

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE (OPD)

**PARENTS REPRESENTATION PROGRAM
EXPERT AND LITIGATION COSTS
POLICY AND PROCEDURE
*Updated July 2022***

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A. Purpose

In order to ensure effective assistance of counsel within its Parents Representation Program, the Washington State Office of Public Defense (OPD) funds expert services and litigation services necessary for and directly related to representation of indigent parents in child dependency and termination of parental rights cases.

The purpose of this Policy and Procedure is to establish how OPD will authorize expenditures for Parents Representation Program expert services and litigation services, and to establish how payment for services will be made.

OPD adopts this Policy and Procedure pursuant to its duties to provide effective Parents Representation Program public defense services to indigent parents under Chapter 2.70 RCW and Chapter 13.34 RCW.

Generally speaking, Expert and Litigation costs do not include items for which DCYF is required to pay. Please read below for more specificity.

B. Definitions

- 1) "Children's Administration" or "Department" means the Washington State Department of Social and Health Services Children's Administration, or its successor agency, the Department of Children, Youth, and Families. "ESC number" means the number OPD assigns to an approval for expert costs or litigation costs.
- 2) "Expert costs" mean: The cost of expert services that are necessary for and directly related to providing adequate legal defense to an indigent parent in a child dependency or termination of parental rights case.
 - a) Expert costs typically involve a professional evaluation of a person for purposes of assessing and/or rendering an opinion about a parent or child or a child welfare issue, and may include expert services to rebut a court-ordered evaluation. Examples of expert costs include polygraph examinations, drug/alcohol related analyses, medical forensic reviews, home studies, psychological/mental health evaluations, disabled parent evaluations, attachment and bonding evaluations, parenting evaluations, psychosexual evaluations, domestic violence evaluations, and social work forensic reviews. Expert costs include an expert's fee to participate in a deposition or testify at trial, and necessary travel and per

diem for the expert based on receipts consistent with the requirements and limitations of the Washington [State Administrative & Accounting Manual \(SAAM\)](#).

- b) Expert costs do not include remedial services or evaluations or services that the Department is required to fund, such as “concrete goods” as provided in Children’s Administration [Policy 4519](#) and [Concrete Goods Guide](#).
 - c) Expert costs do not include court records, which are to be provided to indigent clients and their attorneys at no expense. [GR 34](#), [RCW 13.50.100](#), [RCW 13.50.010\(1\)\(b\)](#), [RCW 13.34.090\(4\)](#); Jafar v. Webb, 177 Wn.2d 520 (2013).
- 3) “Litigation costs” mean:
- a) The cost of litigation-related defense services that are necessary for and directly related to providing adequate legal defense to an indigent parent in a child dependency or termination of parental rights case.
 - b) Examples of litigation costs include court reporter costs for depositions and transcripts, paternity testing, subpoena costs, and interpreter costs (out of court).
 - c) Litigation costs do not include court records, which are to be provided to clients and their attorneys at no expense. [GR 34](#), [RCW 13.50.100](#), [RCW 13.50.010\(1\)\(b\)](#), [RCW 13.34.090\(4\)](#); Jafar v. Webb, 177 Wn.2d 520 (2013).
 - d) Except as allowed for experts in Section B(3), travel costs are not routinely paid but in rare cases may be considered pursuant to a Director’s Exception as provided in Sections F(1) and F(2) of this Policy and Procedure.
- 4) “Parents Representation Program” means the OPD-administered program that contracts with qualified attorneys and social services workers to represent indigent parents in child dependency and termination of parental rights cases, as provided in RCWs [2.70.020](#), [13.34.090](#), and [13.34.092](#).

C. Pre-Approved Expert Costs - \$500 or less:

- 1) An expert cost is pre-approved for Parents Representation Program cases if the total service cost is \$500 or less and other possible resources for securing the service have been exhausted. Pre-approved expert costs include *but are not limited to* the following expert services at \$500 or less per total service:
- a) Background checks,
 - b) Polygraph examinations,
 - c) Professional consultations (for example, consultation with a client’s physician),
 - d) Testing procedures (for example, UAs and hair follicle tests)

If the expert service is to be secured by an OPD social worker or OPD social service worker, the attorney on the case shall be included in the decision to seek the service.

D. Pre-Approved Litigation Costs - \$500 or less:

A litigation cost is pre-approved for Parents Representation Program cases if the total service cost is \$500 or less and other possible resources for securing the service have been exhausted. Pre-approved litigation costs *include but are not limited to* the following litigation services at \$500 or less per total service:

- 1) Court reporter transcription services.

- 2) Interpreter services for client meetings outside of court. (Courts are financially responsible for interpreters in court proceedings.)
- 3) Subpoenas for trial witnesses.

E. OPD Approval Required for the Following Costs:

- 1) For expert costs or litigation costs that exceed \$500 per service in a Parents Representation Program case, the OPD-contracted attorney or OPD social worker or social service worker* acting on behalf of an OPD-contracted attorney, must contact OPD and secure agency approval in advance of the service.
 - a) To request approval, the OPD-contracted attorney or OPD social worker or social service worker acting on behalf of an OPD-contracted attorney should email or telephone the OPD Parents Representation Program Manager responsible for the county where the case is filed, and provide the following information:
 - Name and contact information for the expert or litigation service provider,
 - Cost for the service
 - Brief case background regarding why the service is necessary. Do not include case numbers, client initials, or other client identifying information.
 - * If approval request is made by OPD social worker or OPD social service worker, email request should include the assigning attorney and their OPD social work manager. If by phone, OPD social worker or OPD social service worker should indicate that the assigning attorney approves of the request.
 - b) The OPD-contracted attorney or OPD social worker or social service worker acting on behalf of an OPD-contracted attorney should ask the service provider to apply his/her rate for clients who are indigent or for public defense offices, and should negotiate the best rate considering what is reasonable based on the facts of the case.
 - For second opinion expert evaluations, the contracted attorney should explore with the service provider whether a lower cost “peer review evaluation” would be appropriate in lieu of a full psychological evaluation.
 - c) In an emergency, an OPD-contracted attorney or OPD social worker or social service worker acting on behalf of an OPD-contracted attorney may contact any available Parent Representation Program Manager to request approval of expert costs or litigation costs.
 - d) Director or Director’s designee approval is required for any out-of-state travel associated with expert or litigation costs.
 - e) Director or Director’s designee approval is required for any out-of-state travel associated with expert or litigation costs.
 - f) The following is required when OPD Social Workers or Social Service Workers assist an attorney in obtaining an expert:

- i) OPD social worker or social service worker may recommend, research and assist attorneys in obtaining and utilizing expert services.
 - ii) Attorney shall be the final decision makers on all expert services.
 - iii) Any formal expert request to OPD from social worker or social service worker should include a copy to attorney, if in email or by verbal affirmation that attorney approves the request, if request is not in writing.
 - iv) OPD Social Worker managers shall be copied on all Expert Service Approval Letters submitted by OPD social worker or social service worker.
- 2) OPD will approve a cost request that is directly related to providing adequate representation for an indigent parent when the request is reasonable and qualifies as an expert cost or litigation cost as defined in this Policy and Procedure, and funds are available.
- 3) Following approval of expert costs or litigation costs, OPD will notify the service provider in writing of the approved expenditure, including an ESC number and the process to receive payment. The service provider cannot exceed the specified maximum amount unless OPD approves a follow-up request for additional costs.
- 4) For client travel and lodging costs that are reasonable and directly related to the client's legal defense and which the client is not able to pay, the OPD-contracted attorney, or OPD social worker or social service worker acting on behalf of the OPD-contracted attorney, must contact OPD and secure agency approval in advance of the client travel.
 - a) The OPD Parents Representation Program Manager responsible for the county where the case is filed may approve in-state client travel and lodging for a court appearance or to meet with an OPD-funded expert up to \$1,000 per round trip, including lodging allowances as established in the State Administrative and Accounting Manual (SAAM).
 - b) Director or Director's designee approval is required for client travel and lodging costs exceeding \$1,000 per round trip or exceeding SAAM allowances.
 - c) Director or Director's designee approval is required for any out-of-state client travel costs.

F. Exceptions

- 1) The OPD Director may grant exceptions to this Policy and Procedure unless prohibited by law. Exceptions should be in writing.
- 2) The OPD Director may grant exceptions on a case-by-case basis. The OPD Parents Representation Program Manager will provide the Director with a case description of the case and why good cause exists for approving the exceptional cost.
- 3) The OPD Director or Director's Designee will consider requests to pay specified costs for a parent who has retained private counsel but is found by the court to be indigent for the

purpose of expert costs. When requesting a service under this exception the attorney must provide OPD with a copy of the court order. OPD may oppose or pursue reconsideration of any court-ordered costs as deemed appropriate by the Director.

G. Payment for Expert and Litigation Costs - \$500 or less

- 1) Whenever possible OPD prefers to make direct payment to the expert or litigation service provider, and not reimburse costs to the parent's attorney. If the contracted attorney needs to be reimbursed for an expert or litigation cost that is \$500 or less, they will email any associated invoice and proof of payment (i.e. cleared/processed check – front & back or receipt) to OPD at expert-invoices@opd.wa.gov for a customized invoice.
- 2) For direct payment of \$500 or less to the expert or litigation service provider, the requesting parent's attorney shall submit to OPD the following required forms:
 - a) Their contractor's "under \$500" invoice cover sheet, emailed by OPD at the beginning of the current fiscal year and
 - b) The service invoice or other billing documentation. The invoice **must** include a non-replicated invoice number; service dates and a brief description of those services; expert or litigation service provider's email address and statewide vendor number.
- 3) Invoices for either direct payment or reimbursement may not be accepted by OPD if the span of time between the time the services were rendered and the invoice was submitted is greater than 12 months.

In submitting invoices for reimbursement under this Policy and Procedure, the billing entity agrees to maintain records of its billed services and make those records available for auditing by OPD, or other state auditing service, for a period of 60 months following the submission of the invoice.

H. Payment for Expert Costs and Litigation Costs over \$500:

- 1) Whenever possible OPD prefers to make direct payment to the expert or litigation service provider, and not reimburse costs to the parent's attorney.
- 2) For direct payment to the *expert or litigation service provider*, **the expert or litigation service provider** shall submit to OPD at expert-invoices@opd.wa.gov the following required forms:
 - a) The Expert Service Approval Letter provided by OPD and
 - b) The invoice or other billing documentation. Your invoice **must** include the name of the OPD attorney who requested the expert or litigation service; a non-replicated invoice number; the ESC approval number; service dates and a brief description of those services with client identifying information redacted; expert or litigation service provider's email address and statewide vendor number.
- 3) For reimbursement to the attorney, the parent's attorney shall submit to OPD the following required forms:

- a) The Expert Service Approval provided by OPD upon approval of the service and
 - b) The invoice or other billing documentation submitted to the attorney by the expert or litigation service provider should include the time frame for the services provided, the expert or litigation service provider’s mailing address, and should be redacted of client information. A receipt or proof of payment such as a cleared/processed check should be included to document payment of the invoice by the attorney. The invoice should be redacted of client information
- 4) Once the expert or litigation service provider has submitted the Expert Service Approval Letter and their invoice to OPD, OPD will seek signature approval from the requesting attorney to confirm that the service has been completed as invoiced.
 - 5) Invoices for either direct payment or reimbursement may not be accepted by OPD if the span of time between the time the services were rendered and the invoice was submitted is greater than 12 months.

In submitting invoices for reimbursement under this Policy and Procedure, the billing entity agrees to maintain records of its billed services and make those records available for auditing by OPD, or other state auditing service, for a period of 60 months following the submission of the invoice.

I. Examples

Below is a list of example items for which OPD has either granted or denied approval. These are only examples and OPD makes the final determination whether a request by a contractor is covered by policy and no entitlement to services is created because it appears in the list below.

Service	Policy Authorization or Denial Reason
Depositions and transcripts	B(4)(b)
Subpoenas	B(4)(b)
Interpreter costs (out of court)	B(4)(b)
Polygraph examinations	B(3)(b)
Drug/alcohol related analyses	B(3)(b)
Medical forensic reviews	B(3)(b)

Disabled parent evaluations	B(3)(b)
Concrete services (utilities, cellphones, gas cards for court ordered services)	Not included in policy. Typically Denied.
Court fines	Not included in policy. Typically Denied.
Costs of services or evaluations required for DCYF to pay.	Not included in the policy. B(3)(c). Typically Denied.
Parking fees for Attorney	Not included in policy. Typically Denied.