



THIRD JUDICIAL CIRCUIT
OF MICHIGAN


TIMOTHY M. KENNY
PRESIDING JUDGE
CRIMINAL DIVISION

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MEMORANDUM

To: Criminal Division Judges

From: Judge Timothy M. Kenny 
Presiding Judge – Criminal Division

Date: April 19, 2017

Re: Assign Counsel requests for expert witnesses

The requests for expert witnesses for the defense have been increasing substantially over the past several years. The requests are usually appropriate and essential to a vigorous defense.

Please keep in mind, however, that the Chief Judge is the one who makes the final decision about expert witness fees. Also, note that expert witness fees come out of the court's budget. Although attorney fees are paid by the county; expert witness fees are not.

If you receive a motion for a defense expert, please apply the following procedure:

- 1) Identify the expert witness and determine whether he/she will be permitted to testify as an expert. This should be done by either a stipulation regarding the qualifications of the proposed expert, or a judicial finding of expertise (personal and subject matters) at a Daubert hearing. The court will not pay to hire an expert whose testimony would be inadmissible.
- 2) Require defense counsel to obtain an estimate of the expert's fee. This should include an estimate of the amount of time needed for the task, hourly rate, travel costs, etc.
- 3) Have defense counsel bring the fee estimate to the Presiding Judge for preliminary approval or fee negotiation.

It is not appropriate for the assigned trial judge to sign an order granting specific expert witness fees.