Superior Court of California
County of Riverside

Court Policy Memorandum #C.4.2 (Criminal) February 7, 2017

TO: Judges and Commissioners, District Attorney, County Counsel, All Private Counsel, Public Defender, County Executive Office, Court Executive Officer

FROM: Becky L. Dugan, Presiding Judge

SUBJECT: Funding of Investigation Costs

REFERENCE: Penal Code Section 987.9
Penal Code Section 987.2

APPLICABILITY: Criminal Divisions, Countywide

SUPERCEDES: CPM dated November 21, 2007 – Funding of Investigative Costs

PENAL CODE SECTION 987.9 CASES

I. *Introduction*

Case law and statutory law authorize funding for indigent defendants for the ancillary costs of a criminal case. Ancillary costs are non-attorney costs such as investigators, printing transcripts, expert witnesses, etc. The Statutory Law is contained in two sections of the Penal Code, 987.9 and 987.2. Section 987.9 is for cases where the death penalty is a possibility. Section 987.2 is for all other types of criminal cases.

II. *Pay Panel Judge*

The Presiding Judge shall annually appoint six judicial officers to serve on the Pay Judge Panel. The purpose of the panels shall be to review requests for funds in cases pursuant to Penal Code Section 987.9 and 987.2. The trial judge shall not review such requests. The Presiding Judge shall appoint one of the panel members as chair and may appoint another as vice-chair. The Presiding Judge may appoint one or two alternates.

There shall be two 3 person panels. Panel A and Panel B. Panel A shall handle all 987.9 funding requests whether from a represented defendant or a pro per defendant. Panel A shall also handle 987.2 requests as assigned by the chair. Panel B shall handle all non-death penalty pro per funding requests. Panel B shall also handle 987.2 requests as assigned by the chair.

III. *Death Penalty/987.9 P.C.*

An indigent defendant is eligible for 987.9 funds if he or she is charged with 187 P.C. plus one or more special circumstances pursuant to Section 190.2 P.C. The defendant is eligible for 987.9 funds whether or not the prosecution has made an affirmative election to seek the death penalty. If the District Attorney elects to not seek the death penalty, the defendant is no longer eligible for 987.9 funds even if life without parole is the possible penalty, but the defendant may be eligible for 987.2 funds. Note: Special Category: If a defendant is charged pursuant to Section 190.05 P.C., the defendant is eligible for funds under Section 987.9 even though the death penalty is not a possibility.

IV. *987.2 Cases*

Except for the cases eligible for funds under Section 987.9, all other cases are eligible to apply for funds pursuant to Penal Code Section 987.2.

V. *Procedures for 987.9 and 987.2*

A. Finding of Indigency
   Before a request for funding can be considered, the trial court must make a finding of indigency.
B. Initial requests: Upon defendant's arraignment, or anytime thereafter, he or she may apply for funds by submitting a request to the Court Executive Office.
C. Subsequent requests shall be handled the same as B above.
D. An applicant may not incur expenses without prior approval.
E. When requesting experts or other out of the ordinary items, the applicant must locate the provider and obtain cost estimates. The applicant must find out if there is a cheaper alternative. Explain the need for the expert/item.
F. Confidentiality
   All documents, submissions, and transcripts relating to 987.9 or 987.2 requests are confidential.
G. Supervision
   Counsel for defendant or a pro per defendant is responsible for supervising 987.9/987.2 funds and must be prepared at all times to provide a detailed list of expenditures and the reasons for the expenditures.
H. Unauthorized Expenditures per the State Controller, Examples:
   a.) Dental plates, haircuts, and other expenses relating to improving the defendant's personal appearance;
   b.) Clothing;
   c.) Cleaning charges (clothing);
   d.) Cash to defendant;
   e.) Attorney fees or expenses whether or not attorney of record;
   f.) Surveys, research projects, or classes/seminars, books or manuals.

I. If funding is denied, an applicant may request a hearing before the Pay Judge Panel.

VI. *Rates*

Investigation: $32.00/hour – No death penalty
$38.00/hour – Yes death penalty possible
$42.00/hour – Death penalty mitigation specialist

VII. *Effective Date*

February 7, 2017

/s/

BECKY L. DUGAN
Presiding Judge