

MEMORANDUM

To: Members, Criminal and Delinquency Conflicts Panels and Investigators via Attorneys

From: Carol Woods, Director
Julie Traun & Betsy Wolkin, Administrators
Indigent Defense Administration
Lawyer Referral and Information Service

Date: November 26, 2003

Re: **CHANGES TO BILLING FORMS AND PROCEDURE EFFECTIVE
DECEMBER 1, 2003**

INTRODUCTION

Effective December 1, 2003, the billing process for all appointed cases changes dramatically. We ask that you take time to review this memorandum and the attached billing forms very carefully.

We are fully aware of the new responsibilities accompanying the expansion of our role in the administration of the Conflicts Panels. It is a process and there will be a few bumps in the road, to be sure. We trust we have your cooperation in this important process vital to the continuation of the Conflicts Panel, as we know it. We are very proud of the work performed on behalf of indigent defendants in San Francisco. We are even more proud that we have maintained a strong, experienced, ethical and independent defense bar. All of the changes now implemented and those to be implemented in the future are made with several goals in mind: continuation of experienced private practitioners in the field of indigent defense; cooperation with the Superior Court and the Office of the Public Defender to effect cost savings and accurate reporting of conflict cases; systematic and thorough review of all bills submitted by attorneys and investigators to effect cost savings; expedited and efficient review of bills resulting in prompt payment to attorneys and investigators. We know that you will join us, hopefully willingly, in an effort to adjust to these new changes in order to realize our goals.

As noted, we firmly believe that the process for payment will be considerably expedited once underway. We are currently working with the Court to develop the capability to accept your requests for payments on-line. We anticipate completion of that program within a few months. You will be notified of a training seminar in advance of the on-line billing program and implementation. The forms included in this mailing are the first phase of our transition to on-line billing.

Bills already submitted to the Court.

The Court will continue to process all bills submitted to the Court if submitted prior to December 1, 2003. Should questions arise regarding bills submitted prior to December 1, 2003, please call **court personnel** as you have in the past.

Where and how to submit Attorney, Investigator and Expert Witness bills on or after December 1, 2003.

Even if appointed prior to December 1, 2003, the process for review and payment changes on December 1st for all bills submitted on or after the effective date. This Memorandum summarizes and describes the billing process. In general, you will be required to use new forms and follow the new submission process, described below as of December 1, 2003.

I. WHERE TO SUBMIT REQUESTS FOR PAYMENT

Do not submit any attorney or investigator/expert bills after December 1st to the court. Mail an original and one copy to:

**Indigent Defense Administration
Lawyer Referral & Information Service
Bar Association of San Francisco
301 Battery Street, 3rd Floor
San Francisco, CA 94111**

Do not enclose a second copy or a Self Addressed Stamped Envelope, as a conformed copy will not be returned to you. **Please be certain to retain your own copy for your files.**

II. NEW FORMS

Please note: **Bills submitted on or after December 1, 2003 must be submitted on the new forms.** Please discard every previously authorized form from the Bar Association and/or the courts. New forms are now required for every phase of appointment, including orders appointing investigators and experts. Any bills or forms submitted to the IDA (Indigent Defense Administration) after December 1, 2003 utilizing the old forms will be returned to you without processing. You will be required to resubmit the bill using the new form and of course, the process for payment will be delayed as a result.

Several new forms are enclosed with this Memorandum. They are discussed in the following order: Reporting of Appointment forms, Attorney Billing Forms and Procedures in Criminal/Delinquency Matters; Authorization of Funds for Appointment of Investigator/Expert Witness; Investigator Billing Forms and Procedures in Criminal/Delinquency Matters (including attorney(s)' new responsibilities connected to the billing process for investigators/experts); Billing Guidelines and the Review Process.

A. NEW FORMS IN CRIMINAL/DELINQUENCY MATTERS FOR REPORTING OF APPOINTMENTS

- 1. Scheduled Conflicts Calendar Dates**
- 2. Bench Appointments**

There are four (4) new reporting forms enclosed, two (2) for scheduled conflicts calendar dates (one each for criminal/delinquency matters) and two (2) for bench appointments (one each for criminal/delinquency matters). **No other form may be used or submitted. If a form not bearing the BASF-IDA 12/01/03 date is submitted, it will be returned to you and delay the process. Please discard all other previously issued appointment reporting forms.**

1. Report of Appointments on Scheduled Criminal/Delinquency Conflicts Calendar Dates.

Please take a moment to review the new form(s). You are now required to complete several new fields of information regarding the level of seriousness, the stage of the proceeding, and appointment type. Collection of this information is vital to the Bar, as we need to know, in advance of billing, the number and nature of appointments being made by the court. **All fields of information must be completed on the form.** You need not list every charge contained on the charging document, but be certain to list the most serious offenses charged including, of course, the charges that support your classification for the billing rate. This reporting form may be handwritten, but if the completed form is not easily legible, it will be returned to you and delay the process. We prefer that you complete the forms by typing them.

The new fax number for IDA/BASF is: 415-782-8993. (It is noted on the form.) You may mail the form as well, but whether mailed or faxed, the IDA must receive a completed form within seven (7) days of appointment or your name will be taken out of rotation for conflicts calendar dates.¹

Please note, bills subsequently submitted for appointed work will NOT be processed for payment if we have not received the reporting form in a timely fashion.

2. Notice of Bench Appointment(s) in Criminal/Delinquency Matter(s)

You are required to note, under appointment type, whether this is an appointment made in the case of multiple defendants, a *Harris* appointment, appointment pursuant to court order for co-counsel in extraordinary cases, appointment to represent a witness, DNA testing or any other appointment. (Not all of these categories apply in delinquency matters.) It is critical that we have sufficient information to track the nature and number of Bench appointments. **Note, in all *Harris* appointments and appointments of co-counsel, a written motion must**

¹ Timely reporting of all appointments is essential. Under our new contract with the CCSF, we are to report the number of conflict cases each month. These cases are compared with the reported conflicts declared by the Office of the Public Defender, who now documents every conflict declared. We need to compare conflicts reported by the BASF attorneys with those reported by the Public Defender in a timely fashion.

accompany your bill before it will be processed. No request for payment for an appointment made pursuant to *Harris* or upon motion for the appointment of co-counsel will be processed in the absence of a written motion.²

Again, the new fax number for IDA/BASF is: 415-782-8993. (It is noted on the form.) You may mail the form as well, but whether mailed or faxed, a completed form must be received by the IDA within seven (7) days of appointment or bills subsequently submitted for appointed work, will NOT be authorized for payment if we have not received the reporting form in a timely fashion.

B. NEW BILLING FORMS FOR ATTORNEYS IN CRIMINAL/DELINQUENCY MATTERS.

1. Introduction to the New Forms.

Accompanying this Memorandum are all of the new billing forms to be used **exclusively** in all criminal/delinquency matters for all bills submitted by attorneys on or after December 1, 2003. **All forms bear the “BASF-IDA 12/01/03” notation on the lower left hand corner of the form. No bill will be processed unless the current form is used. Please discard all other billing forms.**

If you have received this packet of material by mail only, it is because we have no e-mail address for you. The billing forms may be downloaded for your use. Please send us your e-mail address so that we may send the forms in WORD. **No handwritten bills will be processed. Any bill submitted with handwritten entries will be returned to you, resulting in a delay of payment.**

These billing forms are for interim use, pending on-line billing. We hope to use on-line billing for all attorney and investigator bills exclusively within a few months. The on-line billing forms will be similar to the enclosed forms so careful consideration was given to the development of these forms, given the nature of the information being collected by the Bar, now and in the future.

2. New Information to be Included on Attorney Billing Forms.

Any bills with incomplete information will be returned to you and not processed until all information is complete on the new form. Therefore, it is important to review these new forms carefully. Some of the newly requested information is noted below.

- a. If your case bears two court numbers (applies in criminal cases only) both numbers must be included.
- b. The basis for the appointment should fit one or more of the boxes listed; if it does not, then complete the box (with explanation) “PD unavailable” or “Other”.

² The only exception to this rule is where the court appoints counsel on a second or third case that is being joined or simultaneously prosecuted with the underlying case (for example, where the appointment on the first, underlying case was made on the basis of a conflict). The underlying case may NOT be a *Harris* appointment. In this limited circumstance, a written motion is not required, but an explanation must accompany the Notice of Bench Appointment and the Request for Payment.

- c. The charges, which support the level of seriousness and billing rate, must be reflected in the list of charges. You may list up to five (5) charges in order of seriousness.
- d. The names of co-defendants, their attorneys (including the names of Public Defenders) and all case numbers, are now required in all multiple defendant cases.
- e. **You must carefully note all other moneys received from outside sources prior to appointment (obviously no money may be received *during* appointment). All previously court-ordered payments must be included as well.**
- f. If **reviewing documents**, you may no longer simply note the time expended for review. The number of pages reviewed during the relevant time period must be noted as well. Therefore, please make separate entries for review of documents.³
- g. **Quarterly billing is now required in all serious felony cases and all W & I § 707 matters.**

C. AUTHORIZATION OF FUNDS FOR APPOINTMENT OF INVESTIGATOR/EXPERT WITNESS

1. The New Form

Enclosed is a new form to be used exclusively in all cases where an investigator and/or expert is appointed on or after December 1, 2003. Discard all other forms used for the appointment of an investigator/expert. Modify the form, as needed, for paralegals or other extraordinary appointments. Once the court has authorized the appointment and the amount permitted for expenditure, the new form requires only your signature following review.⁴

2. The Order Must be Supported by Written Declaration and the Declaration Must be Attached to the Request for Payment by the Investigator/Expert.

This form must accompany any request for payment submitted by your investigator and/or expert.⁵ As noted below, your investigator and/or expert will also be required to submit your declaration filed in support of the Authorization for Funds. Please be certain to provide your investigator/expert with the declaration made in support of the order of appointment. YOU MAY NOT REQUEST THE COURT TO APPOINT AN INVESTIGATOR OR EXPERT IN THE ABSENCE OF A WRITTEN DECLARATION.

D. NEW BILLING FORMS FOR INVESTIGATORS IN CRIMINAL/DELINQUENCY MATTERS

1. It is your Responsibility to Notify Investigators/Experts that Effective December 1, 2003, the Billing Process has Changed.

³ Do not, for example, note two (2) hours was spent on legal research and the review 30 pages of documents, as we will not be able to separate the documented amount of time needed for the review of the 30 pages.

⁴ The old forms required the signature of the court following review. Effective December 1, requests for payments to investigators/experts will be reviewed by BASF, not the court.

⁵ If the amount expended by the investigator/expert is under \$150.00, the court's authorization is not needed. Only your review and approval is required.

Investigators and experts complete all work at your direction. As such, you are responsible for verifying the reasonableness of their services. In addition, you are responsible for their compliance with the new billing procedures. Remember also to remind investigators that effective July 1, 2003, 2% of their fee is deducted by the Controller and remitted to BASF to offset costs of administration of IDA.

We do not have a list of all of the investigators utilized by appointed counsel. **Should any investigator wish to submit a bill on or after December 1, 2003 the new forms must be utilized. All forms not bearing the BASF-IDA 12/01/03 date will be returned to the investigator and payment will be delayed.**

It is your responsibility, as the supervising attorney, to be certain that your investigator has received this Memorandum, the new billing forms and attachments. We will be happy to forward the same information upon request.

2. Where to Submit the Request for Payment for Investigators/Experts in Criminal/Delinquency Matters.

Notify every investigator and or expert submitting a Request for Payment on or after December 1, 2003 to mail an original and one copy to us at the address noted in Section I of this Memorandum.

3. Changes to the Billing Forms and Procedures for Investigators in Criminal/Delinquency Matters Require Your Assistance.

- a. A bill submitted by an investigator or expert in the absence of a **Court Order** Authorizing the services of the investigator/expert and the **written declaration(s) that accompanied the Authorization will not be processed**. It is your responsibility to provide the investigator/expert with a copy of your written declaration(s) and Orders of Appointment.⁶
- b. Effective December 1st, your investigator is required to complete information regarding the nature of the case, the level of seriousness and the stage at which the services were performed. Please review these new billing forms with your investigator, as some of this information may not be as easily accessible to your investigator. It is your responsibility to provide all required information to your investigator. If the investigator fails to fully complete the billing form, it will be returned, and delay the process for payment.

⁶ One of the benefits to the new billing system is confidentiality. In the past, occasionally, requests for payment with supporting documentation were erroneously filed by the clerk's office for public review in court dockets. As all bills will be retained at the Bar Association effective December 1, 2003, there is no chance of review of confidential information by the public or law enforcement.

4. It is your Responsibility to Review and Verify the Accuracy and Reasonableness of all Services Provided by the Investigator/Expert.

The form for AUTHORIZATION OF FUNDS FOR APOINTMENT OF INVESTIGATOR/EXPERT WITNESS has changed and the new form includes written verification of services. As the attorney, **you are still required to review the entire bill, and verify its accuracy.** Sign off on the bill only after careful review of the bill. A bill submitted by an investigator or expert will not be processed in the absence of your verified review. Questions regarding the bill will be directed initially to you as the attorney supervising the work performed. **Please be certain to retain a copy of your investigator/expert's statement of services.**

III. BILLING GUIDELINES AND REVIEW PROCESS.

A. GUIDELINES FOR ATTORNEYS/INVESTIGATORS

You and your investigator are expected to be familiar with all previously issued billing guidelines.⁷ Work which is either unreasonable, or outside the billing guidelines will not be compensated.

B. REVIEW PROCESS

Once the Request for Payment is submitted to BASF-IDA, the information contained in all fields is entered onto a database. Our database is linked to the Court's database. BASF-IDA personnel conduct an initial review of the bill for compliance with general billing guidelines. BASF-IDA personnel are fully familiar with all billing guidelines. Any irregularities, or suspect billing practices will cause the bill to be referred to the Indigent Defense Administrators (Julie Traun & Betsy Wolkin) for further review. If the Request for Payment does not meet with approval by the Administrators, contact with the attorney and/or investigator will be made in an effort to resolve any billing disputes/discrepancies. Unresolved disputes/discrepancies, or any other suspect billing practice previously outlined in BASF's Fee Audit Procedure will result in referral of the attorney's or investigator's bill to the Fee Audit Committee. There, following review, various recommendations may result ranging from approval as submitted, to a recommendation for non-payment or removal from the Conflicts Panel. You should be aware that under the new system, it is most likely that the IDA will give greater scrutiny to submissions of bills by attorneys and investigators than has been generally true in the recent past.

Only the Court has the authority to approve or disapprove a request for payment.

⁷ See: *Polices and Procedures Manual for Court-Appointed Attorneys and Investigators*, revised 6/26/96 and subsequent Memorandum from BASF regarding billing guidelines.

BASF-IDA's new role is to supervise and review the billing process. Court action may or may not be taken as recommended by BASF-IDA. The Court retains the power to remove panel attorneys at any time as all attorneys serve at the pleasure of the court.

It is our hope that this process results in expedited payments to attorneys and investigators. In large part, that will depend on your cooperation with all billing guidelines compliance with the new billing process. We look forward to working with all of you in this exciting new endeavor.