

TULARE COUNTY SUPERIOR COURT

POLICY AND PROCEDURES ON REQUESTS FOR FUNDS AND PAYMENTS IN CAPITAL CASES UNDER PENAL CODE SECTION 987.9 AND IN ALL OTHER CRIMINAL CASES

July 1, 2018

I. POLICY

Penal Code section 987.9 provides for authorization of funds for payments to investigators, experts and others that are reasonably necessary for preparation of the defense of indigents in capital cases. Section 987.9 is only applicable to murder cases in which the death penalty is sought, even though the offense charged is statutorily punishable by death. However, prosecutions under Penal Code section 190.05(a) (second degree murder with prior prison term for murder) are covered by section 987.9.

Additionally, as to *all* criminal cases (including those in which the death penalty is not sought) and juvenile cases an indigent defendant's or minor's (hereinafter referred to as defendant) right to counsel includes the right to use investigators, experts and others in the preparation of a defense pursuant to the federal Constitution's guaranty of the right to counsel and its due process clause (U.S. Constitution, 6th and 14th Amendments).

Review Judge: A judge assigned by the presiding judge of the Tulare County Superior Court will review all requests for funds submitted in death penalty cases under section 987.9. This judge shall be known as the "987.9 judge". (See exhibit one attached hereto for the name of the current 987.9 judge.)

The 987.9 judge will also review requests for funds for investigators and ancillary services in *all* criminal cases in which the death penalty is not sought and in juvenile cases. *However, the trial judge, and not the 987.9 judge, has the responsibility to review all requests for funds and payments to experts in cases not seeking the death penalty pursuant to Evidence Code section 730 or other applicable code section.*

Confidentiality: All requests for funds submitted to the 987.9 judge, and orders issued in response, shall be confidential and maintained in a case file that is separate from the criminal case. The confidential file shall have an independent file number and be known as the "987.9 file".

If a defendant waives his or her privilege of confidentiality by providing information on the record to a criminal trial judge concerning his or her 987.9 file, the 987.9 judge may release information to the criminal trial judge regarding the status and contents of requests and orders contained in the defendant's 987.9 file.

Revocation of Orders: *All orders authorizing funding for a pro-per defendant are immediately revoked and vacated upon termination of a defendant's pro-per status or resolution of the criminal or juvenile case.* The court will deny all requests for payment for work performed or services provided subsequent to the termination of a defendant's pro-per status or resolution of the criminal case unless pre-approved by the court.

The defendant shall immediately notify the 987.9 judge and trial judge if granted expert funding in a non death penalty case and all service providers of the termination of his or her pro-per status or resolution of the criminal case.

Additionally, all service providers shall verify a case is active and, if the defendant was pro-per when authorization for funding was approved, that the defendant continues to be pro-per prior to performing work or providing a service.

II. PROCEDURES

A. Request for Funds

Contents of Request: All initial requests for funds submitted by a defendant or defendant's counsel to the court shall be in writing and contain:

- 1) The name of the defendant, description of pending charges and criminal case number;
- 2) A detailed description of the service requested and the need for the service; and
- 3) A declaration signed under penalty of perjury by the defendant that lists the defendant's assets and liabilities and shows that he or she is indigent. Defendants who are represented by counsel shall use the Mandatory Judicial Council Form CR-115 entitled Defendant's Statement of Assets.

All subsequent requests for funds shall state:

- 1) the name of the defendant and the 987.9 file number instead of the criminal case number; and
- 2) a detailed description of the service and need for service.

Phone Cards: Requests for phone cards provided by the Tulare County Sheriff's Office to pro-per defendants who are in custody shall also state the amount of money the defendant requests per week for legal telephone calls.

Office Supplies: Requests for office supplies provided by the Tulare County Sheriff's Office to pro-per defendants who are in custody shall also state the tier level of supplies the defendant requests as follows:

- 1) Tier 1 for cases in which the death penalty is sought--supplies may be ordered up to the current limit set by the Sheriff's Office once per week;

- 2) Tier 2 for all other felony cases—supplies may be ordered up to the current limit bi-weekly; and
- 3) Tier 3 for misdemeanor cases—supplies may be ordered once a month.

Service Providers: Requests for funds for a service provider shall also state:

- 1) the name, address, and qualifications of the provider;
- 2) the proposed hourly rate to be paid for work performed;
- 3) the number of hours anticipated for the work to be completed; and
- 4) the total fee for the work requested.

A request for funds for a private investigator shall also state the investigator's professional license number.

Orders: All requests for funds shall contain an original separate proposed order allowing for the request plus one copy and a self-addressed stamped envelope.

If the request is for a service provider, the proposed order shall state:

- 1) the name and address of the provider appointed;
- 2) the proposed hourly rate to be paid;
- 3) the number of work hours authorized; and
- 4) the total fee approved.

If the request is for a phone card, the proposed order shall state the amount of money authorized per week for the phone card; if the request is for office supplies, the proposed order shall state the tier level of supplies authorized.

If a request for funds is approved, the defendant or defendant's counsel shall provide a copy of the order approving the request and a copy of this policy to the provider authorized to receive the funds.

If the defendant or defendant's counsel submits additional copies of the proposed order, the clerk of the 987.9 judge will mail conformed copies of the order to the defendant or defendant's counsel.

Presentation of Request: All requests for funds, **except for requests for expert funding in non death penalty cases**, shall be presented directly to the clerk of the 987.9 judge. (See exhibit one attached hereto for the location of the clerk of the current 987.9 judge.) The request shall not be filed or lodged with the criminal clerks in Room 124 or with the court administrator's staff in Room 303. **Request for expert funding in non death penalty cases shall be presented to the clerk of the trial judge.**

All requests to the 987.9 judge shall be contained in a sealed envelope marked confidential and addressed only to the 987.9 judge.

Approval of Request: The court will only approve requests for funds that are shown to be reasonable and necessary.

B. Request for Payment

Allowable payments: All service providers, including the Tulare County Sheriff's Office, shall only submit requests for payment for work performed or services provided that have been previously authorized in writing by the 987.9 judge. The court will deny requests for payment that have not been pre-approved.

All service providers shall only submit one request for payment per month per case. *The request shall only include work performed or services provided in the immediate prior month (i.e. a request submitted in May shall only include work performed or services provided in April).* Late requests for work performed or services provided in any earlier month will be denied.

Contents of Request: Requests for payment shall state the defendant's name and the 987.9 file number instead of the criminal case number. Requests shall contain a detailed statement showing:

- 1) the date of service;
- 2) type of service;
- 3) time spent;
- 4) costs incurred;
- 5) sub-total for each entry; and
- 6) grand total of the amount requested.

The court will not approve requests for payment for normal overhead costs which include, but are not limited to, a portion of the provider's office rent, telephone installation or monthly charges, or time spent preparing a request for payment.

Each request for payment for work performed shall contain a declaration submitted by the provider that states:

"I, _____, declare under penalty of perjury, that the work for which payment is being requested was performed as submitted to the court in this request for payment."

If a defendant is represented by counsel, a request for payment shall contain a declaration submitted by the attorney that states:

"I, _____, declare under penalty of perjury, that the work for which payment is being requested is within the scope of work I requested."

Receipts: Requests for payment of costs shall contain a copy of the receipt showing the cost was incurred.

Costs for photocopies shall be paid at a reasonable rate, but shall not exceed 10 cents per copy.

Mileage: Mileage shall be paid at the rate of 54.5 cents unless otherwise stated in the order approving the request for funding.

The court will not approve a request for payment for miles driven or travel time spent between an investigator's/expert's office located outside of Tulare County and the Tulare County border unless pre-approved. This means that an investigator/expert whose office is located outside of Tulare County will be paid mileage and travel time only from the Tulare County border for conducting any business in Tulare County.

All providers who maintain an office outside of Tulare County and request funding for mileage or travel time shall submit a declaration with a request for payment that states:

“I, _____, declare under penalty of perjury that no time or travel expense between Tulare County and my office which is located outside of Tulare County is included in this statement.”

The court will not approve a request for payment for mileage and travel time outside of California unless it is *pre-approved or authorized in the order granting a request for funding.*

Hotel Accommodations, Meals, and Air Faire: The court will not approve a request for payment of hotel accommodations, meals, or air faire unless it complies with State of California guidelines and is *pre-approved or authorized in the order granting a request for funding.* State of California guidelines presently provide for compensation of meals as follows: \$8.00 for breakfast, \$12.00 for lunch and \$20.00 for dinner.

Expert Witness Compensation: Experts shall be compensated at a reasonable rate not to exceed \$200.00 per hour for review of court documents, consultation with attorney and/or client, laboratory work and preparation of testimony. The rate paid for courtroom testimony is \$500.00 for ½ day and \$800.00 for a full day. The rate paid for travel time is \$75.00 per hour.

Orders: All requests for payment shall contain an original separate proposed order allowing for the request plus one copy. *The proposed order shall not state the name of the defendant or the criminal case file number.*

The proposed order shall state:

- 1) the 987.9 file number;
- 2) the name, address, and social security or tax identification number of the provider; and
- 3) the grand total of the amount requested.

If a service provider submits additional copies of the proposed order and a self-addressed stamped envelope, the clerk will mail a conformed copy(s) of the order to the provider.

Presentation of Request: All requests for payment, **except for requests for payment to experts in non death penalty cases**, shall be presented directly to the clerk of the 987.9 judge. (See exhibit one attached hereto for the location of the clerk of the 987.9 judge.)

The request shall not be filed or lodged with the criminal clerks in Room 124 or with the court administrator's staff in Room 303. **Requests for payment to experts in non death penalty cases shall be presented to the trial judge.**

All requests shall be contained in a sealed envelope marked confidential and addressed only to the 987.9 judge.

Approval of Request: The court will only approve requests for payment that are shown to be reasonable and necessary.

EXHIBIT ONE

Name and Address of the 987.9 Judge:

Melinda M. Reed, Judge
Tulare County Superior Court
Visalia Division, Department 1
221 S. Mooney Blvd.
Visalia, CA 93291

Address of the Clerk of the 987.9 Judge:

Courtroom Clerk for Department 1
Tulare County Superior Court
Visalia Division, Department 1
221 S. Mooney Blvd.
Visalia, CA 93291