

## EXPERT WITNESS FEE PAYMENT GUIDELINES

### I. PURPOSE OF GUIDELINES

The purpose of these guidelines is to define responsibility for the payment of the expert witness fees and to provide direction for controlling expert witness fee costs.

These guidelines shall be used by the Administrative Office of the Courts (AOC) to determine expert witness fees incurred by the district and magistrate courts. These guidelines, which were originally adopted by the Department of Finance and Administration, are adopted by the Supreme Court for informational purposes for cases involving expert witnesses called by state agencies.

### II. GENERAL GUIDELINES

#### A. Definition of Expert Witness Fees

Expert witness fees are all allowable expenses charged by a witness who is called for court testimony as a direct result of that person's expertise or specialized skill. An expert witness is not a character witness or witness-of-fact. In most cases, the prosecution or the defense will call the expert witnesses; however, a judge may also choose to call an expert witness for testimony.

For purposes of these guidelines, expert consultant fees are not included in the definition of expert witness fees. Expert consultants are used only in the preparation of a case for investigative purposes and are not scheduled for court testimony; therefore, their fees do not qualify as expert witness fees.

#### B. Cost Control

1. As state officials, judges, district attorneys and public defenders are to maximize the use of taxpayer dollars by obtaining witnesses in the most economical manner possible while not detrimentally affecting the proceedings of justice. The use of volunteer expert witnesses at no cost or for per diem and mileage is encouraged.

2. The use of state agency staff in expert testimony in lieu of private sector expert testimony is encouraged. (See, NMSA 1978, §29-3-4.) The Health and Environment Department and the Human Services Department are among the agencies whose staff may be appropriate as expert witnesses in certain proceedings.

3. The use of in-state resident expert witnesses is encouraged.

4. The use of out-of-state expert witnesses is discouraged and should only occur if in-state resources are not adequate or available or cannot be used.

5. In accordance with state law, no agency may pay an expert witness for services not rendered (See, NMSA 1978, §13-1-158).

### III. PAYMENT LIMITATIONS

If the trial court chooses to call an expert witness, payment of expert witness fees shall be limited as follows:

A. In magistrate court, fee payment shall be limited to one hundred dollars (\$100.00) (SCRA 1987, 2-701), plus per diem and mileage as provided in the Witness Fee Payment Guidelines;

B. In metropolitan court, fee payment shall be limited to three hundred dollars (\$300.00) (SCRA 1978, 3-701), plus per diem and mileage as provided in Witness Fee payment Guidelines; and

C. In district court, the judge may order payment of reasonable witness fees in any pending civil case in addition to per diem and mileage for an expert witness who testified in person or by deposition (NMSA 978, §38-6-4; Witness Fee Payment Guidelines).

### IV. PAYMENT RESPONSIBILITY

#### A. Criminal Proceedings

The Agency that calls the expert witness shall be responsible for payment of the fees.

1. Criminal Proceedings in District Court: Whoever call an expert witness shall be responsible for payment of that witness.

2. Preliminary Hearings and Bond Arraignments in Magistrate Court: The agency that calls an expert witness shall pay the fees of that witness. Since the purpose of a preliminary hearing is to determine probable cause, and not determine guilt or innocence, the need for expert witnesses in magistrate court should be minimal.

3. Criminal Grand Jury Proceedings: Whoever calls an expert witness shall pay the fees of that witness. The AOC shall pay for an expert who is called specifically by the grand jury and who conducts an examination testimony at the direct request of the jury. This request shall be made through the presiding district judge. The presiding judge must approve the request as being necessary to the determination of probable cause before the AOC will pay for that expert. Since the purpose of a grand jury is to determine probable cause, and not to determine guilt or innocence, the need for an expert witness in a grand jury proceeding should be minimal.

4. Delinquency Proceeding: Whoever calls the expert witness shall pay the fees of that witness.

B. Civil Proceedings

1. The state agency that calls the expert witness shall pay the fees of that witness in the following types of proceedings:

- (a) Mental Health and Developmental Disabilities Code;
- (b) alcoholism commitment proceedings;
- (c) child abuse and adult abuse proceedings;
- (d) child support cases;
- (e) termination of parental rights and custody proceedings;
- (f) CHINS proceedings; and
- (g) Habeas corpus proceedings.

2. Expert witness called by court-appointed attorneys or guardians ad litem shall be paid by the district court.

Note: Use of “free” experts from either public health agencies or private health agencies is encouraged in all the above cases.

3. County Legal Proceedings: The county shall pay for all expert witness fees in county legal proceedings in which the district attorney represents the county.

4. Wage Claim Proceedings: The labor and industrial commission shall pay for expert witness fees incurred by the state.

C. Other administrative Case Hearings and Regulatory Hearings

Whoever calls the expert witness shall pay the fees of that witness.

D. Consultation

Whoever requests consultation with the opposing party’s expert witness will pay the expenses for that consultation when the expert charges a fee.

E. Office of the Medical Investigator (OMI)

1. OMI shall not charge the state professional fees for consultation or testimony by its staff or faculty. However, it may charge mileage and per diem or chartered plane costs, as necessary. The agency using OMI is responsible for notifying OMI immediately if a plea bargain or cancellation occurs to avoid unnecessary travel expense to the state and inconvenience to OMI.

F. Processing of Vouchers for AOC Payment  
When the Grand Jury Calls a Witness

1. The Certification of Expert Witness form is filled out by the expert witness and attached to the expert's bill for services.
2. Court personnel prepare the voucher and review for completeness and accuracy and forward the form, the voucher and all attachments to AOC for payment.
3. AOC processes the payment request and mails the expert witness fee payment directly to the expert witness for magistrate court, unless otherwise specified; payments for district court will be returned to that court for distribution to the expert witness.

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