

INSTRUCTIONS Macomb County Indigent Request For Funds - Expert

Introduction

The following are instructions provided for attorneys making an Indigent Request For Funds – Expert within the Macomb County Indigent Defense System. A request for funds to hire an Expert applies to situations where a defendant facing adult criminal charges is indigent. Funds for an Expert are appropriately considered for approval where there is a reasonable probability that an Expert would benefit the defense, and that denial of an Expert’s assistance would result in a fundamentally unfair trial.¹

Making a Request for Funds for An Expert

Before an Indigent Request For Funds – Expert can be considered the defendant must be both indigent and facing adult criminal charges. The attorney may be assigned or retained. In an assigned case, a Court has already made a determination of indigency.² In a retained case, an Order of Indigency is needed before an Indigent Request For Funds – Expert can be considered. The Order of Indigency must be submitted with the Indigent Request For Funds – Expert. (See example Order in Appendix A). Information about indigency is found under “Indigency Determination” in the Public Defender Website. <https://www.macombgov.org/publicdefender>

Process to Follow When Seeking to Hire an Expert

When an Expert is requested to assist in the defense of an indigent defense case, the attorney should follow the following steps:

- 1) Contact the proposed Expert:
 - discuss the Expert services needed,
 - obtain the Expert’s proposed hourly rate,
 - agree on the number of hours needed.
- 2) Get a copy of the Expert’s curriculum vitae (“CV”).
- 3) Complete the Indigent Request For Funds – Expert Form.
(Form provided in website under “Experts”)
<https://www.macombgov.org/publicdefender>
- 4) Submit the completed form to the Public Defender’s Office at:
Publicdefender@macombgov.org



¹ See *People v Kennedy* 502 Mich 260, 228; 917 NW2d 355, 368 (2018), adopting standard in *Ake v Oklahoma* 470 US 68; 105 SCt 1087; 84 Led2d 53 (1985).

² In support of a finding of indigency, Courts make inquiry of the defendant and use form MC 222 or JA 003.

Make sure to use the form found on the website named “Indigent Request For Funds – Experts”.

Process After Submitting the “Indigent Request For Funds - Expert”

Once the Request Form is 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 noted need for an Expert, the type of Expert requested, the education/experience of the Expert, and the projected hours and total fees requested.

An Approval form is created for approved requests. The attorney must provide the Approval and the Request for Payment Forms to the Expert. Payment can be made once the Expert completes services. Attorneys should note:

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

Rules for Submitting the “Expert’s Request for Payment”



When the Expert 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 Expert Fees Form found on the Public Defender Website, (Or invoice form of the Expert’s choosing, however the invoice must be signed and must show: date of service, description of service, time for each service, and total hours.)

The Request For Payment of Expert Fees form is found under “Experts” in the website: <https://www.macombgov.org/publicdefender>

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

Time billed must be in tenths of hours (ex: 1 hour and 15 minutes = 1.25). Any Request for Payment – Expert must be submitted within 60 days of the date of the last service, late billings may be denied payment.

To receive payment, and a 1099 at the end of the year, the Expert will need to be in the Macomb County finance system. The Expert 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.

Limitation on the Amount of Fees for an Expert



There is a presumed limit on the hourly rates that an Expert can charge in an indigent defense case. Both the Michigan Indigent Defense Commission (MIDC), and the Macomb County Indigent Defense Plan adopt the following schedule of maximum hourly fees for experts. These rates are related to the area of expertise and the amount of education of the Expert. Complexity of the case, amount and type of experience can also be a factor.

Suggested Maximum Approved Expert Hourly Fee Rates

The following list details the maximum approved Expert hourly fee rates. When an Indigent Request For Funds - Expert has an hourly rate that falls within these approved rates, the request can quickly reviewed and approved by the Macomb County Office of Public Defender. The maximum³ rates which are recognized by MIDC and the Macomb County Indigent Defense System are as follows:

<u>Education Level of Proposed Expert</u>	<u>Hourly Rate</u>
High School or Equivalent	\$35/hr
Associate’s Degree	\$50/hr
Bachelor’s Degree	\$75/hr
Master’s Degree	\$85/hr
Crime Scene & Reconstruction Experts	\$100/hr
CPA/Financial Expert	\$100/hr
Pharmacy/PharmD	\$125/hr
Information Technology Experts	\$150/hr
Ph.D./Licensed Doctor	\$200/hr
Medical Doctor	\$250/hr
Medical Doctor with Specialty (e.g. Psychiatrist, Pathologist, etc.)	\$300/hr

The process of reviewing an Indigent Request For Funds - Expert includes consideration of, among other things, the following:

- Whether the Expert’s requested hourly rate is within the suggested maximum rate.
- Whether the number of hours for the Expert services are in line with other requests for the same services.
- Whether there are other local Experts that provide the same or similar services within the suggested maximum rate and expected number of hours requested.
- Whether the Expert can reasonably assist the defense.
- If the denial of the Expert will result in a fundamentally unfair trial.

³ Rates are expressed as “maximums” and are not presumptive. The rate for a particular Expert could be lower.

Some reviews of Indigent Request For Funds – Expert may lead to contacting the attorney for further justification/explanation. In appropriate instances, use of a different local Expert may be suggested where another Expert can provide the same or similar services at a reduced rate or number of hours.

Requests Above The Suggested Maximum Approved Rates

Some Experts, due to specialty, availability, or otherwise, may be necessary in a case and have rates that exceed the suggested maximum rates. Attorneys making such an Indigent Request For Funds – Expert form must state **specific reasons about why** the rate requested is appropriate and necessary.⁴ Reasons must be in writing and will require special review by the Macomb County Office of Public Defender. Prior discussion with the Macomb County Office of Public Defender is encouraged. Alternative Experts may be explored with the requesting attorney.

Rates can also be lower than the suggested maximum even though the Expert has a higher education level. A rate based on education of the Expert will apply only if the Expert is testifying in that field. (Ex: a Ph.D. educated Expert must be testifying as an Expert in the field of their Ph.D. for the \$200/hr rate to apply.) There is no guarantee of a specific chosen Expert. Where similar Expert services are available at a lesser rate, then a different Expert at the lesser rate may required for be approval.⁵



Certain activities of an Expert may not qualify for payment under grant funding. This may include cost of the Expert's staff, access fees, copy fees, and other fees. Requests for these items must be pre-approved.

Travel costs must be specifically requested for approval. Generally, ½ of the Expert's hourly rate is suggested for travel. Reduced rates for Expert travel are not intended to discourage Expert interest. Individual requests will be reviewed on a case-by-case basis when it comes to fees for travel. When appropriate, travel costs can be reduced by conducting conferences virtually, and even appearing in Court virtually. However, it is recognized that in-person testimony may be best for certain cases. Pre-approval should be sought for all Expert travel expenses and travel time.

⁴ Ex: A retired police officer with 30 years of evidence tech experience and an Associate's degree could qualify as an expert at a rate, greater than \$50/hr if testifying about crime scene processing/evidence gathering based on experience, in an appropriate case.

⁵ The right to an Expert to assist in the reasonable defense of a case will generally be upheld. However, use of a "specific" Expert is not guaranteed. For example, if there were several local general ballistic Experts available, a request for an out-of-state ballistics' Expert, without justification of a need for some unusual aspect of ballistics expertise, would not be approved based on considerations of additional travel expenses which could make the out-of-state Expert unreasonably more expensive. In the example, such circumstance, an Expert would be approved, but the rate (including travel expenses) would be denied.

Denial of Rate or Denial of Request for Expert



If an Indigent Defense Request For Funds - Expert 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 either approved or denied.⁶

- Second, should the Indigent Request For Funds – Expert still be denied, then the attorney can appeal. The first appeal is administrative, 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 include:

- A copy of the Indigent Defense Request For Funds – Expert.
- Statement of reasonable probability that the Expert would be of assistance to the defense.
- Statement of how denial of the Expert will result in a fundamentally unfair trial.
- Statement explaining why the hourly rate is reasonable.
- Statement explaining why the same or similar services from another Expert are not available locally at a lesser hourly rate.
- Statement explaining why the number of hours claimed is reasonable.

A copy of any appeal must be provided to the Macomb County Office of Public Defender. The Macomb County Office of Public Defender may reply, in writing, to the MACC with a copy provided to the attorney within 14 days. The MACC may request additional information from either side or decide based upon the submissions received. The MACC will decide by providing a written decision within a reasonable time.

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

Requested Fees in Excess of Amount on Approval Form

The Office of Public Defender will not pay any amount in excess of the amounts stated on the Approval form. Should an Expert’s fees exceed the approved amount, they will be denied. To seek any additional payment over the approved amount, the attorney must submit a new Indigent Request for Funds – Expert form. Explanation must be sufficient to explain why original

⁶ An Expert is appropriately appointed where there is a reasonable probability that an Expert would be of assistance to the defense, and denial of Expert assistance would result in a fundamentally unfair trial.

requested fees were “unanticipated.” Payment in excess of the amount on the Approval Form is in the sole discretion of the Macomb County Office of Public Defender. Approval in one case is not grounds for approval in another case.

Appeal from a denial of excess “unanticipated” Expert fees must be made to the Judge in your case by filing a motion. The Macomb County Public Defender Office must be properly served a copy of the motion and notice of hearing at least 7 business days prior to any hearing.

Submitting the Expert’s Request for Payment



The Expert⁷ should submit the following items when seeking payment:

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

The Request For Payment of Expert Fees Form is found under “Experts” in the website: <https://www.macombgov.org/publicdefender>

Any Expert Request For Payment Form must be submitted within 60 days of the last service. Late billing may be denied payment.

An Expert Billing Form (or invoice) must be signed by the Expert. The signature verifies the time being billed. Unsigned Expert Bills or Invoices cannot be processed for payment.

Time billed must be in tenths of hours (ex: 1 hour and 15 minutes = 1.25).

⁷ The attorney does NOT submit the “Expert Request for Payment” with the attorney’s bill for services or otherwise. Attorneys will NOT be reimbursed for amounts paid to Experts.

APPENDIX A

STATE OF MICHIGAN
IN THE 16th JUDICIAL CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN

Judge: _____

Plaintiff

Case No: yyyy-xxxxxx-aa

Vs

(DEFENDANT'S NAME)

Defendant

_____ /

ORDER OF INDIGENCY

At a session of Court held in the
City of _____, County of
_____, State of Michigan;
Held On: _____

THIS 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 – Expert."

SO OREDERED.

CIRCUIT COURT JUDGE

Date: _____