

WITNESS FEE PAYMENT GUIDELINES

I. PURPOSE OF GUIDELINES

The purpose of these guidelines is to define responsibility for the payment of witness fees and to provide direction for controlling witness costs.

These guidelines shall be used by the Administrative Office of the Courts (AOC) to determine witness costs incurred by the magistrate and district courts. These guidelines supersede all policies and procedures previously in effect.

These guidelines apply to witness costs incurred for appearance at court. The jury and witness fund is not responsible for the payment of any investigatory costs or other expenses of witnesses during trial preparation.

These guidelines apply only to payments made from the jury and witness fund and do not affect other proceedings. AOC will pay for witnesses from the fund only for state witnesses or in cases where indigency has been determined.

II. GENERAL GUIDELINES

A. Definition of Witness Payments

Witness payments are all allowable expenses charged by a witness who has been subpoenaed by the court, prosecution or defense for the purpose of giving testimony during trial to what he has seen, heard or observed. The jury and witness fund covers allowable expenses during trial for all state witnesses and for defense witnesses when indigency has been determined. For determination of indigency, see the public defender indigency determination standards and form.

The types of proceedings for which witness payments are allowable are:

1. Grand Jury
2. Criminal Cases, and
3. Civil cases provided free process as follows:
 - (a) Children's Code, and
 - (b) Mental Health and Developmental Disabilities Code.

B. Cost Control

1. Witnesses shall be allowed no fees for service. A witness shall be reimbursed per diem and mileage expenses pursuant to the current Per Diem and Mileage Act.

2. Notwithstanding any rules of civil procedure, no per diem and mileage expenses shall be paid in advance from the jury and witness fund unless the court has determined

that an extraordinary situation exists warranting an advance. An example of an extraordinary situation is an out-of-state witness who is unable to pay travel expenses to New Mexico. The amount of the advance shall not exceed eighty percent of the estimated per diem and mileage allowance. AOC must have at least two weeks' notice to process advance payments. Advance payment warrants shall be issued in the name of the district attorney, public defender or other attorney calling the witness; no advance payment warrants shall be issued in the name of the witness. Appropriate receipts and other information shall be included with the certification of witness form and final voucher to indicate how much money had been advanced and the balance due. If the advance exceeds the amount of the actual per diem and mileage allowance, AOC shall be reimbursed by the district attorney, public defender or other attorney to whom advance payment has been made.

3. When common carrier tickets have been purchased but not used, the court must be reimbursed for the expenditure. The court shall refund the money to AOC. The agency or person who requests a continuance, resetting or trial cancellation will be responsible for necessary penalty charges incurred for canceling tickets prior to trial. The court shall require from district attorneys, public defenders and other attorneys a monthly cumulative list of witnesses who have received advances, including common carrier tickets, and the appearance date of the witness. If a witness did not appear, an explanation shall be included. The court shall submit a copy of the reports to AOC.

4. Pursuant to NMSA 1978, §§39-2-9 and 39-2-10, witness payments in civil cases are limited to four witnesses per side unless the judge certifies on the record the necessity for more witnesses.

5. As state officials, judges, district attorneys and public defenders are required to maximize the use of taxpayer dollars by obtaining witnesses in the most economical manner possible while not detrimentally affecting the proceedings of justice. Counsel is encouraged to minimize witness costs by limiting the amount of time an out-of-town witness is required to be in town for court.

6. If the witness is a police officer who is on duty at the time of the trial, he shall not receive per diem or mileage unless the trial is 15 miles or more from the officers designated post of duty or residence. If he is off duty during the trial, he shall receive per diem and mileage.

7. Witnesses who are prison inmates do not receive per diem or mileage.

8. Notwithstanding any other provisions of law, rule or the guidelines, in no event shall a warrant for less than \$5.00 be issued.

III. PAYMENT RESPONSIBILITY

A. Mileage

1. Payment of mileage only applies when the witness is required to travel over

15 miles one way from his or her of residence. If the witness is a state employee, mileage shall be paid only if the required travel is over 15 miles from his or her residence or his or her duty station.

2. Ordinarily, mileage is paid for one round trip portal-to-portal. If a witness chooses to travel to court each day, the judge or his designee shall approve the lesser of mileage or the overnight per diem rate. AOC will not pay in town mileage for witnesses.

3. Mileage will be paid at the DFA rate (currently 32 cents per mile for privately owned vehicles and 40 cents per mile for privately owned airplanes). Driving mileage is calculated by using an official road map unless beginning and ending odometer readings are provided; air mileage is calculated by using an official air map.

4. The cost of common carrier, i.e., commercial bus, train or plane, may be reimbursed to the traveler. Reimbursement for travel by train, bus or privately owned vehicle or airplane shall not exceed the cost of coach class commercial airfare.

5. Mileage shall be paid to only one person per vehicle.

6. Car rental expenses for a witness shall only be reimbursed upon prior written approval of the judge or his designee. See paragraph 2 of this section for mileage payments.

Documentation Required

A Certification of Witness form filled out and signed by the witness and the public defender, district attorney or attorney must accompany the reimbursement request with a copy of the subpoena attached. If reimbursing a traveler for airfare, bus ticket, etc., one of the ticket slips must be attached. AOC will not accept travel agency invoices or credit card slips without the ticket slip attached. Reimbursement for hotels and travel agencies must include a copy of the relevant subpoena or the Certificate of Witness form.

B. Per Diem Expenses

Witnesses shall be paid per diem expenses at the current DFA schedule for public employees:

1. Travel for less than 24 hours when overnight lodging is not required, reimbursement of per diem shall be prorated as follows:

- | | | |
|-----|--|---------|
| (a) | less than 2 hours beyond normal work day, | none |
| (b) | 2 hours, but less than 6 hours beyond normal work day, | \$12.00 |
| (c) | 6 hours, but less than 12 hours beyond | |

	normal work day,	\$20.00
(d)	12 hours or more beyond normal work day,	\$30.00

A “normal work day” means eight hours within a nine-hour period.

2.	Travel for each 24 hour period or when overnight lodging is required, for all cities except Santa Fe the per diem rate is	\$85.00
----	---	---------

	The overnight per diem rate for Santa Fe is	\$85.00
--	---	---------

3. On the last day of travel when overnight lodging is no longer required, partial day reimbursement shall be made. To calculate the number of hours in the partial day, begin with the time the traveler initially departed. Divide the number of hours traveled by 24. The hours remaining constitute the partial day which shall be reimbursed as follows:

(a)	for less than 2 hours,	None
(b)	for 2 hours, but less than 6 hours,	\$12.00
(c)	for 6 hours, but less than 12 hours,	\$20.00
(d)	for 12 hours or more,	\$30.00

In no event will the above partial day per diem be paid unless at least one 24-hour cycle and at least six hours beyond the end of the last 24-hour cycle have been completed.

4. For our-of-state witnesses, travel time is usually calculated in flying time rather than driving time. Exceptions may be made when the court is not located near an airport. For purposes of these guidelines, “out-of-state” means over 150 miles from the exterior boundaries of New Mexico.

5. When a witness is required to appear more than one day and he chooses to stay somewhere other than the town in which the court is located, the judge or his designee shall approve the lesser of mileage charges or the overnight per diem rate. If a witness must return to his place of residence and the mileage charges exceed the overnight per diem rate, the attorney calling the witness must obtain prior approval from AOC.

C. Parking

Parking expenses are allowable if incurred while a witness is attending court and if parking is not provided by the court. Appropriate receipts must be provided to AOC for

reimbursement.

D. Other Expenses

1. Per diem and mileage expenses shall be reimbursed pursuant to these guidelines to public employees serving as security escort to the witness. A security escort is defined as any full-time salaried law enforcement officer, bailiff, correctional officer or security agent under contract to the state. This paragraph also applies to out-of-state security escorts.

2. When a prisoner is housed in a municipal or county jail in order to serve as a witness, the jail will be paid for housing the prisoner as long as the cost does not exceed the normal and customary cost of housing a prisoner in that facility.

3. If the person or agency who calls the prisoner witness causes that witness to spend more than three nights in the host jail facility, that person or agency shall pay for the additional cost, unless prior written approval, including the reason for the additional time requested, has been obtained from the judge to exceed the allowable time. The approval must be submitted with the voucher.

E. Payment Responsibility When Witness Not Used

The person or agency that calls the witness shall be responsible for notifying the witness of trial cancellations, continuances, resettings or settlements. If that person or agency fails to notify the witness, that person or agency shall be responsible for the per diem and mileage expenses of the witness; under those circumstances, AOC will not pay for the witness. In determining payment responsibility under this subsection, the one who called the witness must show that he was unable to contact the witness despite good faith efforts to do so, and a sworn statement to that effect must accompany the request for payment.

F. Processing of Vouchers

1. The Certification of Witness form is filled out by the witness. If the form is incomplete, it will be returned to the appropriate court for completion.

2. The state agency that requested the witness shall prepare the voucher; if a private attorney requested the witness, he may provide the necessary information to the court for preparation of the voucher. Court personnel shall review for completeness and accuracy and forward the form, a copy of the indigency determination form, the Order of Appointment, if applicable, all necessary receipts and prepared state voucher for each witness to AOC for payment. The court shall retain a copy for its files. Distribution vouchers will not be accepted by AOC.

3. The judge or his designee shall reject a voucher requesting payment from the fund for expenses that are not allowable expenses pursuant to these guidelines. The judge or his designee certify to the accuracy of the form by signing the Certification Witness form or voucher.

4. AOC will process the payment request and mail the payment directly to the witness for the magistrate courts, unless otherwise specified. Witness payments for the district courts will be returned to that district court for distribution to the witness.

V. EXPERT WITNESS PAYMENTS

AOC shall only pay for expert witnesses who are called specifically by a grand jury. See “Expert Witness Fee Payment Guidelines” for payment of other expert witnesses.

Revised and Effective: September 11, 2007