

OAC PROCEDURES

HOW TO FILE YOUR MOTION FOR “RETAINED INDIGENT” STATUS

(Revised February 28, 2012)

Dear Retained Defense Attorney:

In the same PDF Portfolio file containing this procedural document, you will also find a sample pleading you may choose to use as a template for your own pleading if you decide to seek a court order authorizing government assistance in the funding of reasonable and necessary ancillary services in a criminal case in which you are serving as retained counsel. OAC refers to such matters as “Retained Indigent” cases since they originated as “retained” matters but now involve a claim of “indigency” for ancillary service funding purposes. Also included in the Retained Indigent PDF Portfolio are Billing Procedures that you will need to be familiar with if you have a Retained Indigent case with OAC and/or become an OAC panel attorney handling conventional appointed matters.

Please remember that the fact counsel has been retained in a case creates a presumption that the client in question is not indigent for purposes of providing for his or her defense. Accordingly, the burden will be on retained counsel to overcome that initial presumption and persuade the court that the client is in fact indigent and, therefore, eligible for county funded ancillary services. Any request for funding approval for particular ancillary services must also be adequately supported by justification information clearly establishing that the requested services are reasonable and necessary for presenting a defense in the case.

The following are the key steps required in the process of filing documents to request County assistance in the funding of ancillary services in “Retained Indigent” matters, and also the documents you must provide to OAC for OAC’s internal file opening purposes:

- 1) You will need the following documents: (a) a fee agreement signed by the retained attorney plus the client and any other persons or entities who or which may be financially responsible for payment of the attorney fees and/or costs on the case, (b) a declaration from the retained attorney in support of the request for government assistance in the funding of ancillary services on a retained case, (c) a Motion seeking a court order authorizing such government funding assistance, (d) Points & Authorities in support of the motion, (e) the client's financial declaration demonstrating indigency (a court form), and (f) the proposed court Order.
- 2) Take the original and two copies of the pleadings to the San Diego Superior Court’s Criminal Presiding Department for the County, Department 11 in the Central Courthouse in downtown San Diego, and file those pleadings at the counter with the court clerk. The required documents should be filed with the court as confidential sealed documents not available to the public or the prosecution. The court will not

entertain these types of requests *ex parte*, but the Superior Court's Supervising Criminal Judge usually rules upon them soon after submission.

- 3) The San Diego County Superior Court's Supervising Criminal Department, currently Department 11 in the Central courthouse in downtown San Diego, handles all Retained Indigent requests for all four judicial districts in the entire County; so your request must be submitted through that department regardless of where the case is otherwise being heard.
- 4) The Superior Court's Supervising Criminal Judge may not agree to sign the proposed Order you initially submit. Instead, the Judge may sign an Order directing you to first "meet and confer" with OAC' representatives in an effort to reach some stipulations regarding your request. If this happens, please send an e-mail message to OAC at oac@sdcounty.ca.gov that attaches copies of all of the documents you submitted to the court in support of your request – preferably in one PDF file. OAC's Director and/or Deputy Director will review your submission and draft a "RETAINED INDIGENT STANDARD STIPULATED ORDER." A copy of this "Stipulated Order" will then be e-mailed to you as a PDF attachment for your review. Once you confirm with OAC that the Stipulated Order is acceptable to you, OAC will file it with the other documents in Department 11 with the anticipation that the court will then sign the Stipulated Order.
- 5) OAC will provide you with a conformed copy of the documents noted above. You must provide OAC with a copy of the charging document in the case.
- 6) OAC, upon receipt of all the required paperwork, will open up a Retained Indigent file in OAC's case management system and will then be prepared to review and process your funding requests following the normal ancillary service request procedures used by OAC in all indigent cases. If any of the required documents are missing from the package you submit to OAC, OAC will not open up a retained indigent file in its system. That means OAC would not agree to process, approve, or pay for any ancillary service funding requests you might submit until and unless you provide the missing document(s).
- 7) You will be required to use OAC's Ancillary Service Request forms available online at <http://www.sdcounty.ca.gov/oac> in order to draft your requests for funding approval for specific ancillary services pursuant to the court order.
- 8) Much additional helpful information can be found on OAC's website, including links to legal research resources, various useful case forms, and information on training.