

February 2, 2004

Re: Supplemental Changes to Billing Procedures Implemented 12/01/03

Dear Panel Member,

As we anticipated, there have been a few bumps in the road but generally the process has been working rather smoothly and efficiently. Many of you have received phone calls about billing matters that we could not and did not anticipate before we rolled up our sleeves and began the task of securing the future of our strong, independent and committed panel of experienced criminal practitioners. Your feedback has been essential to the evolution and development of our administrative process.

EXPERTS AND INVESTIGATORS

It is clear that there are areas on the billing forms for attorneys and investigators that require further explanation and areas on the billing forms that will in fact be modified prior to the implementation of web-based billing. Enclosed you will find new forms that should be used to obtain authorization from the court for the services of an investigator, expert. The forms have been modified to reflect that the BASF will deduct a 2% administrative fee from the compensation request of investigators and experts. However, it is the duty of the attorney to notify any investigators or experts that are hired that there will be a 2% fee reduction. This 2% administrative fee applies to forensic experts and court-authorized providers of ancillary services, (including but not limited to paralegals and transcribers) whose requests for payments are processed by BASF, as distinguished from expenses included in the attorney's bill.

If counsel requests that the court exercise its discretion and appoint an expert pursuant to Evidence Code sections 730/1017, counsel should provide the Court with a declaration indicating the reasons for the appointment. Obviously, if the court appoints an expert as required by statute, i.e. Penal Code section 1368, 1026, and 2970. 288(1)(a) etc, no declaration is necessary.

As noted in an additional enclosure dated January 26, 2004 *Re: Processing Investigator Requests for Compensation*, ¶ 5, page 1, addressing Orders/Supporting Declarations, you must indicate the hourly rate of compensation when making application to the court for all appointed experts and ancillary services (except for investigators as their hourly rate has been set by the court in the amount of \$47.00). Please make your declarations as detailed as possible so that we (and the court) are fully apprised of the work/service contemplated by the order, rate of compensation and reasons for the appointment. “Generic” declarations will be returned to you for further explanation and the payment process will be unfairly delayed to the provider.

FURTHER EXPLANATION OF NEW BILLING FORMS

Many attorneys have been confused (and understandably so) by the questions on the billing form that ask, “Is this a bill for preliminary hearing?” and “Is this a bill for trial?”

Preliminary Hearings

With respect to the question regarding preliminary hearings, BASF is interested in knowing whether the particular bill being submitted for payment is for work done up to and including a preliminary hearing. (If a preliminary hearing was conducted at some point in the case, but the bill at issue is for subsequent work, this box need not be checked.) Essentially, this question addresses whether the request for payment is for work done in “Municipal Court”, such as it was prior to court consolidation. The reason for this question is to help collect data that can be compared to data collected over the years prior to court consolidation.

In that regard, we are interested in developing a uniform billing policy in relation to the proper procedure for billing cases in which a certified plea is entered prior to preliminary hearing. Because sentencing issues have become more complex and because there is often more than one appearance of counsel required after the entry of a certified plea before preliminary hearing, BASF is persuaded that in cases where a plea is entered prior to (or during) a preliminary hearing, that counsel should submit a bill upon entry of the plea, using the preliminary hearing court’s (seven digit) number for the case. Counsel should bill all in-court and out of court work related to the sentencing in a separate bill using the Superior Court (six digit) number for the case.

Reduction of charges/billing rates in adult and juvenile cases.

If a felony case is reduced to a misdemeanor prior to or after a preliminary hearing, counsel should submit a bill at that time at the regular felony rate. Counsel should submit an additional and subsequent bill at the misdemeanor

rate for services subsequent to the reduction, when the misdemeanor portion of the case is completed.

In juvenile cases filed as serious felonies, but settled as regular felonies or misdemeanors requiring “progress” or “status” reports, the lower rate of billing applies once the charge(s) is reduced.

Trial Bills

If a jury has been impaneled and sworn in a case, counsel should answer, “yes” to the question as to whether the case went to trial. If the case was assigned to a trial court and a plea was entered there prior to jury selection, the case did not go to trial for the purpose of this question. This question is designed to alert the bill reviewer that a trial was conducted. If counsel is puzzled about how to answer this question, use a common sense approach and then explain the ambiguities raised by providing a brief explanation of the billing activity in the space provided on the form.

Fiscal Year End Bills

At the end of each fiscal year, attorneys have traditionally been instructed to submit bills for work completed during the fiscal year, which ends on June 30th. This procedure will continue in much the same fashion.

Investigators do not submit bills at the end of the fiscal year. Investigators should bill when the money authorized for their services has been exhausted.

Interim Bills/Quarterly Bills

In the past, counsel have sometimes obtained permission from the court to submit interim bills on complex cases that are anticipated to go on for extended periods of time. This procedure enables attorneys to be paid during the course of a fiscal year and also has served to keep the Court informed about the costs associated with the particular case. This information allows the Court to project anticipated costs associated with these cases. BASF and the Court are now requiring counsel to bill all serious felony cases on an interim (quarterly) basis.

Bills for work done on serious felony cases through March 31, 2004 should be submitted to BASF by April 30, 2004. Customary fiscal year end bills will be submitted by counsel on all cases (over \$350.00) by July 31, 2004. Bills for work done on serious felony cases from July 1, 2004 through September 30, 2004 should be submitted by October 31, 2004. Lastly, bills for work done on serious felony cases from October 1, 2004 through December 31, 2004 should be submitted to BASF by January 31, 2005.

Juvenile Delinquency cases are to be billed when the case is concluded, with the exception of serious felonies and W & I 707 cases which are to be billed quarterly. There is no provision for monthly billing. While regular felony and misdemeanor juvenile delinquency cases may not appear to “truly end”, they should be billed at the time of disposition. Of course, end of the year fiscal bills should be submitted in July 2004.

Calendar Year End Bills

Generally, attorneys do not submit year-end bills. Quarterly bills for serious felonies will be required in January for work performed on serious felony cases through December of the preceding year.

Investigators are not permitted to submit bills merely because it is the end of a calendar year.

SERIOUS FELONIES

As you all know, for the better part of this calendar year, all preliminary hearing bills over \$1000.00 were automatically reviewed by the Fee Audit Committee of BASF at the request of the San Francisco Superior Court. It was discovered that one of the most common billing errors was the classification of a crime as a “serious felony” when in fact, based on the operative definition of serious felony used by BASF, the crime was actually a regular felony. The confusion is understandable given that a serious felony is defined differently in Penal Code section 1192.7. Members of the Conflicts Committee of BASF are addressing this confusion and reviewing the definition of “serious felony” for future billing purposes. Until the work of that committee is completed, attorneys should continue to use the definition of a serious felony historically and consistently used by BASF, which is contained in the Qualification Form for the Criminal Panel as set out below:

SERIOUS FELONY DEFINITION: “forcible sex cases, attempted murder, mayhem, non-vehicular manslaughter, complex fraud cases (securities, consumer, insurance or tax), gun use with great bodily injury, child abuse with great bodily injury, three or more separate instances of robbery, assault or first degree burglary.”

EXTRAORDINARY EXPENSES

These are expenses that are unusual either because of the amount of money being expended or because of their character. Counsel should not assume that merely because an expense seems critical to the case that it will automatically be paid for by the Court. To assure reimbursement for any significant expense, counsel should submit an authorization and supporting declaration for signature by the court.

Thanks to all of you for your patience while we find our footing, for your invaluable input, for your criticism (most of it constructive) and for your continuing pursuit of justice.

Sincerely,

Carol Woods