or other. Upon a request for fees or a billing rate other than that which is consistent with the Court's Appointed Services Fee Schedule, the application must provide good cause and a showing that efforts have been made to find the service at the Court's Appointed Services Fee and to negotiate for rates set forth in the Court's Appointed Service Fee Schedule.
- 2.4 All such motions shall be made by motion supported by declaration or affidavit setting forth:
 - ▶ A summary of the circumstances of the charged offense(s) and ultimate facts indicating that the case or circumstances of the case are of such a nature as to require, in the interests of justice, appointed ancillary defense funding, and;
 - ▶ The status of the proceedings, and;

▶ The specific purpose for which funds are sought, the nature of the services to be rendered and the basis of counsel's or *in propria persona* (*pro per*) defendant's belief that the services are reasonably necessary for the preparation and presentation of the defense, and;

▶ The name and title of each appointed service provider (investigator, expert, or other) for whom funds are being sought, the maximum amount expected to be charged for the service or expenditure; if any travel-related expenses other than mileage are to be pre-authorized pursuant to Section 9 of these PC§987.2 Procedures and Rules; and if any Special Expenses are to be pre-authorized pursuant to Section 10 of these PC§987.2 Procedures and Rules.

2.5 The defense's PC§987.2 Funding Application, including all supporting declarations or affidavits, and points and authority, shall be accompanied by a proposed court order following the Court's *ex parte* order format incorporated herein as Exhibit A. The defense shall submit one original of the proposed order and one copy of the proposed order, or the defense may submit two (or more) copies of the proposed order if the order must also be served by the defense upon a third party (expert, Sheriff, etc.).

3. Expert Services

3.1 Billing rates of appointed experts shall be consistent with the Court's Appointed Service Fee Schedule, unless the defense's proposed order and supporting declaration specifically requests and supports a higher billing rate pursuant to Local Rule of Court 1460.7 ("Extraordinary Expert Fees"). Any request for extraordinary fees in excess of the Court's Appointed Service Fee Schedule must receive prior authorization of the designated PC§987.2 Judge.

3.2 On initial applications for authorization for expenses for doctors, psychologists, psychiatrists and similar experts, the maximum sum allowed by the Court would be an amount sufficient to procure an initial written report from the expert which should set forth the need, if any, for further services at an approved rate.

3.3 It is the duty of the defense to endeavor to negotiate the lowest hourly rate the expert will work for recognizing that the expert's services are a charge to the government.

3.4 In order to minimize expert's travel time, whenever possible the defense should utilize experts who reside in the southern California area. Should the defense elect to retain an expert from another locale, the declaration shall set forth in detail the reasons why local experts could not be employed to provide similar services.

- 3.5 Per Local Rule of Court 1460.3, transcription services are deemed to be an expert service; compensation for transcription service shall be at the lowest commercially-available rate.
- 3.6 Any request for fees higher than the Court's standard Appointed Service Fee Schedule for EC§1017 appointments must be approved by the PC§987.2 Judge.

4. Transportation Orders

If transportation for the purpose of a medical examination is required, the order authorizing the examination must include a transportation order. Orders for transportation of inmates for purposes of medical examinations must include a statement that the defendant will not be informed of the exact day and time of the transport until the latest possible time (allowing fasting, shaving hair, etc.).

5. Funding Limits

- 5.1 Initial funding for investigator services shall be limited to no more than \$600 (20 hours at \$30/hr) plus mileage at the Court's authorized mileage rate.
- 5.2 Initial funding for legal runners shall be limited to no more than \$250 at the prevailing State minimum wage plus the amount equivalent to the applicable Federal self-employment tax, plus mileage at the Court's authorized mileage reimbursement rate.
- 5.3 If the initial funding approval is exhausted and additional services are needed, the defendant may subsequently apply to the designated PC§987.2 Judge for additional funding per Section 8, below ("Subsequent Applications for Funds").

6. Limitations on *In propria persona* (Pro Per) Cases

- 6.1 If a defendant has *in propria persona* (*pro per*) status for more than one case, and the Court grants appointment of investigator services for more than one of the *in propria persona* (*pro per*) cases, the same investigator shall be appointed for each of the defendant's pending *in propria persona* (*pro per*) cases, except under extenuating circumstances. The appointed investigator shall separate out the activities performed for each case, and if there is duplicate work (such as interviewing a witness relevant to more than one case, or researching criminal priors) the investigator shall bill only once for the service.

6.2 Sheriff's *in propria persona* (*pro per*) defendant Policies and Procedures

The privileges granted by the Sheriff to in-custody defendants appearing *in propria persona* (*pro per*) are set forth in the San Bernardino County Sheriff Department's Trial Court Pro Per Policy Memorandum, and are incorporated in these PC§987.2 Procedures and Rules by reference.

Privileges shall be at the expense of the in-custody defendant appearing *in propria person* (*pro per*) unless the Court has granted the defendant indigent status. Privileges shall be honored at the reasonable convenience of the Sheriff's facility and shall be dependent on the security of the in custody defendant, other persons in custody, Sheriff's staff and the facility.

6.3 Law library time for defendants with *in propria persona* (*pro per*) status for more than one case shall be limited to a maximum of eight hours per week, and shall be consistent with the Sheriff's Trial Court Pro Per Policy Memorandum.

6.4 Phone Access and Phone Cards – Requests made by an in-custody criminal defendant appearing *in propria persona* (*pro per*), for an order authorizing the defendant to make non-collect telephone calls will be granted only upon a showing that there exists a real and specific need for the defendant to make telephone calls for investigative purposes. Requests for issuance of phone cards at government expense shall be per defendant, not case and shall be pursuant to the Sheriff's Trial Court Pro Per Policy Memorandum, and authorization of issuance of phone cards at government expense shall be made by finding of need and order by the Court's designated PC§987.2 Judge. Any order for issuance of phone cards shall be limited to one (1) \$20 phone card per month. Upon a showing of good cause, a greater value of phone card or number of phone cards may be issued in a separate order identifying the number of cards and their value to be issued per specified time frame.

6.5 Legal Research Material - The Sheriff will provide in-custody *in propria persona* (*pro per*) defendants with access to legal research materials per the Sheriff's Trial Court Pro Per Policy Memorandum. Appointed investigators are not to purchase legal research material (books, etc.) for *in propria persona* (*pro per*) defendants.

6.6 Indigent Supplies – The Sheriff will provide indigent supplies per the Sheriff's Trial Court Pro Per Policy Memorandum to in-custody *in propria persona* (*pro per*) defendants upon an order of the PC§987.2

Judge, after review of the defendant's application. Indigent supplies shall be limited to the amount specified in the Sheriff's Trial Court Pro Per Policy Memorandum, unless good cause is shown in writing by petition to the designated PC§987.2 Judge.

- 6.7 The Court shall maintain a Pro Per Investigator Panel of private investigators who have prior experience of, at least, three (3) years investigating criminal cases and who are willing to accept appointments to assist pro per defendants.

Investigators must complete and submit to the Court the Court's Pro Per Investigator Panel Application in order to join the panel. The Court's Pro Per Investigator Panel Application is posted on the Court's web site under "Forms and Rules", then "Appointed Services and Claims".

Panel applicants must also submit to the Court a copy of their California investigator's license and agree to comply with the Court's Local Rules (Chapter 14) and Penal Code §987.2 Funding (Other than Attorney Fees) Rules, Application Procedures and Claims.

Pro Per Investigator Panel investigators serve at the pleasure of the Court and may be removed from the panel without cause at any time without recourse or remedy.

The Pro Per Investigator Panel is maintained by the Court solely as a resource for defendants who want to obtain the services of an investigator. The Court makes no representations regarding the qualifications of the investigators on the Pro Per Investigator Panel, and the Court does not endorse or recommend the services of any investigator on the Pro Per Investigator Panel.

7. Conflict Panel Trust Fund Expenditure Applications

The adult indigent defense contractors ("conflict panel") must receive prior express written approval from the Court's designated PC§987.2 Judge for any contract trust fund expenditure that is not strictly consistent with the Court's Local Rules or Appointed Services Fee Schedule, or prior to expending more than the contract-specified amount in trust funds pre-authorized for investigator services for any single case, or for any travel-related expenses other than mileage reimbursement. The contractors are encouraged to pursue discounted rates for appointed expert services when and where possible that will result in savings of trust fund expenditures. It is the duty of the Contractor to endeavor to negotiate the lowest hourly rate an expert will work for recognizing that the expert's

services are a public expense. It is anticipated that the pre-authorized amount specified in the contracts should be sufficient for most cases represented by the conflict panel, and that approval of additional funds will be an exception for extraordinarily complex cases.

8. Subsequent Applications for Funds

8.1 Each subsequent application for additional PC§987.2 funding for a previously authorized appointed service provider (investigator, expert, or other) shall include a declaration setting forth:

- ▶ The date and amount of previous authorization(s) of funding for the appointed service provider, and;
- ▶ The amount of any billings for completed services received from the appointed service provider, and;
- ▶ The balance remaining for funds previously authorized for the appointed service provider, and;
- ▶ A detailed description of the work or services already rendered by the appointed service provider, and;
- ▶ A detailed description of the work or services remaining to be undertaken by the appointed service provider, and in the case of a medical or mental health expert should be accompanied by a declaration of the expert setting forth the necessity for the additional funds.

9. Authorization for Travel Expenses

9.1 No funds may be expended for overnight travel by investigators, experts, or others, unless prior approval is obtained from the Court. Pre-approved hourly investigation expenses may not be applied to overnight or airline travel costs unless expressly designated by the Court for travel purposes after an appropriate request has been made. Only in extraordinary circumstances will the court approve travel expenses for counsel.

9.2 In order to better manage the considerable costs associated with overnight travel, it is the policy of the Court to encourage the defense to interview witnesses who do not reside in the local area by telephone whenever feasible.

9.3 In order to justify the expense of sending a local investigator to the residence of a distant witness, the defense's declaration should establish why it would not be feasible to employ the services of a local investigator in the area of the witness's residence to interview

the witness. If telephonic contact with witnesses for interview purposes is not feasible, it is the Court's policy to allow overnight/airline expenses for travel only upon a showing that it would be impracticable to employ the services of an investigator who maintains an office in the area where the witness resides to conduct the interview.

9.4 If neither telephone contact nor utilization of a local investigator in the area of the witness's residence can be accomplished, the defense should consider the feasibility of flying the witness to the Ontario airport for an interview, with a return flight the same date, thus avoiding the expense of overnight travel for the defense's investigator.

9.5 All applications which include a request for travel expenses to interview witnesses must contain a declaration which shall set forth:

- ▶ A clear showing of the relevance and materiality of the witness's proposed testimony;
- ▶ Why a telephonic interview would not suffice in lieu of a face-to-face interview;
- ▶ Why it would be impractical to utilize the services of an investigator in the area where the witness resides to conduct the interview.
- ▶ Why it would not be practical to fly the witness to the Ontario Airport for the interview.

9.6 Applications for airline travel should include a quote from a travel agency or airline indicating that the fare quoted is the least expense available at the time, and is being booked sufficiently in advance to obtain the best possible rates.

10. Authorization for Special Expenses

No funds may be expended for the purchase of any items without prior approval from the Court by application pursuant to these rules.

C. APPOINTED SERVICE AND EXPENDITURE CLAIMS

1. Application of Rules

All claims for appointed services and/or expenses shall follow these Rules.

2. Time to File Claims

All claims for appointed investigators, experts and legal runners shall be submitted in a timely manner. Claims shall be submitted on Superior

Court of California, County of San Bernardino forms to the Court's Indigent Defense Program within 60 days of completion of services for the case. Any claim submitted more than 60 days after completion of services on a case will be subject to a penalty of ten percent (10%) of the claim amount per month, up to a maximum of twenty percent (20%), except under extenuating circumstances. Billing shall be for all services provided to that point that have not been previously presented or paid. Appointed service claim forms are available on the Court's website www.sb-court.org under the heading "Forms and Rules."

3. Form for Filing Claim

All appointed service claims of investigators, experts (except EC 1017 evaluation services at the Court's standard rate) and others must be printed in chronological order, and shall be fully itemized as to specific dates, hours, and activities, case name, and case number, and appointment date. The minimum reported increment shall be 0.25 hours (15 minutes). Claims submitted for court-appointed services shall follow the Court's Appointed Services Fee Schedule in effect at the time of appointment.

- 3.1 For most activities, including general investigation, witness interviews and subpoena services, names, although helpful, are not required; however, location (city) is required.
- 3.2 For activities where travel time and/or mileage is claimed or involving meetings with defense counsel, experts, or others providing services or supplies for the defense, both location (city) and names must be provided, with the exception of the names of confidential witnesses.
- 3.3 Claims must provide sufficient specificity with regard to services performed to support the bill for payment, with dates and hours of service itemized. When multiple distinct services are performed during a given day, the different services should be listed on separate lines with corresponding amount of time listed, or the service description should specify the time spent for each service [e.g., "interview witness San Bernardino (.5 hr)"] with the total listed for all the day's activities.

4. Requirement for Supporting Documentation

All submitted appointed expenditure claims shall be accompanied by all supporting documentation including original invoices or receipts, orders authorizing expenses or rates, and other documentation of all disbursements. A file stamped copy of the court order authorizing the service(s) and/or expense(s) must accompany all appointed service

and/or expense claims. Original invoices or receipts must be included when reimbursement is sought for expenses. If a phone log of long distance calls, by case, is kept, this will be accepted in lieu of original phone bills.

5. Signature of Defense Counsel

In cases of retained counsel or appointed counsel, billings must be signed by defense counsel as appropriate in the space provided prior to submittal to the Court for payment.

6. Special Expenses

If extraordinary expenses are authorized, original receipts will be required for payment to be processed, except:

- If expenses total less than \$10.00 per claim, an itemized listing will be accepted in lieu of original receipts.

Attachment: Exhibit A - PC§987.2 *Ex parte* Order Format

1 (Attorney Name), Attorney at Law
State Bar No. ()
2 (Attorney Address)
Tel. No. ()
3 FAX No. ()

4 *-or, if pro per defendant -*

5 (Defendant Name), In Propria Persona
(Inmate Booking Number)
6 (Detention Center Address)

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN BERNARDINO

10
11 THE PEOPLE OF THE STATE OF) CASE NO. (*specify case number*)
12 CALIFORNIA,)
13 Plaintiff,) EX-PARTE ORDER FOR FUNDS
14 vs.) PURSUANT TO PENAL CODE SECTION
15 (DEFENDANT NAME),) 987.2
16 Defendant)

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20 The Court having read and considered the defense's ex-parte application for an order
21 authorizing defense funds pursuant to Penal Code Section 987.2 (P.C. § 987.2), the Court finds
22 that a sufficient showing has been made that the defendant does not have the means or ability to
23 pay for legal assistance necessary for the defense in this cause, and that ancillary defense funding at
24 government expense is reasonably necessary for payment of the following in the preparation and
25 presentation of the defense as follows:

26 *[Set forth the specific proposed ancillary defense expenditure(s), on separate lines if*
27 *more than one, and, if applicable, the name, title (if applicable), nature of service to be rendered*
28 *(e.g., investigator, forensic expert, etc.) and number of hours and hourly rate* being requested*

1 *for expert, with the subtotal dollar amount for each line item to be approved.. *(Also specify if*
2 *an extraordinary expert billing rate above those specified in the Court's Local Rules or*
3 *Appointed Service Fee Schedule is being requested (must be justified in supporting declaration),*
4 *and/or; if an individual to be appointed is to be allowed defendant detention center visitations.]*

5 Payment shall be made by the Auditor/Controller of the County of San Bernardino upon
6 submittal of an appropriate itemized claim on Court forms and presentation of original invoices or
7 receipts, and upon verification of the claim by the Court, for expenditures and services rendered at
8 the authorized rate and mileage at the current Court-approved rate.

9 It is so ordered.

10 Dated: _____
11

12 By: _____
13 Designated P.C. § 987.2 Judge
14

15 Specify:

16 [] The above P.C. § 987.2 order was approved pursuant to the attorney's declaration alone
17 (without a hearing), or;

18 [] The above P.C. § 987.2 order was approved pursuant to a hearing.
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