

SCCID Voucher Payment Policy
Adopted by the Commission September 25, 2007

Please refer to the Order of the SC Supreme Court dated September 29, 2006, and memorandums of Chief Justice Toal, dated July 6, 2005, and July 8, 2005, all of which can be accessed at www.sccid.sc.gov

I. Appointment of Counsel

a. Attorney Registration: Every attorney who represents or expects to represent an indigent client pursuant to court appointment must personally register on line with SCCID, at its website www.sccid.sc.gov and be approved and issued an attorney password. This registration is for the attorney and payee information and does not have to be repeated when the attorney registers a case. (When filling our Payee portion of voucher on line, Payee information must be identical in name, social security number or Federal ID number as is was submitted on the W-9, or the system will reject the voucher).

b. Case Registration For Appointed Counsel: Upon appointment by the court in an indigent case or proceeding, counsel must notify the Office of Indigent Defense (OID) within 15 days of the appointment by registering the case online at www.sccid.sc.gov Additional documentation may be required by OID. Every court appointed case must be registered even if the attorney does not intend to apply for payment of attorney fees and/or expenses.(In addition to being an electronic voucher processing system, the system is also the exclusive data collection and tracking system for all indigent defense cases).

c. Payment: Vouchers, time sheets and any other supporting documentation for payment must be submitted online through the Indigent Defense website. They may be mailed directly to OID only if electronic access is not available. Vouchers must be received by OID in correct form no later than thirty (30) days after the services are completed. Vouchers should not be mailed to the Clerk of Court for transmittal. The Clerk of Court is no longer required to sign off on a voucher. Detailed invoices for any experts, investigators, translators, and other outside services must also be submitted, and may be submitted by fax or regular mail. The website contains the appropriate fax numbers.

d. If there is no objection to the reasonableness of the request and the amount requested is within the hourly rates and statutory caps, OID is authorized to make payment of the requested amount without further action of the Court. However any expense whether below the statutory cap or not must have prior approval of the trial court.

e. If there is an objection by OID to the reasonableness of the amount, the amount requested exceeds the hourly rates or statutory caps or if for some other reason OID determines the voucher is not in order, OID will notify the trial court and counsel of any objection and will forward the voucher, timesheet and any other submitted

materials to the trial court in writing or electronically. Upon submission of the documentation the trial court may determine the matter with or without a hearing in its discretion. OID will then pay such amount as the trial court may authorize.

f. OID, along with S.C. Court Administration, subject to the approval of the Chief Justice or the Supreme Court, may establish such additional procedures for the electronic award of fees and costs to minimize delay and to facilitate the administration of the Indigent Defense Chapter of the Code.

g. OID will notify counsel of all actions taken on a voucher. If a voucher is forwarded by OID to the trial court for approval, the trial court will also notify the attorney and OID of its actions.

h. Nothing herein shall preclude the trial court from taking immediate action on ex parte requests for fees and costs during the pendency of a case as may be authorized by statute or court rule.

i. Authorization to Exceed Rates/Caps: Pursuant to Memorandum of Chief Justice Toal, dated July 6, 2005, and S.C. Code Ann. Section 17-3-50(C) (2003), payment of attorneys fees in excess of the statutory amount is allowed if the circuit court “certifies, in a written order with specific findings of fact, that payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel.” Because Section 17-3-50(C) does not provide for ex parte proceedings to determine attorney’s fees, hearings on requests for additional fees should be held in open court.

Further, whether or not additional fees are necessary to ensure effective assistance of counsel is an issue that should be determined with reference to the facts of a particular case. Payment in excess of the statutory rates should not be authorized as a matter of course for all appointed cases or for all of a particular attorney’s appointment cases.

j. Advance of Funds : (See also Section VII) The policy of SCCID is not to advance funds except in extraordinary instances, such as court approval, witness travel and lodging costs. Pursuant to Memorandum of Chief Justice Toal, dated July 8, 2005 and S.C. Code Ann. Section 17-3-50(B) (2003), when requests for investigative, expert, or other services in excess of the statutory limits are received, circuit court judges should closely examine the need for the services, especially when approval for advance costs are requested. Rather than seeking advance expenses counsel should seek authorization for incurring expenses for a specific reason and up to a specific amount. When authorized by the Court, OID will need only the order, the invoice for services rendered, and the electronic voucher submission in order to process the payment.

In determining whether additional fees are reasonable and necessary, judges should require the requesting party to show that there is a substantial factual basis for the contention the party seeks to prove by the use of the services and that the services are integral to the building of an effective defense. In addition where the party seeks funding for services of a particular provider, the party should be required to show why the services must be provided by that particular provider. Judges may ask OID to participate in the hearing on a request for additional expenses or legal fees to contribute information concerning expenses and legal fees awarded in similar cases.

k. Transcripts: The court reporter's fee for providing the transcript of the trial proceeding may be reimbursed only after direct submission by the court reporter of a letter of transmittal showing the case name and number, the nature of the proceeding, the reporter's name, address, and social security number, a copy of the written request for transcript, a copy of the order of appointment of the requesting party as counsel and a completed court reporter's bill (Form SCCA DI-4). Provision of transcripts and billing rates are to conform to the guidelines set out in Rule 508, SCACR, and are applicable to state court reporters as well as independent court reporters. Only the cost of one (1) original or one (1) copy of any transcript per defendant, regardless of the number of counsel, may be reimbursed out of the defense fund.

II. Fees of Appointed Counsel

a. Statutory maximum limits are as follows (Provisos are authorized in the 2007-2008 Appropriations Act):

Case Type	Attorney Fees	In Court	Out of Court	Expenses	Authority
Death Penalty	\$25,000 each	\$75.00	\$50.00	\$20,000	SC Code 16-3-26
Felony	\$3,500	\$60.00	\$40.00	\$500.00	SC Code 17-3-50(A)
Misdemeanor	\$1,000	\$60.00	\$40.00	\$500.00	SCACR 602(a)
Post Conviction Relief	\$1,000	\$60.00	\$40.00	\$500.00	SC Code 17-27-60 and Proviso 35.4*
Termination of Parental Rights	\$2,000	\$50.00	\$50.00	\$500.00	Proviso 35.5*
Abuse and Neglect	\$2,000	\$50.00	\$50.00	\$500.00	Proviso 35.5*
Probate Commitment	\$2,000	\$50.00	\$50.00	\$500.00	Proviso 35.5*
Sexual Violent Predator	\$2,000	\$50.00	\$50.00	\$500.00	Proviso 35.5*

* Provisos are found in the State's annual Appropriations Act.

b. Appointed counsel must electronically submit a Defense of Indigents Voucher and time sheet that specifies the time spent in-court and out-of-court with an explanation as to the nature of the services rendered. In computing time, "In-court" time is that time for which appointed counsel is required to be present the courtroom and appears before a judicial officer for the purposes of a particular case to which counsel has been appointed. "In court" time includes jury qualification and roll calls that pertain specifically to the client's case. "Out-of-court" time is any time spent by counsel in the preparation of a case and includes: plea negotiations, travel time, research, interviews, observing co-defendants' trial and time spent waiting for a trial or hearing to begin. If waiting for multiple trials or hearings for one or more defendants to be held on the same day, counsel may only bill once for the time spent waiting. Time spent on a case whether "in-court" or "out-of-court" must be the actual time spent in the particular activity computed to the nearest one-tenth (.1) of an hour. "Fixed Time" for activities will not be allowed. Examples of fixed time are ".5 hours" for every letter written, ".25 hours" for all telephone calls, etc. The activity claimed must be actually performed by the attorney. Counsel may not claim time spent by clerical personnel preparing documents.

III. Reimbursable Expenses for Appointed Counsel

There is a \$500 limit on expenses in all civil and criminal cases, except capital cases, in which the limit is \$20,000. These limits may not be exceeded unless the court certifies, prior to any expense being incurred, in a written order with specific findings of fact that such excess is both reasonable and necessary to insure adequate representation in the particular case. (See Chief Justice Toal's Memo dated July 8, 2005) SCCID will not provide funds for payments in amounts in excess of the prior authorization. Claims for necessary expenses must be submitted with the order approving the expenditure, setting out the total amount allowed and copies of invoices documenting the claims. By submitting the voucher for payment, counsel certifies that the services were performed and that the amount is fair and reasonable. Necessary expenses are those deemed to be reasonable and essential for a proper defense. The following are deemed to be necessary expenses, subject to limitations in Section IV.

- a. Fees for expert witnesses and investigators, subject also to provisions of Section V.
- b. Costs of scientific tests or exhibits for trial demonstration.
- c. Costs of psychiatric examination.
- d. Extraordinary travel expenses. (Out of county of appointment, with prior approval.)
- e. Long distance telephone calls (Prior approval is not required, but bills or itemized affidavits setting out dates and actual costs must be submitted with the voucher. Estimated costs may not be submitted.)
- f. Subpoena charges.
- g. Deaf or foreign language interpreters.

IV. FEES AND EXPENSES THAT WILL NOT BE PAID

- a. Any expenses incurred which the court did not previously approve prior to being incurred.
- b. Expenses that are considered to be normal operating or overhead costs of a law firm such as staff personnel, secretary or employed paralegal time. These overhead items are deemed to be included in the attorney fee rates.
- c. Copies for staff members or for “in-house” administrative purposes.
- d. Fees for time billed as in-court time which was expended waiting for a trial or hearing to begin; conferences with defendants; witnesses; and solicitors in the courthouse; travel to and from court; and observation of co-defendants’ trials. These examples are regarded as out-of-court time.
- e. In non-capital cases, fees and expenses for any attorney other than appointed counsel, and in capital cases, fees and expenses for any attorney other than the appointed first chair and second chair.
- f. Long distance telephone bills, which are estimated or rounded off, including fees or costs for using a facsimile machine or computer. A copy of the bill or an affidavit setting out the actual costs must accompany the voucher. Charges for the use of a fax machine other than the long distance charges are not allowed.
- g. Mileage is paid only for extraordinary travel and is reimbursable only for travel outside the attorney’s county of appointment upon approval, or circuit if by contract and only at the current state mileage rates.(the current state mileage rate is 44.5cents per mile) Where the court has found it necessary to appoint an attorney from outside the county of appointment, mileage and travel time will not be paid if the attorney maintains an office in the county of appointment or for some other reason has a connection with that county thereby placing the attorney on that county’s appointment list. This also applies if the attorney has contracted with SCCID to render indigent defense services. No payment for mileage or travel time will be allowed where the attorney has volunteered to be appointed or solicited appointment. Mileage within the county of appointment is not reimbursable. Where the attorney maintains an office in another county or has solicited or volunteered for the appointment, neither mileage nor time for travel between the attorney’s office and the county of appointment shall be reimbursed. Absent special circumstances, if a vehicle is rented for case-related travel, reimbursement will be for the lesser of the cost of the rental vehicle plus gasoline or the mileage reimbursement at the current state rate. A receipt for rental car expenses is required. Credit card receipts or statements will not be accepted.

h. Fees for time billed as travel time from the attorney's primary office to another county in which counsel has an office, the existence of which resulted in the attorney being appointed to a case in that county because the attorney maintained an office there.

i. Meals are reimbursable at the current state rate and will be reimbursed only when it was necessary for the attorney to travel out of the county of appointment and remain overnight. Attorneys must provide a detailed listing of the departure and return times to establish which meals will be reimbursed.

j. Charges for entertainment, cover charges, and alcoholic beverages will not be reimbursed. Meals provided for or consumed at meetings between counsel, witnesses, experts or other staff personnel will not be reimbursed.

k. Lodging is reimbursable as provided in Proviso 72.25 of the 2007-2008 Appropriations Act, at the current CONUS rate, as published by the U.S. General Services Administration. (See www.sccid.sc.gov or www.gsa.gov for lodging rates for all cities in the US including SC cities.) Incidentals such as room service, tips, telephone charges, etc., are not reimbursable.

l. Non service type expenses such as eyeglasses, hearing aids, orthopedic devices, etc. However, examinations for these problems may be paid if they relate to the defense of an individual.

m. Time spent preparing and seeking approval of the Defense of Indigents Voucher for fees and expenses and for opening and closing a file will not be reimbursed. Activities occurring after the end of a case will be carefully examined for necessity.

n. Time expended in travel and mileage where an attorney has solicited the appointment to represent the defendant. This does not include situations where a judicial officer has appointed an attorney outside the county of appointment because of a lack of qualified attorneys in that county. It applies to situations where the attorney has solicited the appointment. The appointed attorney will be treated as if residing within that county or having an office located there.

o. Fees generated prior to the date of appointment to the case unless specifically authorized by the court with prior notice to SCCID of attorney's motion or intent to seek such payment.

p. Compensation to lay witnesses for their time or expenses except under extraordinary circumstances.

q. Trial Attendance by Investigators, Experts and Mitigation Specialists will be compensated only for attending portions of a trial when their presence is necessary, and as long as the services provided are within the amount pre-authorized for their service. Attendance for an entire trial will not be compensated, unless there are extraordinary circumstances and the attorney of record obtains prior approval.

r. OID will not compensate for any investigator whose license is not valid or current throughout the term of employment in the case, or who is unlicensed.

s. Continuing Legal Education costs, including specialized seminars and conferences will not be paid by SCCID.

V. EXPERT FEES, INVESTIGATORS, ETC.

These policies apply to the use of Expert Witnesses, Psychiatrists, Psychologists, Investigators, Paralegals, Mitigation Experts, Jury Consultants, and other individual services rendered to indigent defendants for which the Commission on Indigent Defense is expected to provide funds. Payments will be made only to the Attorney of Record or the Defender Offices and not to the individual provider. In order for funds for payment to be disbursed, the provider must meet the following requirements:

1. The provider of services must have a separate business address and Taxpayer Identification Number from the attorney or attorneys of record or the Public Defender's Office, and an independent investigator must be properly licensed according to South Carolina law and the license must be current and in good standing during the period of employment in the case. Payment for use of "in-house" employed staff as investigators or paralegals is not allowed. The hourly rate paid for attorney services is intended to reflect and include office overhead.
2. The use of the provider must be approved by court order prior to the services being provided and such request must state with specificity the reason for the use and the anticipated services as they apply to the individual case. Approval may not be granted *nuc pro tunc* except where provided by statute.
3. The voucher requesting reimbursement for expert's services must be accompanied by an invoice for such services detailing what services were actually performed, and that the invoice is fair and reasonable. Such statement need not divulge case or defense sensitive information but must account for the provider's time, rates and expenses other than stating only the totals for each activity.

VI. REIMBURSEMENT FOR EXPENSES

All requests for expenses must be approved prior to being incurred. Failure to have expenses pre approved will result in non-payment. Bills, statements, invoices or other documentation must be submitted to substantiate all requests for reimbursement of all expenses.

VII. ADVANCED APPROVAL OF FUNDS

(See Memorandum of Chief Justice Toal, dated July 8, 2005)

The policy of SCCID is not to advance funds to cover expenses except in extraordinary instances, such as court approved witness travel and lodging costs. Rather, the attorney should seek court approval of authorization of specific expenses to be paid by OID upon

submission of vouchers and invoices showing that the services were performed; and no further order of the court for payment will be needed.

Payment of either expenses or fees is allowed only under the provision of SCACR 602(g)(1). Unless otherwise set out in the order, advanced payments of attorneys fees will not be made prior to the end of the trial stage of the case, except in extraordinary circumstances. Failure to provide the required documentation and accounting records will result in no payments being made in the case or to the attorney. Any funds advanced shall be subject to periodic accounting.