

INSTRUCTIONS

Macomb County

Indigent Request For Funds - Investigator

Introduction

The following instructions provided for attorney making an Indigent Request For Funds – Investigator. They apply to the Macomb County Indigent Defense System. A request for funds to hire an Investigator can arise where a defendant facing adult criminal charges is indigent. Attorneys have a duty to make reasonable investigations or make reasonable decisions that make investigation unnecessary.¹ Funds for an Investigator can properly be considered when the attorney provides specifics on how the investigator will assist the defense² and will assist with effective representation.³

Making a Request For Funds For An Investigator

A request for funds for an Investigator is made by the attorney representing an indigent client facing adult criminal charges. The attorney may be assigned or retained. In an assigned case, a Court has already made a determination of indigency.⁴ In a retained case, an Order of Indigency is needed before an Indigent Request For Funds – Investigator can be considered. The Order of Indigency must be submitted with the Indigent Request for Funds – Investigator. (See example order in Appendix A). Information about indigency is found under “Indigency Determination” in the Public Defender Website. <https://www.macombgov.org/departments/public-defender>

Process to Follow When Seeking to Hire an Investigator

When an Investigator is requested to assist the defense present a defense and satisfy due process, the attorney should take the following steps;

- 1) contact the proposed Investigator
 - discuss the services needed
 - agree on the number of hours needed
 - explain the hourly fee paid
- 2) get a copy of the investigator’s Curriculum vitae (“CV”) and license number
- 3) Complete the Indigent Request For Funds – Investigator Form (Form found in website under “Investigators”)

<https://www.macombgov.org/departments/public-defender>



¹ See *Strickland v Washington* 466 US 668, 691; 104 SCt 2052, 2066; 80 Led2d 674 (1984)

² An investigator can help ensure due process right to present a defense and help maintain an attorney’s ethical duty to provide effective representation. Need for an investigator is not automatic. It may not be based on pure speculation and conjecture. Facts and circumstances of each case must lead to some reasonable line of inquiry.

³ An available investigator ensures the ability of counsel to meet their duty of providing effective representation.

⁴ In support of a finding of indigency, Courts make inquiry of the defendant and often use form MC 333 of JA 003.

- 4) Submit the completed form to the Public Defender's Office.
publicdefender@macombgov.org

Make sure to use the form found in the website named "Indigent Request For Fund – Investigator".

The Michigan Indigent Defense Commission (MIDC) and the Macomb County Indigent Defense Plan provide for the maximum hourly fees for Investigators.

Maximum Investigator Hourly Fee: \$100/hr

Process After Submitting the "Indigent Request For Funds – Investigator"

Once the Request Form is completed and submitted, it will be reviewed by the Macomb County Office of Public Defender. Attention will be given to the information provided, including: the type of case, the services to be provided, the specifics as circumstances in the case that make the request reasonable, the Investigator's being licensed, the projected hours and the total fees requested.

An "Approval" form is created for approved requests. The attorney must provide the Approval form and Request For Payment form to the Investigator. Payment can be made once the Investigator completes services. Attorneys should both discuss with their chosen Investigator and note:

- Retainer fees for an Investigator are not paid
- Flat Fees are not approved
- Payment for Investigator fees are not paid in advance
- Only up to the approved amount can be paid
- Access fees are not paid
- Any costs associated with services of an Investigator, including travel, copy fees, and other expenses must be pre-approved.



Rules For Submitting the "Investigator's Requests For Payment"



When the Investigator completes services, they should submit the following to the Macomb County Office of Public Defender for review and processing:

- Approval Form
- Request For Payment of Investigator Fees found in the Public Defender Website, (or invoice form of the Investigator's choosing, however, the invoice must show: Date of service, description of service, time for each service, and total hours.)

The request for payment of Investigator Fees form is found under "Investigators" in the Public Defender website: <https://www.macombgov.org/departments/public-defender>

An Investigator Request For Payment Form (or invoice) must be signed by the Investigator. This signature verifies the time being billed. Unsigned Investigator Requests For Payment or Invoices cannot be processed for payment

Time billed is done in tenths of hours (ex: 1 hour and 15 minutes = 1.25)

To receive payment, and a 1099 at the end of the year, the Investigator will need to be in the Macomb County finance system. The Investigator should be directed to contact the Macomb County Office of Public Defender for instructions. (586) 466-8311. A Form W-9 is required. Direct deposit to a designated account can be set up.

Funds for Investigators are in whole or in part grant funded. Request for Payment of Investigator Fees are DUE WITHIN 90 DAYS OF COMPLETION OF SERVICE.

LATE SUBMISSIONS MAY BE DENIED.

Limitation on the Amount of Fees for an Investigator

The Michigan Indigent Defense Commission (MIDC) and the Macomb Count Indigent Defense Plan provide for the maximum hourly fees for Investigators.

Maximum Investigator Hourly Fee:	\$100/hr
Travel time is compensated at ½ of the \$100/hr hourly rate:	\$50/hr

Investigators must be licensed and should provide a copy of their license number to the requesting attorney.

While the rate of \$100 per hour is generally followed, there can be unusual circumstances which warrant a different rate. Flat fees are not paid. Retainers are not paid.

Investigator Access Fees

Unless pre-approved, access fees are not paid over and above the hourly fees for the Investigator. This means that additional fees are not paid for things including: iChat, Westlaw, Accurint, LexisNexis, driver look-up fees, title searches, Facebook, YouTube, other social media accounts, etc. Reimbursement of fees not pre-approved will not be paid.



Any reimbursement for access fees or other out-of-pocket fees must be pre-approved. Fees Cost of obtaining records can be reimbursed. This can include copy fees charged by a Court for Court file documents. Fees for body-cam videos, interview videos, scout car videos, etc., are not paid when these are part of Brady discovery materials. Investigators seeking these materials should obtain them from the attorney, (who can request them as part of discovery or file an appropriate motion to produce). Fees for FOIA requests are not reimbursed without pre-approval.



Denial of Rate or Fees or Denial of Request For Investigator

If an Investigator Request Form is denied, the attorney may proceed as follows:

- First, contact the Macomb County Office of Public Defender to discuss the reason for the denial. Reasonable requests may, upon review and explanation, be reconsidered and approved or denied.⁵
- Second, should the Indigent Request For Funds – Investigator still be denied, then the attorney can appeal. The first appeal is administrative and made in writing, and submitted to Macomb County’s appeal partner. The appeal partner is the attorney running the MACC system in Lapeer. A written appeal must provide:
 - A copy of the Indigent Defense Request For Funds – Investigator
 - Statement of specific reasons for the Investigator’s services
 - Statement of how denial of the request for Investigator is part of providing effective assistance of counsel
 - Statement explaining why the Investigator is necessary to present a defense and otherwise satisfy due process requirements
 - Statement explaining why the same or similar services from another Investigator are not available locally at a lesser hourly rate (or lesser required travel expense)
 - Statement explaining why the number of hours claimed is reasonable

Appeal to the MACC, including all of the above must be provided to the MACC and to the Macomb Court Office of Public Defender. A reply to the attorney’s request may be made in writing and provided to the MACC and the attorney within fourteen (14) days. The MACC may request additional information or decide on the submissions. The MACC will decide by providing a written decision within a reasonable time.

Should the request continue to be denied, the attorney may file a Motion with the Court where the case is pending, seeking a Court Order.

Requested Fees in Excess of an Amount on Approval Form

Fees for Investigators will not be paid in excess of the amounts on the Approval Form. Payment will only be made in an amount equal to or less than the approved amount. Fees sought in excess of the pre-approved amount will be denied.

Should additional fees above what was originally requested and approved be required, a subsequent Request For Funds should be submitted prior to the start of services. Specific details should be provided concerning why the subsequent request was needed in excess of the original approved amount.

⁵ An Investigator is appropriately approved when there are specific reasonable reasons for the request and the request is part of providing effective assistance of counsel and/or necessary to present a defense.

Generally, hourly fees for an Investigator will not be approved above \$100/hr without exceptional circumstances.

Submitting the Investigator's Request for Payment

The Investigator⁶ should submit the following items when seeking payment after services have been completed:

- Approval Form
- Request For Payment of Investigator Fees found on the Public Defender Website. (Or invoice form of the Expert's choosing, however the invoice must show: Date of service, description of service, time for each service, and total hours.)

The Request For Payment of Investigator Fees form is found under "Investigators" in the website: <https://www.macombgov.org/departments/public-defender>

Investigator Request For Payment forms must be submitted within 90 days of the last service. Late billing may be denied payment.

An Investigator Request For Payment Form (or invoice) must be signed by the Investigator. The signature verifies the time being billed. Unsigned Investigator Request For Payment forms or Invoices cannot be processed for payment.

TRUE DETECTIVE

⁶ The attorney does NOT submit the Investigator's Request For Payment. Attorneys will NOT be reimbursed for amounts paid to Investigators.

APPENDIX

STATE OF MICHIGAN

IN THE 16th JUDICIAL CIRCUIT COURT

PEOPLE OF THE STTE OF MICHIGAN

Judge: _____

Plaintiffs

Case No: yyyy-xxxxxx-aa

Vs

(DEFENDANT'S NAME)

Defendant

_____/

ORDER OF INDIGENCY

At a session of said Court held in the
City of _____, County of
_____, State of Michigan.

Held On: _____

THS MATTER, having come before the Court on Defendant's Motion, and the Court being otherwise fully advised in the premises:

THE COURT FINDS that Defendant is indigent for purposes of making an "Indigent Request For Funds – Investigator."

SO OREDERED

CIRCUIT COURT JUDGE

Date: _____