

THE REGIONAL MANAGED ASSIGNED COUNSEL OFFICE

INVESTIGATORS AND EXPERTS

INVESTIGATIONS AND EXPERT WITNESS POLICY

PURPOSE

To outline the Regional MAC Office's policies and procedures for providing investigative and expert witness services to appointed counsel in Wayne County's District Courts. To robustly encourage use of these resources.

BACKGROUND

The United States Supreme Court has held: (1) "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v Washington*, 466 US 668, 691; 104 S Ct 2052, 2066; 80 L Ed 2d 674 (1984); and (2) "[c]riminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both." *Harrington v Richter*, 562 US 86, 106; 131 S Ct 770, 788; 178 L Ed 2d 624 (2011). The MIDC Act authorizes "minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel..." MCL 780.985(3).

As outlined by The Michigan Indigent Defense Commission's website the following is required by Standard 3:

- A. Counsel shall conduct an independent investigation of the charges and offense as promptly as practicable.
- B. When appropriate, counsel shall request funds to retain an investigator to assist with the client's defense. Reasonable requests must be funded.
- C. Counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution's case. Reasonable requests must be funded as required by law.
- D. Counsel has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance. Decisions to limit investigation must take into consideration the client's wishes and the client's version of the facts.

The Regional Managed Assigned Counsel Office has adopted policies and procedures to fulfill the requirements of Standard 3.

ADMINISTRATION OF INVESTIGATION AND EXPERT WITNESS RESOURCES

The provision and funding of investigation and expert witness services must be administered by a licensed attorney in good standing with the State Bar of Michigan. The Administrator and other staff attorneys for the Regional Managed Assigned Counsel Office meet this requirement and are tasked with processing attorney requests and expending payments for services rendered. The process delegates approval of defense requests to the Administrator from the traditional statutory authority exercised by the judiciary. The Regional Managed Assigned Counsel Office's policies and procedures regarding investigator and expert witness services are developed to ensure compliance with MIDC Standard 3.

The Regional Managed Assigned Counsel Office is the exclusive source for approval and payment of investigators and experts for cases at the District Court level in Wayne County. Requests for investigation and expert services will be approved in accordance with applicable court rules, statutes and caselaw. Generally, requests will be granted when reasonably necessary to prepare a defense, understand or rebut the prosecution's case, or prepare for plea negotiations or sentencing.

In the spirit of client confidences, facts of individual cases and reasons for requests for either an expert or investigator will remain confidential between the attorney/pro se defendant and the Regional Managed Assigned Counsel Office. Limited summary data will be compiled by the Administrator for the purpose of improving our processes and making reports to MIDC.

Wayne County District Court judges retain judicial discretion for purposes of qualifying experts to testify, determining the admissibility of their reports or testimony, and any other matter relating to admission or exclusion of evidence.

SCOPE OF SERVICES

Who

Investigative and Expert Witness requests may be made by:

- a. Appointed counsel representing **indigent defendants** in all of Wayne County's District Courts
- b. Retained counsel whose clients have **become indigent** during the course of their Wayne County District Court case. In this instance, counsel must submit an order of indigency from the sitting judge.
- c. Counsel representing clients on as **pro bono counsel**
- d. Defendants who have been granted the right to represent themselves (**Pro Se Defendant**)

Jurisdiction

The investigation and expert witness services administered by the Regional Managed Assigned Counsel Office is available for misdemeanor cases in the District Courts of Wayne County, Michigan.

When

Attorneys and Pro Se Defendants may request investigation and expert witness resources at the beginning of their cases and throughout its continuance until it is resolved.

INVESTIGATOR AND EXPERT LISTS

The Regional Managed Assigned Office will provide, via the website, www.regionalmac.org, lists of vetted investigators and expert witnesses. Expert witnesses are listed by expertise. We are using the same list for district court misdemeanors that Wayne County is using for felonies.

Investigators

Investigators must be licensed by the State of Michigan to provide professional services, pursuant to MCL 338.821 et seq. All persons or organizations wishing to provide investigation services must apply for listing on the roster maintained by the Regional Managed Assigned Counsel Office, agree to have assigned counsel evaluate their services, and **obtain a security clearance for entry into Wayne County jails for client visits.**

Attorneys and pro se defendants may use a licensed investigator who is not on the list but they must be approved by the Regional Managed Assigned Counsel Office prior to commencement of services. They should apply to be added to the list on our website, www.regionalmac.org.

Disciplinary issues. Investigators and Experts must provide to the Regional Managed Assigned Counsel Office written notification of any formal charges, sanctions, or disciplinary action taken against their professional licensure. Failure to provide such notification within fourteen (14) days of the formal action may result in suspension or removal from the Investigator's and/or Expert's lists.

Experts

The Administrator will be available to assist with or answer questions for assigned criminal defense attorneys about experts and investigators during office hours of 8:00 a.m. and 4:30 p.m. or by email at regional-inv-exp@ci.dearborn.mi.us.

PROCEDURES

REQUESTS FOR INVESTIGATORS

The outlined procedure contained in this section outlines the process attorneys and pro se defendants will follow to request resources for the procurement of investigative services. The procedures for these requests are as follows:

1. Assigned attorneys and investigators must use the forms provided by the Regional Managed Assigned Counsel Office. Those forms include:
 - a. Attorney Request for Investigator Services
 - b. Investigator Request for Payment
 - c. Impact and Evaluation of Investigator Services

Completely fill out the appropriate request form **PRIOR TO** employing the services of an investigator. Incomplete forms will be returned for completion. **If services begin prior to approval, the Administrator may grant or deny payment for those services, on a case-by-case basis.** Please indicate if you are submitting an initial or supplemental request in the designated area on the form. Forms are found on the Regional Managed Assigned Counsel Office's website, www.regionalmac.org, under the Instructions for Experts and Investigators tab.

The Regional Managed Assigned Counsel Office provides a list of vetted investigators on our website, www.regionalmac.org, for attorney convenience. Attorneys are free to choose one from the list or one of their own choosing.

2. If the investigator has not been vetted and placed on the list, the attorney needs to provide the following documentation to the Regional Managed Assigned Counsel Office along with the request form:
 - a. The private investigator's PI License number
 - b. License insurance
 - c. Bond information
 - d. **WCS Criminal History Record Request form**
3. The number of hours and expenses authorized by the Program's Administrator will depend on the facts and circumstances of the case, as outlined in the Attorney Request for Investigation Services. The number of authorized hours and expenses may not be exceeded without the express written approval of the Administrator.
4. Requests for supplemental hours may be made if the attorney/pro se defendant believes more hours are necessary. The attorney/pro se defendant must complete an additional Request for Investigation Services form, and obtain the approval of the Administrator prior to authorizing the investigator to surpass the hours approved in the original request.
5. **Submit the Request Form to the Regional Managed Assigned Counsel Office via email to regional-inv-exp@ci.dearborn.mi.us**
6. The Regional Managed Assigned Counsel Office will process the form within a reasonable amount of time. Our goal is to process all requests submitted properly within 48 hours.

7. After processing, requests forms will be returned to the attorney via email at the email provided by the attorney to the Regional Managed Assigned Counsel Office indicating it has either been approved or denied.
8. Upon completion of services, the attorney/pro se defendant must submit an Investigator Request for Payment form for payment of services. The number of hours and expenses for which payment is requested must be detailed in the form, which must be accompanied by itemized time sheets, invoices, and receipts.
9. **The Investigator Request for Payment form**, and accompanying documents must be submitted by the Investigator to the Attorney/pro se defendant, who will certify their accuracy and submit them to the Regional Managed Assigned Counsel Office via email at **regional-inv-exp@ci.dearborn.mi.us**
10. Following certification that the investigator provided the services for which payment is requested, the Administrator will approve/deny/modify the payment request.
11. Decisions of the Administrator may be appealed to the Assigned Counsel Administrator of the Indigent Defense Services Department pursuant to Section 5(g), above.
12. The Administrator will promptly submit the payment approval for payment from MIDC funds.
13. Attorneys must complete an Impact and Evaluation of Investigator Services form in every case involving an investigator.
14. Case-related expenses are addressed in the Schedule of Rates for Defense Use of Investigator and Expert Services.

REQUESTS FOR EXPERT WITNESSES

The outlined procedure contained in this section outlines the process attorneys and pro se defendants will follow to request resources for the procurement of services for expert witnesses. The procedures for these requests are as follows:

1. Assigned attorneys and experts must use the forms provided by the Regional Managed Assigned Counsel Office. Those forms include:
 - a. Attorney Request for Expert Services
 - b. Expert Request for Payment
 - c. Impact and Evaluation of Expert Services

Completely fill out the appropriate request form **PRIOR TO** employing the services of an investigator. Incomplete forms will be returned for completion. **If services begin prior to approval, the Administrator may grant or deny payment for those services, on a case-by-case basis.** Please indicate if you are submitting an initial or supplemental request in the designated area on the form. Forms are found on the Regional Managed Assigned Counsel Office's website, www.regionalmac.org, under the Instructions for Experts and Investigators tab.

2. Attorneys should consult the online database of experts available at www.sado.org, using their membership credentials. Attorneys may use an expert who is not listed in that online database with prior approval from the Regional Managed Assigned Counsel Office.
3. The number of hours and expenses authorized by the Program's Administrator will depend on the facts and circumstances of the case, as outlined in the Attorney Request for Expert Services. The number of authorized hours and expenses may not be exceeded without the express written approval of the Administrator.
4. Requests for supplemental hours may be made if the attorney/pro se defendant believes more hours are necessary. The attorney/pro se defendant must complete an additional Request for Expert Services form, and obtain the approval of the Administrator prior to authorizing the expert to surpass the hours approved in the original request.
5. **Submit the Request Form** to the Regional Managed Assigned Counsel Office via email at regional-inv-exp@ci.dearborn.mi.us
6. The Regional Managed Assigned Counsel Office will process the form within a reasonable amount of time.
7. After processing, requests forms will be returned to the attorney via email at the email provided by the attorney to the Regional Managed Assigned Counsel Office indicating it has either been approved or denied.
8. Upon completion of services, the attorney/pro se defendant must submit an Expert Request for Payment form for payment of services. The number of hours and expenses for which payment is requested must be detailed in the form, which must be accompanied by itemized time sheets, invoices, and receipts.
9. **The Expert Request for Payment form**, and accompanying documents must be submitted by the Expert to the Attorney/pro se defendant, who will certify their accuracy and submit them to the Regional Managed Assigned Counsel Office **via email at regional-inv-exp@ci.dearborn.mi.us**

10. Following certification that the expert provided the services for which payment is requested, the Administrator will approve/deny/modify the payment request.
11. Decisions of the Administrator may be appealed to Ruth Carter, Managed Assigned Counsel Coordinator for Wayne County's 36th District Court. The appeal should include the original attorney request form for an investigator or expert and a brief explanation regarding the appeal and is to be submitted to Ms. Carter. She may be reached at 313-610-2333 for submission directions.
12. The Administrator will promptly submit the payment approval for payment from MIDC funds.
13. Attorneys must complete an Impact and Evaluation of Expert Services form in every case involving an expert.
14. Case-related expenses are addressed in the Schedule of Rates for Defense Use of Investigator and Expert Services.

FUNDING

Funding for investigators and expert witnesses is provided by the MIDC grant and is administered by the Regional Managed Assigned Counsel Office. All reasonable requests for either an investigator or expert witness shall be approved and funded. See the Schedule of Rates for Defense Use of Investigator and Expert Services for individual rates of pay.

APPEALS

1. Defense counsel may appeal decisions of the Administrator by written request, within seven (7) business days of any such denial, to the Ruth Carter, Managed Assigned Counsel Coordinator for Wayne County 36th District Court, Assigned Counsel Administrator of the Indigent Defense Services Department. The appeal should include the original attorney request form for an investigator or expert and a brief explanation regarding the appeal and is to be submitted to Ms. Carter. She may be reached at 313-610-2333 for submission directions.

SOURCES

MIDC Standard for Indigent Criminal Defense Services, Standard 3.

<https://michiganidc.gov/standards/#tab-id-3>

Michigan Compiled Laws, section 775.13a, 775.15, 780.985(3).
and 338.821

MIDC Investigators and Experts Grant Manual.

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extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fmichiganidc.gov%2Fwp-content%2Fuploads%2F2021%2F08%2FPages-from-Grant-Manual-Final-MIDC-Approved-February-2021.pdf&clen=114631&chunk=true

Michigan Indigent Defense Commission white paper. Investigation and Experts: A Guide to

Implementation of the Minimum Standards for Delivery Systems, chrome-

extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fmichiganidc.gov%2Fwp-content%2Fuploads%2F2017%2F03%2FWhite-Paper-3-Experts-and-Investigators.pdf&clen=318966&chunk=true

Wayne County Indigent Defense Services. <https://www.waynecounty.com/departments/ids/home.aspx>

Strickland v Washington, 466 US 668, 691; 104 S Ct 2052, 2066; 80 L Ed 2d 674 (1984)

Harrington v Richter, 562 US 86, 106; 131 S Ct 770, 788; 178 L Ed 2d 624 (2011)