From: Brent Johnson
To: Brian Ross
Date: Wed, Nov 14, 2001 11:51 AM
Subject: Re: Follow-up Request for Opinion

This process appears to be okay. I've dug a little deeper and found some things that might be helpful. The code (78-46-26) actually appears to put the burden on the witness to report to the clerk the days for which payment is necessary. The statute says that if the witness does not report the day, then no payment is required or can be expected. The DAs office can and should assist the witnesses in their reporting requirements, and we can rely on what's reported to us for payment purposes. If its not reported to us, or not accurately reported to us, we do not have any obligation for corrections.

>>> Brian Ross 11/14/01 11:09AM >>>
Heather and I met with Third District Court management to discuss options for addressing the issue of Witness under payments. Currently, all county Witnesses subpoenaed by the District Attorney's office are required to appear at the District Attorney's office prior to appearing before the court. Witnesses present their subpoenas to an employee of the District Attorney's office who calculates the amount due to each Witness (including mileage and additional days). The employee of the District Attorney's office attempts to track attendance by marking "2nd Day" on subpoenas for Witnesses entitled to the $49 payment. The Juror/Witness payment clerk enters the dollar amount for each Witness, as calculated by the employee of the District Attorney's office, into FI-NET for payment processing. Unless otherwise indicated on the subpoena, each Witness is issued a payment of $18.50 by the Juror/Witness payment clerk.

Third District Court management would like the Witness payment calculation process to continue to be performed by the District Attorney's office. In other District courts audited, the Witness payment calculation has been performed by an employee of the court. Third District Court management feel that the District Attorney's office would be able to track and calculate the number of days a Witness appeared on the same case for the same hearing type far better and more efficiently than would the court. If this is allowed, Court management would discuss with the District Attorney's office the need to accurately track the number of days a Witness appears on the same case for the same hearing type and record the information on the subpoena to ensure each Witness is paid properly.

Would the situation described above be allowed? Is an employee of the court required to track the number of days and associated payment for Witnesses appearing before the court? Or can the responsibility for tracking days be delegated to an agent outside of the court? Requiring the court to track the number of days of attendance for each Witness appearing before the court would require a considerable amount of research and investigation.

Please let me know what you think of this situation.

Thanks,
Brian

CC: Heather Mackenzie-Campbell