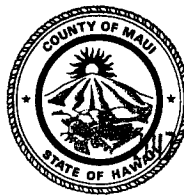


ALAN M. ARAKAWA
Mayor



RECEIVED

APR 12 AM 9:54

OFFICE OF THE MAYOR

JOHN D. KIM
Prosecuting Attorney

ROBERT D. RIVERA
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

April 12, 2017

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Re: Expert Witness Fees

Dear Mayor Arakawa:

Our department's Defendant Witness Program (Index 166873), acts as a "holding account", where we debit related costs and submit reimbursement requests to the State of Hawaii Department of Budget and Finance. Debits include: witness per diem and travel; cost incurred related to prisoner transports from off-island including State Sheriffs and MPD escorts; Overtime costs incurred related to extraditions (out of state fugitive transport), mainland travel, per diem, and excess lodging; and **expert** witness costs, which includes travel and fees.

DENIAL LETTER

On March 6, 2017, our department received a denial letter dated March 2, 2017, from the State of Hawaii Department of Budget and Finance, Administrative Services Officer Tracy Ban; wherein he stated that the Sheriff's Overtime and Expert Witness fees are not reimbursable under HRS §§621-7, 621-9, and 836-3. This came as a great shock as these cost have been reimbursed by the State of Hawaii for our department as a normal routine cost; now midway through our current budget and after we submitted our budget request for fiscal year 2018, the State of Hawaii Department of Budget and Finance has DENIED our request for reimbursement. See enclosure.

The Hawaii Prosecuting Attorneys Association met at the end of March with the Attorney General, Douglas Chin, he made certain allowances for the various counties. He recognized that the

RECEIVED AT *BF* MEETING ON *4-13-17*
Submitted by Prosecuting Attorney

Honorable Alan M. Arakawa
Page 2
April 12, 2017

State of Hawaii Department of Budget and Finance should have given our departments prior notice before denying our request for reimbursements. This would have given us time to either amend the statutes to specifically include these cost, and/or budget for these costs if the State legislators reject our proposed amendments.

Revisions to allowable and disallowed expenses

In March of 2017, State of Hawaii Budget and Finance Department released the following revision to allowable costs:

1. Costs for law enforcement officers, including overtime to transport a defendant;
2. Expert witness fees while the expert is on the witness stand testifying; and
3. Per diem.

Disallowed expenses, to be borne by our Department include:

1. Travel, preparation, and waiting time for expert witnesses; and
2. Costs in excess of per diem.

The above revisions will be in effect through 06/30/18.

Current Numbers

Invoices related to Sheriff Overtime for the months of July, August, September, November, and December 2016 total \$4,501.84.

Invoices related to Expert Witness Fees for the period July 2016 to March 2017 total \$23,042.51. Travel expenses for expert witnesses thru March 31, 2017 total \$4,328.40. See enclosure.

Impact on Department

Disallowed expenses will be absorbed into our General Prosecution Professional Services budget. Our FY17 General Prosecution Professional Services index 906156B, subobject 6132, budgeted at \$100,000 covers expenses related to Court Reporter transcript requests, on-call sex assault doctors, and Clinical Labs employee specimen testing. Debits to this index thru March 31, 2017, total \$65,664.25.

Honorable Alan M. Arakawa
Page 3
April 12, 2017

The current per diem rate for in-state witnesses is \$13.75/quarter, with a maximum of \$55/24-hour period. Out-of-State witness per diem rate is \$200/24-hour period.

Total Expert Witness Fee invoices total \$23,042.51. Of this, under the revised allowable costs, expert witness per diem expenses total \$1,348.76, and allowable expert witness fees will be reimbursed at an average of \$200/hour with an average of 2 hours for 11 experts equal \$4,400 Disallowed Travel Expenses absorbed by Department: \$4,502.40

Disallowed Expert Witness Fees to be absorbed by Department: \$17,293.75

Expenses to our General Prosecution Professional Services for FY17 for quarters 1, 2 and 3: \$65,664.25

FY17 Quarters 1, 2, and 3 - Total Expenses = \$87,460.40

This means that our Department has projected another \$50,000.00 for our next budget to cover the cost of Overtime and Expert Witness fee. If you have any questions regarding the above matter, please call me at 270-7632.

Very truly yours,



JOHN D. KIM
Prosecuting Attorney

xc: Ms. Lynn A.S. Araki-Regan ✓
Budget Director, County of Maui

Enclosures

DAVID Y. IGE
GOVERNOR



WESLEY K. MACHIDA
DIRECTOR

LAUREL A. JOHNSTON
DEPUTY DIRECTOR


STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

March 2, 2017

TO: Departmental/County Fiscal Officers

FROM: Tracy Ban 
Administrative Services Officer

SUBJECT: Reimbursement by State of Hawaii, Department of Budget & Finance for Payments authorized under sections 621-7, 621-9 and /or 836-3, Hawaii Revised Statutes

It was brought to my attention that we have received certain types of reimbursement requests that does not appear to be allowed by Sections 621-7, 621-9 and/or 836-3, Hawaii Revised Statutes. Going forward, we will only reimburse what is allowed by the subject Statutes, and will return without action those requests that does not meet these statutory requirements.

Please refer to the respective statutes (attached) for further clarification regarding the allowable reimbursable expenses. If there are any questions, feel free to call me at (808) 586-1601 or Louisa Lee at (808) 586-1632.

Attachments

RECEIVED
PROSECUTOR'S OFFICE
2017 MAR -6 PM 12:13
COUNTY OF MAUI
WAILUKU, HI 97135

§621-7 Fees; criminal cases. (a) Every witness legally required to attend a state court or grand jury in any criminal case, other than a public officer or employee, shall be entitled to \$20 for each day's attendance and a reasonable mileage fee to be established pursuant to rules adopted by the judiciary for each mile actually and necessarily traveled on the ground each way, including travel to and from the nearest airport when required to travel from another island or from outside the State.

In addition to witness' fees, every witness:

(1) Who attends a state court from outside the State shall be entitled to the actual round-trip cost of plane travel, plus \$200 per twenty-four-hour day; or

(2) Who attends a state court from any island in the State other than that on which the court holds session shall be entitled to the actual round-trip cost of plane travel, plus \$55 per twenty-four-hour day; provided that when the witness is required to stay overnight, the witness shall be entitled to an additional \$145 per twenty-four-hour day.

These per diem payments shall cover all personal expenses, such as board and lodging, and shall be computed on the basis of quarter day periods of time.

(b) Any police officer or other public officer or employee (except the county attorney, prosecuting attorney, or deputy county attorney or deputy prosecuting attorney), who attends a state court as a witness from a district other than that in which the court is holding session, shall be allowed the police officer's, public officer's, or employee's travel cost and mileage fees as provided in this section. A public officer or employee, if not salaried, shall receive witness fees. [L 1907, c 53, §1; am L 1909, c 145, §1; RL 1925, §2560; am L 1925, c 23, §1; am L 1932 1st, c 13, §1; RL 1935, §3816; RL 1945, §9827; am L 1945, c 38, §1; RL 1955, §222-7; am L 1963, c 57, §1; HRS §621-7; am L 1972, c 104, §1(e); am L 1980, c 305, §1; gen ch 1985; am L 1989, c 176, §1; am L 2014, c 195, §2; am L 2016, c 159, §2]

Attorney General Opinions

"District" means one of the districts listed in §4-1. Att. Gen. Op. 73-1.

[Previous](#)

[Vol13_Ch0601-0676](#)

[Next](#)

§621-9 Witness and defendant expenses; budgetary procedure.

(a) Except as provided for in section 802-7, whenever a witness subpoenaed on behalf of the State in a criminal case or on behalf of a defendant at the expense of the State in a criminal case is discharged, the clerk of the court shall issue to him under seal of the court, a numbered certificate from a book having a stub with like designations, stating the name of the witness, when and where he was summoned or subpoenaed, the date of his discharge, the number of miles necessarily traveled from his place of residence to the place of holding court, the number of days' service, and the amount due for transportation and for service. The certificate, when correct, must be so certified by the public prosecutor or county attorney for witnesses subpoenaed on behalf of the State, and by the public defender for witnesses subpoenaed on behalf of a defendant, but no certificate shall be so certified unless presented to him within twelve months after the date of issue. Duly certified witness certificates shall be paid upon vouchers approved by the state director of finance and warrants drawn by the state comptroller.

(b) Whenever the presence of a defendant in a criminal case or in a proceeding under chapter 704 or a petitioner in a post conviction proceeding who is outside the judicial circuit is mandated by court order or bench warrant to appear, the cost of airfare, ground transportation, any per diem for both the defendant or petitioner and sufficient law enforcement officers to effect the defendant's or petitioner's return, shall be borne by the State. All such expenses shall be certified by the court or public prosecutor or the attorney general. Duly certified claims for payment shall be paid upon vouchers approved by the state director of finance and warrants drawn by the state comptroller. The court may order the nonindigent defendant or petitioner who was returned to the State of Hawaii to reimburse the State for the costs of such extradition or return as specifically described above.

(c) Each public prosecutor or county attorney and the public defender shall submit to the state department of budget and finance for inclusion in the department's budget request for each fiscal biennium the amount required for each fiscal year for expenses for witnesses subpoenaed by him and for defendants and postconviction petitioners summoned on his behalf or required by him. [L 1907, c 53, §3; RL 1925, §2562; am L 1932 1st, c 13, §1; RL 1935, §3818; RL 1945, §9829; am imp L 1945, c 35, §1; RL 1955, §222-9; am L 1957, c 152, §1; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §621-9; am L 1976, c 131, §4; am L Sp 1977 1st, c 7, §2; am L 1980, c 306, §1; am L 1987, c 85, §1; am L 1988, c 280, §1]

Cross References

Witness security, see §28-101.

§836-3 Witness from another state summoned to testify in this State. If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence in this State, is a material witness in a prosecution pending in a court of record in this State, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure the witness' attendance in this State. This certificate shall be presented to a judge of a court of record in the judicial district in which the witness is found.

If the witness is summoned to attend and testify in this State the witness shall be tendered a sum equivalent to the cost of round-trip air fare to the place where the prosecution is pending and \$60 for each day that the witness is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this State a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, the witness shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State. [L 1971, c 116, §3; HRS §719-3; ren L 1972, c 9, pt of §1; am L 1980, c 307, §1; gen ch 1985]

[Previous](#)

[Vol14_Ch0701-0853](#)

[Next](#)

**REIMBURSEMENT BY BUDGET & FINANCE FOR COSTS INCURRED
BY PROSECUTORS**

Allowable Costs

1. Costs for law enforcement officers, including overtime, to transport a defendant; ✓
2. Expert witness fees while the expert is on the witness stand testifying; and ✓
3. Per diem.

Disallowed Expenses (to be borne by the Prosecutors)

1. Travel, preparation, and waiting time for expert witnesses; and ✓
2. Costs in excess of per diem. ✓

This treatment of expenses will be in effect from now through 06/30/18.

*Visita Alaba
Society:*

Fiscal Year 17

Expert Fees

7/31/2016	Kanuha, Valli K	\$	1,000.00
8/16/2016	Clinical Lab	\$	937.50
8/16/2016	Triolo, Santo	\$	1,875.00
9/26/2016	Berla Corporation	\$	1,500.00
9/29/2016	Caringer, Ellen	\$	975.00
9/30/2016	Goff, M Lee	\$	2,250.00
10/31/2016	Ammerman, Stacy	\$	1,000.00
10/31/2016	Kayes, Andrew	\$	781.25
11/21/2016	Levine, ArieH	\$	1,960.00
11/21/2016	Werk, Isaac	\$	150.00
11/30/2016	Lorenzo, Hermel	\$	55.52
12/20/2016	Passalacqua, Nicolas	\$	4,250.00
1/31/2017	Truong, Vince	\$	1,000.00
1/31/2017	DeAlwis, Kanth	\$	3,200.00
2/28/2017	Lorenzo, Hermel	\$	108.24
3/20/2017	Clinical Lab	\$	2,000.00
	Total	\$	23,042.51

Expert Witness Airfare

Nicholas Passalacqua	\$	1,537.00	
Witness P.Milosevic	\$	318.00	
Witness R.Taylor	\$	227.40	
Witness M.Goff	\$	292.00	
Witness A.Hawood	\$	1,252.00	
Witness Kanthi Dealwis	\$	308.00	
Witness Clifford Wong	\$	197.00	
Witness Robin Kodie	\$	197.00	
	Total	\$	4,328.40