

## OPD Payment Policies

### Policy A — Representation and applicability of policies

#### A1. Representation

Attorneys appointed to represent indigent appellate clients shall take all steps necessary to provide effective assistance of counsel on appeal, and to comply with the Rules of Appellate Procedure and Rules of Professional Conduct. These duties may include, but are not limited to: filing a designation of clerk's papers; filing a statement of arrangements; reviewing the clerk's papers and report of proceedings; consulting with the client at every critical stage of the proceedings; consulting with trial counsel and the clerk of the appellate court as necessary; conducting adequate legal research; drafting an appropriate brief or similar pleading; drafting a reply brief where appropriate; presenting any scheduled oral arguments in front of the clerk, commissioner or appellate court; and filing post-opinion motions or a petition for review where necessary and appropriate.

#### A2. Applicability

Both contract cases and non-contract cases will be handled in accordance with these policies. Contracts generally will be written in accordance with these policies. If in a particular case contract terms differ from these policies, the contract terms will control.

### Policy B — Payment & Case weighting

#### B1. Payment events — non-contract & contingent contracts

OPD pays attorneys at the time of three “payment events” –

- a) First payment event -- Appointment. Shall be paid when counsel is appointed to represent a client and the client has a right to counsel at public expense. Covers all necessary representation at preliminary stages of appeal, including reviewing the trial court file, ordering transcripts, communicating with the client, and filing a statement of arrangements with the court of appeals to perfect the appeal.
- b) Second payment event -- Filing a brief or brief equivalent, which includes:
  - 1) An opening brief in a direct criminal appeal, an appeal from termination of parental rights or dependency order, a probation revocation hearing, a disposition in a juvenile offense matter, a sexual predator hearing, or any other proceeding where expenditure of public funds for appellate indigent defense has been authorized;
  - 2) A motion for accelerated review in a sentencing case, a termination of parental rights case, a dependency case, or a juvenile offense matter;
  - 3) A personal restraint petition when the appointment of counsel at public expense is authorized;
  - 4) An opening brief in a Supreme Court case where the Supreme Court has granted the petition for review;

- 5) A motion for discretionary review to the Court of Appeals when filed after the record has been perfected in a case where the right to counsel attaches at all stages of proceedings;
  - 6) An answer or responsive pleading to an appeal or discretionary review filed by the state; or
  - 7) A voluntary withdrawal of an appeal by a defendant after the record has been perfected.
- c) Third payment event – Closing, which occurs:
- 1) For cases with oral argument, on presentation of an oral argument.
  - 2) For cases without oral argument, on the date of the Court’s consideration of the case or the date of opinion.
  - 3) For motion for discretionary review cases, on the date of denial of review.

**B2. Payment Schedule — non-contract & contingent contracts**

<b>Number of Pages of Transcript</b>	<b>Assignment Payment</b>	<b>Brief Payment</b>	<b>Closing Payment</b>	<b>Total Payment</b>
Anders Brief, <i>regardless of transcript length.</i>	\$1,406	\$168	\$0.00	<b>\$1,574</b>
0 to 299 pages	\$1,406	\$1,365	\$317	<b>\$3,089</b>
300 to 499 pages	\$1,406	\$2,812	\$317	<b>\$4,536</b>
500 to 999 pages	\$1,406	\$3,212	\$317	<b>\$4,936</b>
1,000+pages	\$1,406	\$3,612	\$317	<b>\$5,336</b>

NOTE: OPD will pay only one assignment, brief, and closing fee per case, even if multiple payment events occur (such as a response to discretionary review followed by a respondent’s brief after review is accepted). Attorneys should request extraordinary compensation under section C2 below if such multiple payment events occur.

“Number of Pages of Transcript” refers to the trial transcript, excluding pre-trial, post-trial, voir dire, and opening statements. For cases where no trial took place, it includes all transcript pages. If a case has an unusually large number of transcript pages outside of the trial, counsel should request extraordinary compensation pursuant to section C2 below.

### **B3. Case Weighting — monthly contracts**

Appellate cases under a monthly contract will be weighted at the time of perfection according to the following case weighting schedule:

<b>Credits</b>	<b>VRP</b>
2	800+
3	1600+
4	2400+
5	3200+
6	4000+

### **Policy C — When invoices shall be filed**

#### **C1. Invoices of counsel**

- a) Attorneys who are assigned indigent appellate cases should invoice OPD within 30 days of each of the three specified payment events.
- b) OPD’s fiscal year runs from July 1 to June 30. OPD cannot pay expenses from one fiscal year with money appropriated for the next year. As such, **all invoices from a given fiscal year must be turned in by August 1 of the following fiscal year to qualify for payment.**

#### **C2. Extraordinary compensation**

- a) Counsel may petition OPD for additional compensation reflecting unusual work in a case beyond basic services. Factors that OPD may consider in deciding whether to award extraordinary compensation include:
  - i. Complex or unusual legal issues requiring unusual research or costs.
  - ii. Issues of first impression under the law of Washington requiring unusual research.
  - iii. Complex and lengthy trial record relevant to issues raised on appeal.
  - iv. Supplemental briefing requested or authorized by the appellate court.
  - v. Cases creating an unusual financial hardship upon the attorney.
  - vi. A certification of extraordinary status by the court hearing the case.
- b) Attorneys seeking extraordinary compensation must submit an affidavit using the form provided by OPD and any other supporting materials necessary for a review of the request.

### **C3. Invoices of court reporters**

Invoices of court reporters may be submitted as soon as the report of proceedings has been filed by the court reporter. Invoices must be submitted by August 1 of the next fiscal year to qualify for payment.

### **C4. Invoices of the superior court clerks**

Invoices of superior court clerks may be submitted as soon as the clerks' papers or other requested documents have been prepared. Invoices must be submitted by August 1 of the next fiscal year to qualify for payment.

## **Policy D — Language and expert services**

### **D1. Interpreters and translators**

- a) Attorneys requiring interpreter services for audio or written communications with clients with limited English proficiency may engage interpreters as needed. Attorneys should use court-certified interpreters where possible. Court certified interpreters can be searched at [https://www.courts.wa.gov/programs\\_orgs/pos\\_interpret/](https://www.courts.wa.gov/programs_orgs/pos_interpret/)
- b) Interpreter services for client communication costing more than \$500 per job require pre-approval by OPD. Attorneys should seek pre-approval by email to the Appellate Program Manager. Interpreter services for client communication costing under \$500 per job are automatically pre-approved.
- c) Attorneys may forward interpreter invoices to OPD for direct payment using the invoice cover sheet provided by OPD. Interpreters must have a Statewide Vendor Number to receive payment from OPD. Attorneys may also pay interpreter invoices and seek reimbursement from OPD by email to the Appellate Invoices email address. To be reimbursed, attorneys must include the original invoice and proof of payment.
- d) Attorneys may request translation of briefs and transcripts for clients with limited English proficiency, per *State v. Cruz-Yon*, 20 Wn. App. 2d 1 (2021). Briefs and transcripts should be translated only upon the client's specific request. Translation of briefs and pleadings may be requested by email to the Appellate Program Manager. OPD will arrange for the translation of briefs and pleadings using state master contracts.
- e) Invoices of interpreters and translators must be submitted by August 1 of the following fiscal year to qualify for payment.

### **D2. Experts and investigators**

Attorneys may engage experts and investigators for representing clients on appellate cases, with OPD's pre-approval. Attorneys should request pre-approval by email to the Appellate Program Manager. Expert invoices should be submitted for payment to OPD using the invoice cover sheet provided by OPD. Invoices of experts must be submitted by August 1 of the following fiscal year for payment.

## **Policy E — Expedited Transcripts**

### **E1. Expedited transcripts for discretionary review cases**

- a) Attorneys may request expedited transcripts for discretionary review cases. Expedited transcripts costing more than \$500 require preapproval from OPD. Attorneys should seek preapproval by email to the Appellate Program Manager. Expedited transcripts costing less than \$500 are automatically pre-approved.
- b) When ordering expedited transcripts, a Statement of Arrangements should not be filed, and the court reporter or transcriptionist should be informed not to bill OPD directly. Attorneys should forward invoices for expedited transcripts to OPD for payment, using the cover sheet provided by OPD.

### **E2. Expedited transcripts for other cases**

- a) For cases other than discretionary review, appellate attorneys may request expedited transcripts for good cause. A client's general interest in a quicker appeal, or a client's impatience with the appellate process, will not be considered good cause.
- b) Expedited transcripts for cases other than discretionary review must be pre-approved by OPD. Attorneys should request pre-approval by email to the Appellate Program Manager.

## **Policy F — CLE Scholarships and Travel**

### **F1. CLE Scholarships**

Attorneys may request scholarships to attend CLEs and conferences relevant to appellate practice. Scholarships may be approved or denied at OPD's sole discretion, subject to the availability of funds. Priority will be given to CLEs directly related to appellate practice. Scholarships may be provided as a flat reimbursement amount, or as full reimbursement for the cost of registration, travel, or both.

### **F2. CLE Travel**

OPD will ordinarily reimburse attorneys for travel and lodging to attend in-person appellate CLEs hosted by OPD. Such reimbursement is at OPD's sole discretion and subject to the availability of funds.