



OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF RIVERSIDE

MICHAEL A. HESTRIN
DISTRICT ATTORNEY

January 15, 2021

Graham D. Donath, President
Riverside County Criminal Defense Bar Association
4229 Main Street, Ste. 2
Riverside, CA 92501

RE: Response to Correspondence re Reasonable Costs of Discovery

Dear Mr. Donath:

Our office received your letter on behalf of the Riverside County Criminal Defense Bar Association (RCDBA) requesting that we re-evaluate our policy for charging for discovery. In the letter, RCDBA requests that the Riverside County District Attorney's Office (RCDA) lower the price of what we charge for copies and digital media and that we eliminate the fee we charge for labor in copying and producing discovery.

Based on RCDBA's request, we reviewed our current discovery billing policy, analyzed our current pricing structure and compared what we charge for discovery with other California District Attorney Offices.

As you are aware, Penal Code section 1054 requires the prosecution to provide discovery to the defense. Discovery in some cases can be very time consuming and costly to produce, requiring the expenditure of materials and labor. *Schaffer v. Superior Court* (2010) 185 Cal.App.4th 1235. In *Schaffer*, the California Court of Appeal held prosecuting agencies can require "reasonable fees for duplicating discovery" for a criminal defendant. *Schaffer v. Superior Court*, supra, 185 Cal.App.4th at p. 1245.

In 2019, the California Legislature enacted Penal Code section 688.5 which precludes a prosecution agency from charging for the costs of investigation, prosecution, or appeal in a criminal case. Penal Code section 688.5 has been interpreted differently by District Attorney's Offices throughout the state. It is our view that Penal Code section 688.5 does not preclude

prosecuting agencies from charging a reimbursement fee for copies of discovery and reimbursement for expenses.

Based on the above, RCDA will make the following changes to our discovery billing policy which will take effect on February 1, 2021:

1. RCDA will eliminate our practice of charging for labor costs associated with producing discovery.
2. We will continue to charge for reimbursement costs to reproduce copies and purchase digital media hardware that is used to transfer discovery as follows:

Copies – Black and White	\$.20 per page
Copies - Color	\$.40 per page
CDs	\$1.00 per disc
DVDs	\$3.00 per disc
Dual Layer DVDs	\$5.00 per disc
Paper sleeves	N/A
Blue Ray 25 GB	\$3.00 each
Blue Ray 50 GB	\$5.00 per disc
Thumb Drive 16 GB	\$15.00
Thumb Drive 32 GB	\$20.00
Thumb Drive 64 GB	\$25.00
Thumb Drive 128 GB	\$30.00
Thumb Drive 256 GB	\$50.00
External Hard Drive 1 TB	\$150.00

A defense attorney may provide a blank thumb drive or external hard drive to RCDA. However, RCDA's Technology Services Bureau must verify the drive is malware free before it is used to copy discovery.

It should be noted that the above listed prices will also be subject to periodic review and change based on price fluctuations in the market for the purchase of digital media and other materials used to duplicate discovery.

3. RCDA is in the beginning stages of a pilot program with Axon Enterprises to use their Evidence.com software to test the feasibility and costs of using their platform to exchange E-discovery with the defense bar. If the pilot program is successful, RCDA may contract with Axon to use their Evidence.com platform to make discovery available to the defense bar electronically. Please note that if RCDA decides to use Evidence.com or any other E-Discovery platform, we will seek reimbursement from the defense bar for any fees that RCDA has to pay for data storage and user licensing in a manner that will be determined at a later date.

If you have any questions or concerns, please feel free to contact me or MDDA William Robinson.

Very truly yours,

MICHAEL A. HESTRIN
District Attorney

A handwritten signature in blue ink, appearing to read "JAH", with a long horizontal flourish extending to the right.

JARED A. HARINGSMA
Assistant District Attorney

JAH/mg