



**RIVERSIDE COUNTY
CRIMINAL DEFENSE
BAR ASSOCIATION**

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Sent by U.S. Mail

District Attorney Michael Hestrin
Riverside County District Attorney's Office
3960 Orange Street
Riverside, CA 92501

July 13, 2020

Re: Reasonable Costs of Discovery

Dear Mr. Hestrin,

I am writing to you on behalf of the Board of Directors and the 147 members of the Riverside County Criminal Defense Bar Association, most of whom are private criminal defense attorneys practicing within Riverside County. There has been a growing, yet longstanding concern within the private bar concerning the unreasonable and excessive cost of discovery from your office. I am writing to you with hopes that we can reach a solution to this issue without litigation.

Currently, it is your office's common practice to charge sums that are totally unrelated to the actual costs of duplicating discovery. For example, just a week ago I was charged \$22.00 for a copy of a five page supplemental police report. I can assure you that this is not an isolated incident. Copies of discs are often billed at an exorbitant amount and simple reports are being billed up to 40X the rate of photocopies from a for-profit copy company such as Staples or PIP. Not only is this practice inappropriate in our opinion, it is not supported by the law.

As a prosecuting agency, we acknowledge that your office is entitled to reimbursement for the **reasonable**¹ costs of reproduction of discovery when requested. While these costs can include things such as proportional equipment costs, materials, and even the labor costs of the employee making the copies, the critical component is reasonableness. To put things in perspective, the following Riverside for-profit businesses (whose prices include profit margins on top of sufficient revenue to cover all operational costs) charge as follows for copies:

¹ See *Rubio v. Superior Court* (2016) 244 Cal.App.4th 459; see also *Shaffer v. Superior Court* (2010) 185 Cal.App.4th 1235

Staples:	\$ 0.14 per page, B&W	\$ 0.49 per page, Color
PIP:	\$ 0.15 per page, B&W	\$ 0.49 per page, Color
OfficeMax:	\$ 0.15 per page, B&W	\$ 0.71 per page, Color

While DVD and CD reproduction are more difficult to reference because of the absence of a for-profit market for those services, the materials cost are roughly less than \$0.50 per DVD, and even less for CDs when purchased in quantities as small as 100 per pack. Duplication devices can be purchased for a few hundred dollars which simply require a disc and the blank media to be placed inside and a button pushed with virtually no labor expended.

In addition, while reviewing the consistent examples of overbilling from my own files and those provided by our members, there is a consistent theme of applying a \$22.00 fee for "Labor (1/2 hour)" that is almost uniformly applied across the board for costs regardless of how menial the task. Aside from the fact that that these costs are not remotely related to the actual amount of time spent, when extrapolated out the fee becomes \$44.00 per hour. In other words, you are paying someone (or several people) an annual salary of over \$91,500.00 per year to make copies. That exceeds what you are paying DDA Is and some DDA IIs.

We would like to work amicably to resolve this issue, and in doing so, would like to propose a new reasonable method of providing discovery. Since your office has already transitioned to having much of your discovery being transmitted electronically, we ask that you amend your office's discovery practice as follows:

- 1) Whenever discovery CAN be provided to counsel cost free electronically, whether it be emailing police reports or providing a link to a download site such as through www.evidence.com, you do so.
- 2) When items exist that cannot be provided electronically, your office abide by the following schedule for discovery duplication, without imposing an additional "Labor Cost" as has previously been the practice:


Black and White copies:	\$0.10 per page
Color Copies:	\$0.40 per page
Photographs:	\$1.10 per photo
CD/DVD Audio/Video:	\$3.00 per disc
Dual Layer DVD:	\$5.00 per disc
Blu Ray:	\$5.00 per disc
Thumb Drive up to 64GB:	\$20.00 per drive
External HD 1TB:	\$70.00 per drive

Please let us know if you would like to have further dialogue on this issue or not, so we may act accordingly. Our hope and goal in proposing this schedule is to come to what we think is a fair and equitable resolution of the issue without the need for litigation. As our neighbors in San Bernardino County do not charge at all for discovery duplication, I believe our position is a fair one in acknowledging that you are entitled to those reasonable costs of

reimbursement. We just ask that they be reasonable, especially in light of the fact that this is for costs reimbursement and not profit.

Looking forward to hearing from you.

Sincerely,



Graham D. Donath, President
Riverside County Criminal Defense Bar Association

cc: Chief Assistant District Attorney John Aki
Assistant District Attorney Michelle Paradise