

Committee for Public Counsel Services
Assigned Counsel Manual
Policies and Procedures

VI. COURT COSTS OF INDIGENT PERSONS FUND
G.L. c. 261, §§ 27A-G

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I. INTRODUCTION

Zealous advocacy often requires incurring expenses in preparing and presenting a client's case. For example, it may be advisable to obtain an expert witness or an interpreter to assist in witness interviews, or a blood analysis. Attorneys should familiarize themselves with G.L. c. 261, §§ 27A-G, which provide for payment of expenses through the Indigent Court Costs Fund.

A. General Guidelines for Obtaining Funds for Defense Costs

Generally, it is necessary to obtain prior written approval from the judge for expenses, by filing a motion under this statute. The motion must be accompanied by an “*Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees & Cost*” form

(http://www.mass.gov/courts/formsandguidelines/aff_indigency.pdf) and, if necessary, a “*Supplement to Affidavit of Indigency*” form

(http://www.mass.gov/courts/formsandguidelines/supp_aff_indigency.pdf), both as issued by the Supreme Judicial Court, or, if acceptable to the particular court, a Notice of Assignment of Counsel (NAC) form and a supporting affidavit of counsel. Counsel should research the law and prepare an argument for hearing before the judge on this motion; if the motion is denied, the attorney should appeal the motion to either the Appellate Division of the District Court, the Superior Court, or the Appeals Court, depending on which court has jurisdiction (see G.L. c. 261, § 27D).

This notice of appeal must be filed within seven days. Counsel should not engage the services of an expert or incur other expenses until s/he has received written court approval for the requested funds under this statute, except as described below. Attorneys are required to verify work performed by experts, investigators and social service providers by signing and dating the expert's payment voucher, indicating the NAC number, and adding the following language: “I certify that the expert or provider who submitted this bill has provided services in this case.” Please note that attorneys may not receive any personal or professional benefit from selecting or using an expert. An expert should be selected by the attorney based upon the expert's qualifications and suitability for the case. For assistance in obtaining the names of qualified experts, contact the appropriate panel at CPCS, the Forensic Services Director of CPCS, or check the CPCS website. A Sample motion and Affidavit in Support can be found at the end of this Section. Information regarding payment can be found in section D, below.

B. Unusual or Extraordinary Expenses

When attorneys seek unusual or extraordinary expenses, they must first obtain prior written authorization from the appropriate Deputy Chief Counsel or Director of the Mental Health Litigation Unit. (See Chapter 5, Section 29, of this Manual.) After receiving the required written authorization from the appropriate Deputy Chief Counsel or Director of the Mental Health Litigation Unit, the attorney must **also** obtain prior written approval from the judge, as outlined in paragraph #1 above. Some examples of unusual or extraordinary expenses are:

1. Expenses required to obtain the services of an expert whose rates exceed the

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range of CPCS published rates, *see* “CPCS Qualifications and Rates for Investigators, Social Service Providers and Expert Witnesses” by clicking on this link: [Rate chart and qualifications for expert witnesses](#)

2. Expenses for an expert whose qualifications do not meet the “CPCS Qualifications and Rates for Investigators, Social Service Providers and Expert Witnesses.” See link to [Rate chart and qualification for expert witnesses](#), above.
3. Expenses required for an Expert Witness traveling from out of state
4. Expenses involving unusual expertise, services, or products.

C. Ordinary Costs of Litigation

Please note that for certain ordinary costs of litigation, attorneys may not need to file a motion for expenses under G.L. c. 261, §§ 27 A-G, or obtain prior authorization from the appropriate Deputy Chief Counsel or Director of Mental Health Litigation Unit of CPCS. For example, attorneys need not file a motion or obtain prior authorization for the following:

- a. interpreter services not exceeding \$500, paid at the standard rate
- b. transcripts for [direct appeals](#), regardless of cost, paid at the standard rate
- c. other transcripts under \$1,000, paid at the standard rate
- d. service of process

D. New Trial Motions

Any request for funds in connection with a motion for new trial pursuant to Mass. R. Crim. Pro. 30 (c) is not within the scope of G.L. c. 261, §§ 27A-G, but should instead be made pursuant to Rule 30 itself.

E. Appellate Review of Denial of Motion for Funds (G.L. c. 261, § 27D)

After notice of the denial, **a notice of appeal must be filed within seven days**. This notice of appeal must be filed in the office of the clerk of the court which heard the motion.

A stay of proceedings pending appellate resolution of the funds issue should also be requested.

The judge must file written findings concerning his denial of the motion within three days of receiving the notice of appeal.

The clerk will forward the motion and findings to the single justice of the Appeals Court if the motion was denied in Superior Court, to the Appellate Division of the District Court if the motion was denied in District Court, or to the Superior Court if the motion was denied in Juvenile Court. A hearing of the appeal will be scheduled by the clerk of the applicable appellate forum.

SAMPLE MOTION FOR EXPENSES

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK,ss.

SUPERIOR COURT DEPARTMENT
Docket No.

COMMONWEALTH

v.

[CLIENT]

MOTION FOR
EXPENSES

Now comes the defendant [or client] in the above-entitled matter and moves this Court, pursuant to G.L. c. 261, § 27C, to authorize the expenditure of funds not to exceed five hundred dollars (\$500) to retain John Doe, a fingerprint expert.

The defendant [or client] states that the requested funds are "reasonably necessary to assure [him] as effective a ... defense as he would have if he were financially able to pay." G.L. c. 261, § 27C(l); *Commonwealth v. Bolduc*, 383 Mass. 744, 748 (1981); *Commonwealth v. Lockley*, 381 Mass. 156, 164 (1980).

[CLIENT]
By his attorney:

[Attorney Name]

SAMPLE AFFIDAVIT IN SUPPORT OF MOTION FOR EXPENSES

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK,ss.

SUPERIOR COURT DEPARTMENT
Docket No.

COMMONWEALTH

v.

[CLIENT]

MOTION FOR EXPENSES

AFFIDAVIT IN SUPPORT OF MOTION FOR EXPENSES

I, [Attorney Name], depose and say that:

- I. Defendant [or client] was found indigent by a justice of the Suffolk Superior Court at his arraignment on [Date]. The defendant remains indigent and has no funds to engage the services of a fingerprint expert. [or]
1. Defendant [or client] is indigent as indicated in his “*Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees & Cost*” and “*Supplement to Affidavit of Indigency*,” filed herewith.
2. John Doe is a qualified expert. I have discussed with him the issues in this case, and he has advised me that the cost of analyzing the fingerprint evidence and preparing a report will be five hundred dollars (\$500.00). Additional funds will be needed to compensate him for his time if it becomes necessary for him to appear in court.

The above is true to the best of my information and belief and is signed under the pains and penalties of perjury.

[Attorney Name]

II. EXPERT ISSUES IN REPRESENTING INDIGENT PERSONS

Statutory provisions for the payment of fees and costs on behalf of indigent persons are

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found in G.L. c. 261, §§ 27A-G. In order to obtain funds, it must be shown that:

- A. The person is indigent. This can be established by filing an “*Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees & Cost*” form (http://www.mass.gov/courts/formsandguidelines/aff_indigency.pdf) and, if necessary, a “*Supplement to Affidavit of Indigency*” form (http://www.mass.gov/courts/formsandguidelines/supp_aff_indigency.pdf), both as issued by the Supreme Judicial Court. In some courts, an assertion by affidavit of counsel that s/he was appointed upon a previous finding that the person was indigent will suffice; and
- B. The requested expenses are "reasonably necessary to assure the applicant as effective a ... defense ... as he would have if he were financially able to pay." G.L. c. 261, § 27C(4).

“The test is whether the item is reasonably necessary to prevent the party from being subjected to a disadvantage in preparing or presenting his case adequately, in comparison with one who could afford to pay for the preparation which the case reasonably requires.”

Commonwealth v. Lockley, 381 Mass. 156, 160-161 (1980).

To obtain authorization for the payment of an expert, a written motion must be filed which should state the amount of money needed, the purpose of the expenditure, and why the expenditure is "reasonably necessary." In criminal cases, the motion must be accompanied by an affidavit detailing the "facts relied upon in support of the motion and signed by a person with personal knowledge of the factual basis of the motion." Mass. R. Crim. P. 13(a)(2). Although the authorizing statute provides that the court "shall not deny any request with respect to extra fees or costs if it finds the document, service or object is reasonably necessary" (and "shall not deny any request without first holding a hearing thereon"), G.L. c. 261, § 27C(4), appellate courts have scrutinized affidavits in this context and have on occasion found them inadequate.

In order to make the necessary representations in the affidavit concerning costs of services, a preliminary discussion with a potential expert may be desirable.

A Sample motion for Expenses and Affidavit in Support regarding payment can be found above.

EX PARTE MOTION

Counsel should ask that a motion for funds be allowed without a hearing or, if a hearing is necessary, that it be conducted *ex parte*. Where the “reasonable necessity” of the funds sought is established in the motion or affidavit in support of the motion, the court should allow the motion without a hearing. Where a hearing is necessary, however, the court should hear the matter on an *ex parte* basis in order that counsel need not disclose key aspects of his or her case. *Cf. Comm. v. Dotson*, 402 Mass 185, 521 N.E.2d 395 (1988) (prosecution has no role to play in defendant's motion for public payment for expert witness under G.L. c. 261, § 27C). An *ex parte* motion remains a part of the public record of a case unless the motion is impounded.

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Therefore, counsel should move to impound the motion.

CAUTION: The information gathered and the opinions formed by an expert “belong” to the client and are not discoverable by opposing counsel (or to be shared with the court) unless the expert will be called by counsel to testify or the expert’s report, if any, will be proffered at the hearing. *Thompson v. Commonwealth*, 386 Mass. 811, 819, 438 N.E.2d 33, 38 (1982) (facts known and opinions held by independent physician to be treated the same as if physician had been hired privately); *Commonwealth v. Haggerty*, 400 Mass. 437 at 441(1987). The court should not draw any adverse inferences from the respondent's decision not to use the report as evidence in his or her case.

III. INFORMATION ON SELECTED ICC SERVICES

A. Interpreters

The Committee pays for interpreter OUT-OF-COURT services which have been requested and allowed by motion (except as set out below in this section) filed by the defense attorney on behalf of an indigent client, at the rate of \$26 per hour for non-certified interpreters and \$40 per hour for certified and qualified interpreters.

A certified interpreter is one trained and certified by the Office of Court Interpreter Services. A qualified interpreter is one certified by the Office of Court Interpreter Services and who has passed the Administrative Office of the U.S. Courts Federal Certification Examination or a sign language interpreter as determined by the Massachusetts Commission for the Deaf and Hard of Hearing.

Requests for compensation of services should be submitted to the Committee for Public Counsel Services, Indigent Court Cost Department, by the interpreter on a signed payment voucher form which includes an itemization of dates, hours, type of services and rate, and a copy of the allowed motion, within 30 days of completion of services.

No motion for expenses is required for interpreter services under \$500. For interpreter services over \$500, attorneys must follow the “General Guidelines for Obtaining Funds for Defense Costs,” outlined in Section A 1, above.

CPCS will compensate interpreters a minimum of two hours of services for each event for which their services are required. For example, if an interpreter is needed to interview a client at his residence, and the interpreter’s combined travel time and interview time are only one hour, the interpreter will be compensated for a total of two hours of service. If the interpreter’s travel time is one hour and the interview time is one hour, the interpreter will be compensated for one hour of travel and one hour of service, totaling two hours. If the interpreter’s combined travel and interview time is three hours, the interpreter will be compensated for a combined total of three hours of service.

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Interpreters will be compensated for their travel time, mileage, and expenses in accordance with the CPCS travel policy for all vendors.

To obtain reimbursement in excess of the ordinary rate for interpreter services, if such reimbursement is needed for a language for which interpreter services are not readily available, attorneys must first obtain prior written authorization from the appropriate Deputy Chief Counsel or Director of the Mental Health Litigation Unit. (See Chapter 6, Section A. 2, “Extraordinary or Unusual Expenses.”) After receiving the required written authorization from the appropriate Deputy Chief Counsel or Director of the Mental Health Litigation Unit, attorneys must **also** obtain a prior allowed motion from the court, pursuant to G.L. c. 261, §§ 27A-D.

Interpreters for the Deaf and Hard of Hearing: CPCS will pay interpreters for the deaf and hard of hearing in accordance with the rate structure established by the Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH). See the MCDHH website for rates paid to interpreters for the deaf and hard of hearing: <http://www.mass.gov/MCDHH/>.

B. Transcripts

The Committee pays for transcriptions, which have been requested and allowed by motion, filed by the defense attorney on behalf of his/her indigent client, or which have been requested by the court as a direct result of the defense attorney's motion to appeal, at the following rates:

Transcripts from notes are paid at the rate of \$3.00 per page for an originally produced (first time produced) page and \$1.00 per page for a copy.

Transcripts from tapes are paid at the rate of \$3.00 per page, per original and .75 per page for a copy.

Please note: the Committee for Public Counsel will reimburse for only one copy at the above noted copy rate. Additional copies should be limited to only those which are absolutely necessary and should be produced at a photocopying rate (maximum .10 per page). Postage, handling, bindings and travel expenses are not reimbursed.

Requests for compensation of services should be submitted to the Committee for Public Counsel Services, Indigent Court Cost Department, by the transcriber on a payment voucher form which includes the date(s) of the original hearing(s), the date the transcript was delivered, the total number of pages produced, a copy of the allowed G.L. c. 261, §§ 27A-G motion OR the court order to produce the transcript, and proof of indigency (see section on acceptable proofs), within 30 days of completion of services.

Please note: transcripts for direct appeals, regardless of cost, paid at the standard

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rate, and other transcripts under \$1,000, paid at the standard rate, are considered ordinary costs of litigation (See Section A (3) (b) and (c) of this chapter), and therefore no motion for funds or prior authorization are necessary for such transcripts.

Court Reporter Attendance. The Committee will pay for the attendance of a Court Reporter, which has been requested and allowed by motion filed by the defense attorney on behalf of his or her indigent client, at the rate of \$185.60 per day (effective with services rendered 1/1/07.)

Requests for compensation of services must be submitted by the vendor, accompanied by an allowed motion, and should be submitted within 30 days of completion of services.

C. Public Notice

The Committee will pay for Public Notices which have been requested by the defense attorney on behalf of his or her indigent client.

A copy of the actual notice or an invoice (showing the name of the newspaper, number of lines, days printed, and rates) and proof of client indigency must be included with the request for payment.

D. Service and Summons

Requests for Service and Summons made by the defense attorney on behalf of his or her indigent client will be paid at the rate allowed under G.L. c. 262, § 8. A complete itemization of dates, rates, mileage, party served, proof of indigency and party requesting the service, must be noted on, or attached to, the payment voucher. Attorneys need not submit an allowed motion for expenses, or obtain prior authorization for service of process. (See Section A (3) (d) of this chapter.)

Note to attorneys: please be advised that we will reimburse you for costs incurred regarding services and summons up to the amount allowed by G.L. c. 262, § 8, **only**. Please notify your vendor as to the correct billing rate prior to contracting services.

E. Psychiatric Examination, Medical/Lab Testing, Private Investigators, Expert Witnesses or Expert Analysis

The Committee will pay for any of the above noted services if they have been requested and allowed by motion filed by the defense attorney on behalf of his or her indigent client, **at an amount not to exceed the allowed motion.**

The attorney is asked to ensure that these services are ones which are reasonably necessary to assure the client as effective a defense as s/he would have if s/he were financially able to pay. Requests for compensation of services must be submitted by the vendor on a payment voucher form, accompanied by an allowed motion pursuant to G.L. c. 261, §§ 27A-G, including an itemization of dates, hours and rates, and submitted within 30 days of completion of services.

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Lump sum or flat fee billing will be rejected; further itemization will be requested.

IV. PAYMENT FROM THE INDIGENT COURT COSTS FUND

The company or person who performed services may submit a Commonwealth Payment Voucher (PV) and be paid directly. If the attorney has already paid the company or person for services, the attorney may submit a PV in order to be reimbursed. Documentation of that payment must accompany the PV.

A. Documentation Required:

The Comptroller of the Commonwealth requires complete documentation, including all receipts and an itemization of all expenses, in order to reimburse attorneys for **any** expenditures. Legible receipts in the form of a canceled check, or other document that clearly indicates that the bill was paid, and indicating the date, amount of expenses, and name of vendor must be submitted with the attorney's request for payment.

A sample PV form follows, along with instructions for completion. Photocopies of the sample are acceptable for use in billing.

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Payment Voucher Form

**THE COMMONWEALTH OF MASSACHUSETTS
COMPTROLLER'S DIVISION
PAYMENT VOUCHER INPUT FORM**

DEPARTMENT OF REGISTRATION

DEPT VOUCHER NAME AND ADDRESS

| | | | | | | | |
|---------------------|--|---------------------|--|---------------------|--|---------------------|--|
| DOCUMENT # | | PV DATE | | ACTS PROJ | | BUD FY | |
| PV NUMBER | | PV DATE | | ACTS PROJ | | BUD FY | |
| DEPT VOUCHER NUMBER | | DEPT VOUCHER NUMBER | | DEPT VOUCHER NUMBER | | DEPT VOUCHER NUMBER | |
| DEPT VOUCHER NUMBER | | DEPT VOUCHER NUMBER | | DEPT VOUCHER NUMBER | | DEPT VOUCHER NUMBER | |

1. Before entering the number of acts on this form, all items of the Comptroller's Department should be approved by the Comptroller's Office.

| LINE | DESCRIPTION | QUANTITY | UNIT PRICE | AMOUNT |
|------|---------------------|----------|------------|--------|
| 1 | DEPT VOUCHER NUMBER | | | |
| 2 | DEPT VOUCHER NUMBER | | | |
| 3 | DEPT VOUCHER NUMBER | | | |
| 4 | DEPT VOUCHER NUMBER | | | |
| 5 | DEPT VOUCHER NUMBER | | | |
| 6 | DEPT VOUCHER NUMBER | | | |
| 7 | DEPT VOUCHER NUMBER | | | |
| 8 | DEPT VOUCHER NUMBER | | | |
| 9 | DEPT VOUCHER NUMBER | | | |
| 10 | DEPT VOUCHER NUMBER | | | |

TO THE COMPTROLLER OF THE COMMONWEALTH OF MASSACHUSETTS,
1. Before entering the number of acts on this form, all items of the Comptroller's Department should be approved by the Comptroller's Office.

APPROVED BY: _____ DATE: _____
 TITLE: _____
 ENTERED BY: _____ DATE: _____

REMARKS TO VOUCHER:
 FULL IN BILLED AMOUNT
 GREAT INCREASE TO
 RETURN BILLED COPY

B. Payment Voucher (PV) Instructions for Completion

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(Numbers on sample form correspond to numbers below.)

The term “vendor” is used below in reference to the person or company seeking reimbursement.

REMINDER: THE COMMONWEALTH'S FISCAL YEAR RUNS FROM JULY 1 THROUGH JUNE 30. PLEASE SUBMIT SEPARATE PVs FOR EACH FISCAL YEAR.

The case name and related assignment number must be noted on the PV and proof of services rendered (each date and description of services on business letterhead), proof of payment for services (canceled check or paid receipt from vendor), Attorney Certification (where applicable), and an allowed motion (where applicable) must be attached.

Attorneys are required to verify work performed by experts, investigators and social service providers by signing and dating the expert's payment voucher after adding the following prescribed language:

"I certify that the expert or provider who submitted this bill has provided services in this case."

1. **Vendor's Certification:** Requires the original signature of either the provider of the services or the attorney, depending on who is seeking reimbursement.
2. **Dept:** Will always be CPC
3. **Vendor Invoice Number:** The first three digits will always be the court code (see Section IX of this Manual.) The next nine digits can be whatever the vendor wants to use as an identification number; usually CPCS attorneys use the nine-digit Notice of Assignment of Counsel number. This number will appear on the check stub.
4. **Vendor Code:** A vendor code must be established and on file with the Commonwealth before a vendor may be paid. It consists of the social security number and the first four letters of the last name, or a federal income tax identification number and four assigned digits. To establish a vendor code, contact CPCS Private Attorney Payment Department.
5. **Vendor Name and Address:** Name and address of the person whose vendor code is listed. The Committee must receive written notification of address changes on letterhead with an original signature.
6. **Quantity:** How many units of work were provided, e.g., hours, copies, etc.
7. **Unit Price:** Cost per unit, e.g., \$25.00/hour, \$2.50/copy, etc.
8. **Amount:** Multiply unit price times quantity.
9. **Description.**

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- i. Client name.
- ii. Court.
- iii. Name of provider of service if different from vendor seeking reimbursement.
- iv. Type of service provided.
- v. See section on documentation below.

10.Amount: Total reimbursement requested.

11.Dates of Services: Dates when services were actually rendered or delivered (in the case of reports or transcripts).
PLEASE SUBMIT SEPARATE PV's FOR EACH FISCAL YEAR.
A fiscal year runs from July 1 to June 30.

After completing the Attorney Verification (where appropriate) forward the packet to:

Committee for Public Counsel Services Billing Department
44 Bromfield Street
Boston, MA 02108

C. **Documentation:**

The following documents must be attached in order for a PV to be processed.

1. Proof of Indigency: An Affidavit of Indigency, a motion authorizing Commonwealth payment of fees due to client's indigency, or a copy of the Notice of Assignment of Counsel form.
2. Proof of Payment: When an attorney requests payment for expenses, monies cannot be advanced. Proof of payment for the service is required. Either a signed receipt or a receipt that CLEARLY shows that the person or company providing the services has been paid PRIOR TO SUBMISSION of the PV is acceptable. A copy of a CANCELED check is recommended.

D. **Reminders:**

1. Do not seek reimbursement if you have not paid the vendor. Have the vendor bill us directly. In such cases, where appropriate, sign Attorney Verification and send the PV and supporting documentation to CPCS.
2. Do not seek reimbursement if someone else paid for the costs. Have him or her bill us directly.
3. Do not submit a PV and then include the amount in rate C of an RFP.
4. Separate PVs for each fiscal year must be submitted (the appropriations are fiscal year specific).
5. Submit your vendor's bill promptly upon completion of vendor's services and your payment of expenses.
6. Vendors must keep itemized time sheets.
7. Vendors must bill **actual** time.
8. Vendors cannot bill waiting time, except as allowed for in-court waiting time.

**Payment Voucher (PV) forms can be downloaded in PDF format
(Instruction PV and the blank PV are included in PDF format)**