

SUPREME COURT OF COLORADO
OFFICE OF THE CHIEF JUSTICE

**DIRECTIVE CONCERNING COURT COMPENSATION OF EXPERT WITNESSES
AND PROFESSIONALS CONDUCTING MENTAL HEALTH EVALUATIONS, SANITY
EVALUATIONS, AND COMPETENCY EVALUATIONS**

In an effort to control expenditures of state funds in court cases, the following policy shall apply to expert witnesses and mental health professionals conducting examinations or evaluations (with or without subsequent testimony), who are entitled to compensation paid by the Colorado Judicial Department pursuant to Colorado Revised Statutes section 13-33-102(4), section 15-14-306 when respondent is indigent, sections 16-8-103, 16-8-106, 16-8-108, sections 16-8.5-101-16-8.5-114, sections 18-1.3-1104, 19-1-104(3)(a), and section 19-2.5-703.

This Directive does not apply to other professionals that are appointed and compensated by the court as provided in other Chief Justice Directives, including, but not limited to, court visitors, child and family investigators, and court-appointed counsel, nor does this Directive apply to expert witnesses procured and compensated by other state agencies, or employees and/or contractors paid by the Colorado Mental Health Institute at Pueblo or other government mental health agencies for work performed at their direction. Certain types of evaluations are also excluded inasmuch as they are governed by other program specific statutes, rules, or policies, including but not limited to, domestic relations evaluations, psychosexual evaluations, substance abuse evaluations, domestic violence evaluations, and alcohol evaluations. If the Court finds that there is not an applicable statute, rule, directive, policy, or similar guidance that governs compensation for an evaluation or expert witness permitted by statute, and that payment by the Judicial Department is appropriate, the Court shall enter an order requiring the professional to comply with the fee and billing requirements and limitations set forth in this Chief Justice Directive.

The Judicial Department may enter in to agreements to provide for evaluations or examinations when it is determined that said agreements are cost-effective and in the best interest of the Judicial Department.

I. Fees and Expenses

- A. Hourly Fee for Sanity and Competency Evaluations. On or after July 1, 2023, for any evaluation conducted pursuant to sections 16-8-103, 16-8-106, 16-8-108, 16-8.5-101-16-8.5-114, and 19-2.5-703, C.R.S., the hourly fee paid to mental health professionals shall be reasonable and may not exceed \$177 per hour (or 50% of the authorized rate as described in section I.E.2. of this Directive) unless there is justification from

the requesting party that they are unable to obtain the services of a mental health professional at a rate of \$177 per hour. Any competency or sanity evaluation ordered prior to July 1, 2023, shall be paid at the rate of \$150 per hour. A motion to exceed the hourly rate shall be filed in advance of engagement of the professional and shall explain why a fee in excess of the authorized rate is both reasonable and necessary. The court may grant, deny, or set a hearing on the motion to exceed the hourly rate. The court's order shall be in writing or shall be recorded in the court's case management system.

- B. Maximums for Sanity and Competency. On or after July 1, 2023, no mental health professional fees in excess of \$1,770 for a case (exclusive of authorized expenses) shall be incurred without prior order of the court, except that a mental health professional who completes the required evaluation of an individual and subsequently testifies as an expert witness at a court hearing in the case may be allowed up to \$2,655 in total fees (exclusive of authorized expenses). Any competency or sanity evaluation ordered prior to July 1, 2023, shall have a maximum allowance of \$1,500 per evaluation (exclusive of authorized expenses), except that a mental health professional who completed the required evaluation of an individual and subsequently testified as an expert witness at a court hearing in the case may be allowed up to \$2,250 in total fees (exclusive of authorized expenses). These amounts are the presumptive cap and shall not be considered a flat rate of pay. Any motion requesting approval of fees in excess of the above maximums shall include the total anticipated fee amount and an explanation of the extenuating circumstances warranting the amount. The court's order approving excess fees must accompany any payment request.
- C. Hourly Fee for Experts and Evaluations Other than Sanity or Competency. On or after July 1, 2023, the hourly fee paid to expert witnesses and mental health professionals performing services pursuant to this Directive that are not related to sanity or competency shall be reasonable and may not exceed \$118 per hour (or 50% of the authorized rate as described in section I.E.2. of this Directive) unless there is justification from the requesting party that they are unable to obtain the services of an expert witness or mental health professional at a rate of \$118 per hour. A motion to exceed the hourly rate shall be filed in advance of engagement of the professional and shall explain why a fee in excess of \$118 per hour is both reasonable and necessary. The court may grant, deny, or set a hearing on the motion to exceed the hourly rate. The court's order shall be in writing or shall be recorded in the court's case management system.
- D. Maximums for Experts and Evaluations Other than Sanity or Competency. On or after July 1, 2023, no expert witness or mental health professional fees in excess of \$1,180 for a case (exclusive of authorized expenses) shall be incurred without prior

order of the court, except that a mental health professional who completes the required evaluation of an individual and subsequently testifies as an expert witness at a court hearing in the case may be allowed up to \$1,770 in total fees (exclusive of authorized expenses). These amounts are the presumptive cap and shall not be considered a flat rate of pay. Any motion requesting approval of fees in excess of the above maximums shall include the total anticipated fee amount and an explanation of the extenuating circumstances warranting the amount. The court's order approving excess fees must accompany any payment request.

E. Compensation for *all* expert witnesses and mental health professionals under this Directive may be made, at the discretion of the court, pursuant to the following guidelines:

1. Fees for reasonable preparation time and in-court testimony time may be paid at 100% of the authorized hourly rate.
2. Fees for travel time and/or time spent waiting to testify as a result of a delay in the scheduled appearance may be paid at 50% of the authorized hourly rate, not to exceed six hours.

F. Expenses for *all* Expert Witnesses and Professionals Under this Directive

1. Travel Expenses. Requests for travel expenses must be in accordance with section 13-33-103, C.R.S., and Judicial Department fiscal rules. Expenses involving out-of-state travel must be approved by order of the court in advance of the actual travel. A copy of the court's order shall be attached to the request for payment. In addition, reimbursement of authorized travel expenses will be made only if itemized receipts are provided to the court executive with the reimbursement request.
2. Food and Lodging. In the absence of extraordinary circumstances, expert witnesses or other professionals performing services under this Directive shall not be compensated or reimbursed for food or lodging. To receive reimbursement for food and/or lodging expenses, the court, after considering whether extraordinary circumstances exist based on justification provided by the requesting party, must authorize such expenses in advance of the actual expenditures. The requested expenses must be in compliance with the per diem rates authorized by the Judicial Department fiscal rules. A copy of the court's authorization, as well as itemized receipts, shall be attached to the request for payment.
3. Other. Expenses and costs other than those detailed in paragraphs 1 and 2 above, including, but not limited to, support or administrative personnel, overhead, and general operating expenses incurred by expert witnesses and other professionals

shall not be authorized for payment by the court.

- G. Courts shall make every effort to control costs related to the services obtained and provided under this Directive. During court proceedings, expert witnesses should be accommodated, to the extent possible, to minimize waiting time.

II. Guidelines for Payment

- A. Payment Requests. After the services are completed, the expert witness or professional who conducted the mental health evaluation shall file with the court a request for payment, using the form in Attachment A, containing an itemized statement of the services performed. The court executive shall review all such requests to ensure compliance with this Directive, and may require additional supporting documentation from the billing party to clarify and resolve any issues.
- B. Discrepancies and Disputes. Unless determined by court order, the court executive, with the cooperation of the billing party, shall be responsible for resolving any discrepancies or disputes regarding final approval and payment of fees and expenses claimed under this Directive.

This Chief Justice Directive is amended effective July 1, 2023.

Done at Denver, Colorado this 29th day of June, 2023.

/s/

Brian D. Boatright, Chief Justice

**REQUEST FOR PAYMENT FOR
SERVING AS EXPERT WITNESS AND/OR CONDUCTING MENTAL HEALTH EVALUATION, SANITY EVALUATION,
OR COMPETENCY EVALUATION**

(This form is to be used for payment requests pursuant to Chief Justice Directive 12-03. Copies of any applicable court orders and supporting documents shall be attached to this request for payment.)

Case Name: _____ Case Number: _____ Court: _____

Type of Evaluation Performed (sanity, competency, or other): _____

Expert Witness or Mental Health Evaluator Full Name: _____

Degree or Certification: _____

Business Full Name (if applicable): _____

Address: _____ City/State/Zip _____

Last 4 digits of Social Security No. xxx-xx-_____ OR Federal Tax ID Number _____

A completed W-9 form containing the payee's Tax Identification Number (Social Security Number or Federal Employer Tax Identification Number) must be on file before a payment will be processed. If the payee has not previously received payment from the State of Colorado Judicial Department, a W-9 form must be completed, including the payee's signature, and attached to this form along with required billing documentation. A W-9 form can be accessed and printed from the following web site:

https://www.courts.state.co.us/userfiles/file/Administration/Financial_Services/CAC/State%20Substitute%20W-9.pdf

ITEMIZATION OF TIME: (Attach additional pages, if needed.)

IMPORTANT: Do not report the same hours in more than one column. Separate the hours in either (a) or (b) or (c), as applicable. Report fractional hours in decimals. (Example: 6 minutes = 0.10 hour)

Date of Activity	Description of Activity: Specify the activity you performed and note whether you were in court on a given date. <i>DO NOT include travel time in this table.</i>	a) Time related to conducting Exam or Eval.	b) Time related to serving as Expert Witness	c) Time waiting at Court Appearance
	SUB-TOTAL HOURS	a)	b)	c)

Fees:

Work at full hourly rate: \$ _____ X _____ Hours (a + b) = \$ _____

In-Court Waiting Time: (50% fee allowed) \$ _____ X _____ Hours (c) = \$ _____

Travel time (50% fee allowed): \$ _____ X _____ Hours = \$ _____

From _____ to _____ Date _____

From _____ to _____ Date _____

Total Hourly Fees \$ _____

Expenses: (ONLY if pre-approved by the court for extraordinary circumstances.)

Mileage expense at statutory per-mile rate: \$ 0. _____ per mile X _____ miles = \$ _____

Food and/or lodging expenses (receipts and itemization attached) = \$ _____

Airfare or other public carrier expense (receipts and itemization attached) = \$ _____

Total Expenses \$ _____

Total Payment Requested \$ _____

I affirm that this request is accurate and complete and that I have received no other compensation for the above. I understand that payment is subject to approval by the court and agree to provide any necessary documentation to justify the request.

Date: _____

Signature: _____

Typed: _____

COURT USE ONLY: Date: _____

Approval Signature: _____

Title: _____