Office of the Ohio Public Defender

Timothy Young, State Public Defender

MEMORANDUM

DATE: April 13, 2020
TO: County Commissioners, County Auditors, County Public Defenders, Court Appointed Counsel, Judges
FROM: State Public Defender Tim Young
RE: COVID-19 and Indigent Defense Reimbursement

As we have all heard from Governor DeWine and Ohio Department of Health Director Dr. Acton, COVID-19 will have a significant impact on our daily lives for the foreseeable future. It is important that we, as leaders in the criminal justice system, begin to plan and act now to try and mitigate the overall impact this virus will have on our communities. This memorandum is intended to provide a status update on options the Office of the Ohio Public Defender (OPD) is offering to counties, in an effort to provide support and assistance during this pandemic. Below you will find information regarding financial disclosure forms, interim billing, billing for arraignments, and extensions on the timelines for reimbursement submissions.

Financial Disclosure Forms

To assist in trying to reduce the person-to-person contact that comes with all possible indigent defendants completing and signing a financial disclosure form, the OPD is waiving the applicant's signature requirement at this time. Information required on the form may be obtained from the applicant via phone/video, and the person receiving the information would indicate on the form "Information received via telephone/video by _____." To be clear, at this time, a defendant's signature on the financial disclosure form is not required to initiate representation and will not be required for reimbursement, so long as the individual who obtains the information from the defendant completes the form as indicated above. This is temporary and OPD will advise when signatures are again required. Alternatively, the financial disclosure form includes a "judge certification" section. If a court elects, a judge may certify an applicant as indigent in lieu of an applicant's certification and signature.

Interim Billing

In most cases, appointed counsel submit their bill for approval and payment following disposition. During this pandemic, when many cases are delayed for significant periods of time, the OPD is encouraging justice system parties to accept periodic or interim billing prior to disposition in a case. If courts and counties are willing to approve and pay interim bills so that local assigned counsel may be paid for the work performed to date, OPD will accept and processes interim bills. Guidance on periodic/interim billing is provided on page 10 of the OPD Standards & Guidelines on Reimbursement.

Arraignment Billing

Where courts are staffing arraignments with one (or several) appointed counsel to serve as counsel for all indigent persons being arraigned in a given day, the OPD will accept, for purposes of reimbursement, one bill for each court proceeding – rather than the normal course of one bill for each defendant represented. The OPD is providing this option in an effort to support social distancing and limit the number of individuals coming into close contact with one another. This method of billing is already offered for specialty dockets, and requires a court to have an approved plan on file with the OPD. Further information on the specialty docket plan and billing process is provided on pages 11 and 12 in the OPD Standards & Guidelines on Reimbursement. Should a court wish to use this billing process for arraignment proceedings (only) during the period of the COVID-19 pandemic, the court should submit a plan to OPD that comports with the requirements of the specialty docket plan process. Plan submissions, questions, and inquiries about this option should be submitted to Laura Austen, Deputy Director of Policy & Outreach via email at outreach@opd.ohio.gov, or by calling 614.728.0155.

Reimbursement Submission Extension

The OPD understands that certain operations may be impacted by the COVID-19 pandemic, and indigent defense reimbursement submissions may be delayed during this time. In an effort to provide support to our county partners, the OPD will grant extensions to the reimbursement submission deadline for the months of March and April. More specifically, R.C. 120.33, requires counties to submit to the OPD all reimbursement submissions within 90 days of the end of the month in which a case was disposed. For submissions that would otherwise be due in March or April, counties may notify the OPD in writing that an extension is necessary, and one will be granted for up to 60 days.

The process for extensions will be as follows:

1. A county auditor, or their designee, should notify OPD's Reimbursement Program Administrator, Alice Hill, in writing via email (alice.hill@opd.ohio.gov), of an extension request for reimbursement submissions for the month of March and/or April, on or before the last day of each respective month.

2. Because the OPD receives and processes approximately 13,000 -14,000 indigent defense bills each month, we ask that counties submit any reimbursement submissions they are able to timely submit in the months of March and April. A county will be permitted to have one timely reimbursement submission in the months of March and April, and one "extension" submission for the months of March and April.

3. The extension submission for the month of March will be due by the end of May, though the OPD encourages counties to submit those reimbursement bills as soon as reasonably possible. Likewise, the extension submission for the month of April will be due by the end of June, though the OPD encourages counties to submit those reimbursement bills as soon as reasonably possible.

4. With both the timely submission and the extension submission, counties should include an appointed counsel summary report (the same that is otherwise required with each reimbursement submission).

In-Court Billing

The OPD has received numerous questions about whether time spent appearing before a court via phone or video is appropriate for in-court billing. When an attorney appears before a court via phone or video, the OPD deems that to be substantively the same as appearing in-person, and the OPD would approve it that way for reimbursement purposes.

If you have any questions, or if there are ways in which the OPD can be of assistance during this time, please feel free to reach out. Thank you, stay safe, and be well.