

# **Q&A For Hourly Billing**

## **Effective 10-1-2023**

### **Answers To Frequently Asked Questions**

#### **GENERAL QUESTIONS**

**Q. What Is An Hourly Billing System?**

A. An hourly billing system compensates assigned attorneys based on the hours expended providing legal services at an established rate.

**Q. Why the change from the prior event-based billing system?**

A. An hourly billing system is viewed as the system most fairly compensating attorneys for services provided and most in line with incentivizing quality legal representation.<sup>1</sup>

**Q. Why is there a need to change?**

A. Studies show that economic disincentives can impair defense counsel's ability/desire to provide effective representation, and this must be avoided. Flat fees, event-based fees, and other fee systems are observed to have different economic disincentives. MIDC Standard 8 was adopted to provide fair compensation to assigned counsel. This includes compensation at a reasonable rate for work necessary to provide quality legal representation, including investigation, negotiation, and planning. (See footnote 1).

#### **THE HOURLY RATES EFFECTIVE 10-1-23**

**Q. What are the hourly rates in the Macomb County System of Indigent Defense?**

A. Fees set for FY 23-24 in Macomb County Managed Systems are:

Felony - Individually Assigned Cases

Capital Felony Rate: \$192/hr (A Level Cases)

Serious Felony Rate: \$144/hr (B Level Cases)

Low Level Felony Rate: \$132/hr (C Level Cases)

Misdemeanor - Individually Assigned Cases

Misdemeanor Rate: \$120/hr (D Level Cases)

Circuit Ct Arraignments, Specialty Courts, PV/Extradition \$132/hr

District Ct Arraignments, Specialty Courts \$120/hr

**Q. Will Attorneys get paid more under the hourly based system?**

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<sup>1</sup> For more information on use of an hourly based system of compensation, attorneys can visit the MIDC website where under Standard 8 attorneys will find an MIDC Report: "Incentivizing Quality Indigent Defense Representation" <https://michiganidc.gov/wp-content/uploads/2018/06/Incentivizing-Quality-Indigent-Defense-Representation.pdf>

A. It is anticipated that on average, more will be paid to attorneys per case for hourly payment of indigent defense services.<sup>2</sup> The previous event-based system of payment included payment of a fixed amount for an event regardless of the time spent on the event or activity bundled into the event fee. In most instances, the hours spent at current rates will result in the attorney getting paid more than in the prior event-based system.<sup>3</sup>

**Q. How were these hourly rates set?**

A. MIDC can approve rates up to the rates paid in Federal Cases. The Macomb County Office of Public Defender negotiated the current rates in the current grant request, and they were approved and funded by MIDC. Subsequent years may have higher rates, as minimum hourly rates are adjusted.<sup>4</sup>

**CASES STARTED PRIOR TO 10-1-23 BUT NOT COMPLETED**

**Q. What do I do when I was assigned prior to 10-1-23 and the case is not yet completed?**

A. Cases not completed prior to 10-1-23 will have two bills: One for event-based billing for event prior to 10-1-23 and one for hourly billing effective 10-1-23.<sup>5</sup>

**Q. Do I have to wait to the end of the case to submit both bills?**

A. No. You can immediately send the bill for event-based services and get paid now. The hourly bill can follow once services are completed on the file.

**THINGS THAT CAN AND CANNOT BE PAID UNDER THE HOURLY FEE SYSTEM**

**Q. Can an attorney get paid for travel time?**

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<sup>2</sup> Per the MIDC Grant Manual, it is estimated that average hours spent on misdemeanor individual assigned cases is 5.3 hours per case, and for felonies, 13.9 hours per case.

<sup>3</sup> For example: Pre-trial: (1) Event-based billing = \$100; (Includes talking to client & prosecutor prior to Pt)  
(2) Hourly based billing will depend on time spent for different activities, and could be:

CC – Client Contact TC with client	.2 hrs
OT – Other TC with Prosecutor	.1 hrs
CA – Circuit Ct Appearance – Pre-Trial	<u>1.0 hrs</u>
Total .....	1.3 hrs

Using the rate \$120/hr for misdemeanor, \$132/hr, \$144/hr or \$192/hr for felony cases will each result in a fee greater than the \$100 event-based fee. Of course, changing the example will change the result, however, in all cases for a 1-hour pre-trial, the hourly amount paid will be greater than the event-based \$100. This provides a financial incentive for the attorney to prepare for the pre-trial by contacting their client (and perhaps the prosecutor in appropriate cases) prior to the pretrial.

<sup>4</sup> Per the MIDC Grant Manual, minimum raters were set at \$100 misdemeanors, \$110 felonies, \$120 capital cases. These hourly amounts were indexed higher for FY 23-24 to \$118.21, \$130.03 and \$141.82

<sup>5</sup> In the unusual case where post 10-1-23 services under the hourly service payment system will result in lower fees, the attorney can request the higher event-based fee. These will be reviewed on a case-by-case basis. (All cases assigned on and after 10-1-23 will be paid in the hourly payment system.)

A. Generally, there is no payment for travel time. One exception is travelling over 50 miles (one way) from their office or place of meeting in the County.<sup>6</sup>

**Q. What costs cannot be billed in the hourly service payment system?**

A. Upfront costs to maintain and operate a law practice is not paid.

These types of costs include, but are not limited to:

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|--------------------------|-----------------------------------|
| office rent;             | telecommunications.               |
| utilities;               | support staff;                    |
| accounting;              | bar dues;                         |
| legal research services; | business travel;                  |
| staff wages;             | professional liability insurance; |
| normal printing;         | normal postage;                   |

**Q. What costs can costs be paid/reimbursed as part of an attorney Request For Payment?**

A. Many costs can be paid in connection with representation services. These can include things like:

- demonstrative exhibits;
- transcripts of proceedings<sup>7</sup>
- clothing for defendants to wear during court proceedings,
- interpreter costs (to facilitate some out-of-court meetings with counsel and clients or witnesses),
- costs to obtain documents, (for example school records, medical record, etc.)

**Q. Can costs associated with a FOIA request be reimbursed?**

A. Yes, if they are pre-approved by the Office of Public Defender. A showing of the need for the FOIA documents may be needed. Requests should be narrowed to not incur inflated costs for unneeded items. Not all FOIA requests will be approved.<sup>8</sup> Attorneys considering a FOIA request should contact the Office of Public Defender in advance.

**Q. Can costs of Experts or Investigators be reimbursed?**

A. Costs for Experts or Investigators must be requested in the manner followed by the Macomb County Indigent Defense System. This involves contacting the requested Expert or Investigator, completing the proper Request Form found in the Macomb

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<sup>6</sup> Each attorney participating in the Macomb County Indigent Defense System represents that they have an office or confidential meeting place in the County. From this representation, it is concluded that each county courthouse and the Macomb County Jail are within 50 miles from the attorney's office. Travel outside the County may be for things like an in-person visit with an MDOC prisoner, or travel to another County's jail to visit with a prisoner.

<sup>7</sup> The current procedure for requesting transcripts in Macomb County should continue to be followed.

<sup>8</sup> An example may be a proposed use of FOIA to obtain body cam video of a police officer who was at the scene of the charged offense. The FOIA would be denied because a FOIA is not a proper replacement for a request for discovery from the Prosecutor that is required to be produced. A Discovery Request, and Motion to Compel, (if needed), is the proper alternative to a FOIA request for the body cam video.

County Public Defender Website ([publicdefender.macombgov.org](http://publicdefender.macombgov.org)) and submitting it for review.

## **HOW TO BILL FOR HOURLY SERVICES PROVIDED**

**Q. How much time can I bill for my services?**

A. Actual time should be billed for services provided. The PD Spreadsheet asks for start and end time for a service, and then time is automatically calculated.

**Q. How much time should I bill for repetitive letters or notices or motions and briefs?**

A. Certain services can be repetitive, including things such as:

- sending an introductory letter
- sending a reminder letter about a Court date,
- preparing a Demand For Discovery,
- preparing and filing a generic Motion To Compel Discovery

These items should be billed only for actual time spent. It is anticipated that reasonable time spent changing what amounts to a form document by updating an address, dates and/or caption will be minimal. Copies of introductory letters and motions and briefs should accompany a Request For Payment. (Note: letters to a client beyond an introductory communication may be confidential and should not accompany a Request For Payment).

Appropriate time for Motions, Briefs, and other documents vary on a case-by-case basis and should be attached for review of reasonableness of time billed.

**Q. Are there minimum increments of time that I can bill?**

A. No. Services are billed in actual time spent and converted to hourly amounts.

- 5 minutes = .083 hr
- 10 minutes = .167 hr
- 15 minutes = .25 hr
- 20 minutes = .33 hr
- 30 minutes = .5 hr etc.

An exception exists for services with minimum times, such as arraignments, docket days, specialty court appearances, etc. In these cases, where the actual time is less than the minimum time, the minimum time is billed. If actual time exceeds the minimum, then the actual time is billed.

## **IMPROPER TO DOUBLE BILL**

**Q. Can an attorney bill for multiple files which are in the same Court, on the same docket, at the same time?**

- A. Yes, so long as the total time on the multiple files does not exceed actual time. An applicable Michigan Rules of Professional Conduct Ethics Opinion provides:

“A lawyer may not bill more than one client at full rates for the same time period, but must apportion the time so each client pays a fair share for time actually devoted to the client’s matter.” RI-150 [1992], referencing MCPC 1.5(a); RI 6[1989]; MCR 8.122<sup>9</sup>

An example of a proper billing would be where 3 hours are spent at court to cover 3 docketed cases, each file would be properly billed 1/3 of the time at court.

Another example: Extending the previous example, (e.g. 3 cases on one docket and 3 hours are spent at Court), an attorney makes 2 phone calls during the 3 hours of docket time, making use of otherwise inactive time at court. The calls are on files unrelated to the docketed files. The calls last a total of 15 minutes. Rules against double billing would result in billing 15 minutes to the files in which phone calls were made, and bill the remaining 2 hours 45 minutes between the 3 docketed cases. Total time billed remains the full 3 hours.

### **MULTIPLE FILES FOR A SINGLE DEFENDANT**

- Q. Can an attorney get paid more for handling multiple cases for a single defendant?**

- A, Yes, by billing actual time. So where a defendant had 3 case files, and a pre-trial lasted 1 ½ hours, the time would be divided between the e files and only a total of 1 ½ hours is billed.

Total time spent on the files is expected to be greater where there are multiple files. Time for reviewing discovery on 3 files will be greater than on one file. Time talking to the client is expected to be greater. Time investigating and negotiating multiple files is expected to be greater than time spent on a single file. While the hourly billing system is different from the prior event-based billing system for multiple files<sup>10</sup>, use of actual time can exceed the event-based system. It is anticipated that there will be greater total hours for a defendant with multiple case files than a defendant who has only a single case file.

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<sup>9</sup> RI-150 also states: “It is unreasonable *per se* to charge two or more clients for the same hour or hours of professional time of one lawyer. If the lawyer actually services more than one client during the court visit, such as when multiple hearings of different clients are scheduled on the same docket, the lawyer should pro rate the flat fee among the clients.” This reasoning resulted from review of a flat fee system where a minimum fee was charged to each of 3 clients, (the minimum representing an average of 3 hours per court visit for a single case, used to set the minimum fee amount.).

<sup>10</sup> Under the no longer used event-based system, multiple files were paid with the following treatment for events:

- 100% for the first case
- 50% for the second, and
- 25% for the third
- 0 for fourth and more

This system does not exist in the current hourly based billing.

**Q. When a defendant has multiple files, can all service time be combined and billed on one file?**

A. No. The time spent on each file should be apportioned to each file. Review for reasonableness requires knowing actual time spent on each file.

**A REQUEST FOR PAYMENT CAN BE REDUCED**

**Q. When can a submitted Request For Payment be reduced?**

A. Request for Payments submitted by attorneys will be reviewed to confirm that certain services were performed, and reviewed for reasonableness. Where questions arise, attorneys may be called to explain their request.

Certain reductions can be warranted for things including:

- Fees claimed for things that cannot be charged<sup>11</sup>
- Fees claimed for travel<sup>12</sup>
- Fees not approved in advance<sup>13</sup>
- Double billing of time<sup>14</sup>
- Undocumented requests<sup>15</sup> (e.g. services billed but required attachments not provided, such as Motions & Briefs, initial contact letters, jail visit slips, etc.)
- Fees claimed are unreasonable

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<sup>11</sup> Upfront costs to maintain and operate a law practice is not paid. These types of costs include, but are not limited to:

office rent;	telecommunications.
utilities;	support staff;
accounting;	bar dues;
legal research services;	business travel;
staff wages;	professional liability insurance;
normal printing;	normal postage;

<sup>12</sup> Generally, there is no payment for travel time. One exception is travelling over 50 miles (one way) from their office or place of meeting in the County

<sup>13</sup> For example, FOIA requests need to be pre-approved by the Office of Public Defender. A showing of the need for the FOIA documents is required. Requests should be narrowed to not incur inflated costs for unneeded items. Some uses of FOIA will not be approved.

<sup>14</sup> Double billing is improper: "A lawyer may not bill more than one client at full rates for the same time period, but must apportion the time so each client pays a fair share for time actually devoted to the client's matter." RI-150 [1992], referencing MCPC 1.5(a); RI 6[1989]; MCR 8.122

<sup>15</sup> A partial list of items which should be attached for approval of payment/reimbursement includes:

- Jail Visit verification slips
- Arranging Zoom/Video conference with client at jail
- Initial Contact Letter
- Deviation Request
- Motion & Brief
- Responsive Brief
- Order of Substitution of Attorney
- Paid Receipts for Reimbursement