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# **Guide to Obtaining Attorney Fees**

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**How to obtain attorney fees in court-appointed cases**

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# Introduction:

- This guide delineates the process for a private court-appointed attorney representing an indigent client to obtain attorney fees.
- This guide is intended to be an aid for an attorney. For additional information, please review the JAC registry contract, JAC Policies & Procedures and the Frequently Asked Questions.

# JAC's Role:

- JAC is responsible for the processing of attorney fees for private court-appointed attorneys in accordance with ss. 27.5304 and 29.007, F.S.
- Generally, JAC pays attorney fees in cases where the person is indigent, is entitled to court-appointed counsel, and the offices of the public defender and criminal conflict and civil regional counsel have a conflict precluding representation, or are not authorized to provide representation for that particular type of case.



# JAC's Role continued:

- JAC primarily processes for payment attorney fees for appointed counsel in criminal cases, dependency cases, guardianship cases, involuntary commitment proceedings, adult protective services, and other civil cases where there is a statutory right to appointed counsel.
- JAC is not responsible for payment of attorney fees unless there is a statutory or constitutional right to appointed counsel under Florida law.
- JAC also is not responsible for payment of attorney fees for cases involving privately retained and paid counsel.



# Registry and JAC Contract:

- As directed by s. 27.40(3), F.S., the court appoints an attorney from the circuit's court-appointed registry as compiled and approved by the chief judge of the circuit and as maintained by the Clerk of Court.
- The chief judge for each circuit is responsible for selecting those attorneys for inclusion in the circuit's registries for court-appointed counsel. Each fiscal year, if an attorney is authorized for continued inclusion on a registry or is selected for a registry, the attorney will need to execute the JAC registry contract.
- The registry contract runs with the State's fiscal year and terminates effective on June 30<sup>th</sup>. The registry contract covers all appointment made prior to its termination date.



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# Registry and JAC Contract Continued:

- JAC does not select or recommend attorneys for inclusion in a registry. Attorneys seeking to be added to a court registry will need to contact the appropriate court official for information on how to become a registry attorney in a circuit. JAC maintain a [Circuit Registry Contact List](#).
- Information regarding how to become a registry attorney may also be posted on a circuit's website.
- To participate in a court-appointed registry, the attorney must execute the JAC registry contract. A review copy of the registry contract is posted on JAC's website:

[http://justiceadmin.com/court\\_app\\_counsel/agreements\\_contracts.aspx](http://justiceadmin.com/court_app_counsel/agreements_contracts.aspx)



# Registry and JAC Contract Continued:

- Failure to execute a contract in a timely fashion may result in an attorney being removed from the registry. JAC provides regular reports to each circuit regarding the attorneys who have executed the contract for each fiscal year.
- When there are no registry attorneys available, a court may appoint an attorney off the registry. As directed by s. 27.40(7)(a), F.S., JAC is only authorized to compensate a non-registry attorney if the order of appointment reflects that there were no registry attorneys available to accept the appointment.
- Starting with the 2016-2017 Fiscal Year Registry Contract, JAC has eliminated circuit-specific contracts. Once an attorney signs the statewide registry contract, the attorney would be eligible for compensation for all court appointments, including off-registry appointments, made during that fiscal year from any circuit.



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## Registry and JAC Contract Continued:

- Attorneys will be able to execute a new contract each year immediately after it is posted, rather than wait for each circuit to approve its registry and provide it to JAC. An attorney will no longer need to execute multiple contracts. Attorneys will also be able to advise the local circuit that he or she has executed a current JAC contract.
- Executable registry contracts will only be available through *My JAC*. Registry attorneys who have not already setup an account will need do so before they can execute the registry contract for next fiscal year. Information on how to setup an account is available at:

– <https://www.justiceadmin.org/login/register.aspx>

# Case Opening Documents:

- When an attorney is appointed to a case, the attorney must notify JAC of the appointment within 30 days of the appointment. The attorney must open the case in JAC's system.
- The attorney must either (1) use the Case Opening system on *My JAC* (JAC's secure website) or (2) e-mail to [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org) to provide JAC with the following required case opening documents:
  - order of appointment; and
  - charging document in criminal cases or initial pleading or petition in civil cases if available.
- The attorney does not need to supply the petition in dependency or termination of parental rights cases. In other civil proceedings, a copy of the petition should be provided.



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# Case Opening Documents Continued:

- If the charging document or petition contains confidential information, this information should be redacted.
- The attorney must submit the required case opening documents within 30 days of the date of appointment.
- Pursuant to the registry contract, if the attorney fails to open the case and provide JAC with the order of appointment within 90 days of the date of appointment or prior to submitting any motion or billing on the case, the allowable attorney fees may be reduced by \$25 as an administrative processing fee.

# Finding of Conflict:

- Except in limited circumstances, private counsel can only be appointed where the offices of the public defender and office of criminal conflict and civil regional counsel have a conflict or are otherwise not authorized to provide representation.
- Pursuant to s. 27.40, F.S., for criminal cases and those civil cases for which the public defender is authorized to provide representation, the public defender and regional counsel must have a conflict precluding representation for the court to appoint private counsel.



# Finding of Conflict Continued:

- For other civil cases, regional counsel must have a conflict precluding representation for the court to appoint private counsel. There are three exceptions to this requirement:
  - Guardianship proceedings under Ch. 744, F.S., where the court cannot determine indigency at the time of appointment.
  - Parental notice of abortion proceedings under s. 390.01114, F.S.
  - Children with special needs appointments under s. 39.01305 F.S.
- For these appointments, a finding of conflict is not required.



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# Finding of Conflict Continued:

- Payment of attorney fees is contingent upon the public defender and regional counsel having a conflict as noted previously. The attorney is responsible for verifying that the public defender and regional counsel, as applicable, have been properly relieved or discharged from the case.
- As a general rule, the order appointing private counsel should address the reason why regional counsel was not appointed to the case. If an attorney receives an order without any such findings, the attorney should inquire before commencing representation. Assuming regional counsel has a conflict, the attorney should obtain an amended order specifying the conflict.
- If regional counsel does not have a conflict, then the attorney should be discharged from the case.

# Compensation Structure:

- Under Florida law, compensation for court-appointed cases is primarily through a flat fee for case payment structure. The legislature has adopted a fee for service compensation structure.
- Pursuant to s. 27.5304, F.S., the legislature sets the applicable flat fees annually in the General Appropriations Act. The flat fees are posted on JAC's website:

[http://www.justiceadmin.com/court\\_app\\_counsel/Flat%20Fee%20Rates.pdf](http://www.justiceadmin.com/court_app_counsel/Flat%20Fee%20Rates.pdf)

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# Compensation Structure Continued:

- Payment of attorney fees is authorized once the case reaches final disposition. Except as authorized by law or procedure, interim billing prior to final disposition of the case is not authorized.
- The flat fee under the General Appropriations Act constitutes full compensation for all attorneys appointed to a case absent a finding the case involved unusual and extraordinary effort. If more than one attorney is seeking compensation on a case, then the court will need to apportion the flat fee between the attorneys unless the attorneys submitted billings seeking compensation for unusual and extraordinary effort.



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# Compensation Structure Continued:

- If an attorney does not intend to seek compensation on a case, the attorney may submit a [fee waiver form](#) in lieu of a billing.
- JAC only processes a flat fee for administrative payment in a case involving payment to one attorney. If more than one attorney is seeking compensation on a case, then the court will need to apportion the flat fee between the attorneys before JAC can process the billings for payment.
- For cases involving unusual and extraordinary effort, s. 27.5304(12), F.S., sets forth the procedure by which an attorney can seek compensation in excess of the flat fee.

# Procedural Requirements:

- In order to obtain compensation for court-appointed attorney fees, the attorney must follow statutory and contractual procedures. Failure to follow these procedures can result in delays in payment and unnecessary litigation.
- Prior to filing any motion for attorney fees, as required by s. 27.5304, F.S., and the registry contract, the attorney must first submit an intended billing and supporting documentation to JAC. Generally, the billing packet will consist of the applicable JAC Invoice/Voucher cover, the dispositional document showing the case has reached a billable stage, and other pertinent documentation.



# Procedural Requirements Continued:

- Upon receipt of an intended billing, JAC will initiate its review process. During this review, JAC may issue a Billing Audit Deficiency requesting additional information. The audit deficiency will indicate the reason JAC is unable to process the billing and will request that the attorney provide additional information or documentation.
- Because JAC has not completed its review, the attorney may not file a motion for attorney fees based upon an audit deficiency.
- Responses to audit deficiencies should be submitted either by appending the response to the billing through the Online Billing Submission system on *My JAC* or via e-mail to [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).



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# Procedural Requirements Continued:

- Once JAC has completed its review, JAC will either process the billing for payment or will issue a letter of objection or no objection to the billing.
- If the attorney has submitted a flat fee billing that comports with all applicable statutory and contractual requirements and the attorney is entitled to the full flat fee, then JAC will process the billing for payment without the need for further court order.
- In other circumstances, JAC will issue a letter of objection or no objection. Upon receipt of such a letter, the attorney may file a motion for attorney fees. JAC's letter must be attached to the motion.



# Procedural Requirements Continued:

- JAC's letter will indicate whether JAC is requesting a hearing on the motion for attorney fees.
- A copy of the motion and all attachments thereto must be served on JAC. This applies even if JAC does not request to participate in the hearing.
- The motion must comport with the intended billing submitted to JAC. With a limited exception, the attorney cannot seek more than the amount of the intended billing. If the attorney intends to seek an amount greater than the intended billing, then the attorney needs to submit an amended intended billing to JAC and receive a response thereto before filing a motion for fees.



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# Procedural Requirements Continued:

- If JAC's letter indicates that the attorney has made a mathematical error or is billing the wrong rate, then the motion may request the amount the attorney should have billed once the error is corrected even if this amount is higher than the amount billed.
  - For example, if the attorney submitted a billing seeking less than the hourly rate authorized by law, the attorney could request the hourly rate authorized by law in the motion without the need to submit an amended billing to JAC.
  - Similarly, if the attorney billed less than the applicable flat fee, the attorney could move for the correct flat fee.

# Procedural Requirements Continued:

- If JAC requests a hearing on the motion, then the matter must be set for a hearing. JAC is entitled to at least 20 days' notice of any hearing on a motion for attorney fees. If the attorney provides JAC with at least 20 days' notice, then the hearing time does not need to be cleared with JAC as long as JAC can appear telephonically.
- If the attorney intends to set a hearing with less than 20 days' notice, then the hearing time must be cleared with JAC prior to setting the hearing.

# Procedural Requirements Continued:

- Any court order on the motion for fees must be provided as soon as feasible, usually within three days following entry of the order. Upon receipt of an order awarding fees, JAC will process the billing for payment unless JAC intends to seek appellate review of the order. Electronic copies of orders are acceptable.
- JAC does not actually pay the bills. Upon receipt of an order awarding fees, JAC transmits the billing for payment to the Florida Department of Financial Services (DFS). DFS can take up to 10 days to review a billing submitted by JAC for payment.



# Timely Submission:

- The attorney must submit an intended billing for all attorney fees, due process costs, and other related expenses ***within 90 days after final disposition of the case.***
- Failure to submit a properly completed intended billing within 90 days may result in the imposition of a statutory and contractual penalty for untimely billing. The amount of the penalty increases the later the billing is received.
- The imposition of a penalty for untimely billing is a contractual matter between JAC and the attorney. If the attorney believes that there is justification to waive the penalty, the attorney needs to provide the information to JAC. Because imposition of the penalty is purely a contractual matter, the courts generally do not have any authority to waive the penalty.

# Timely Submission Continued:

- For purposes of the penalty, an intended billing may not be considered submitted until the attorney has provided all applicable forms and necessary documentation required under the registry contract.
- Final disposition is defined as follows:
  - At the trial court level, when the court has entered a final appealable judgment, unless rendition of judgment is stayed by the filing of a timely motion for rehearing. The filing of a notice of appeal does not stay the time for submission of an intended billing.
  - At the appellate court level, when the court has issued its mandate.

# Flat Fees (General):

- The applicable flat fees are set each year in the General Appropriations Act pursuant to s. 27.5304(1), F.S. The applicable flat fees by fiscal year are posted on JAC's website:  
[http://www.justiceadmin.com/court\\_app\\_counsel/Flat%20Fee%20Rates.pdf](http://www.justiceadmin.com/court_app_counsel/Flat%20Fee%20Rates.pdf)
- Upon receipt of a flat fee billing that comports with contractual and statutory requirements, JAC can process the billing for payment administratively without the need for any court order authorizing payment of fees.



# Flat Fees (General) Continued:

- The attorney cannot file a motion for fees until JAC has received and reviewed a billing from the attorney. Any motion filed prior to the submission is both unauthorized and a breach of the registry contract.
- If the attorney is discharged prior to the case reaching final disposition, there is a presumption that the attorney is not entitled to the full flat fee.
- This typically occurs when the defendant retains a lawyer or when the defendant elects to represent himself or herself. In these instances, JAC will issue a letter of objection. The court will then need to determine a reasonable fee up to the full flat fee allowable for the case.

# Flat Fees (General) Continued:

- In some instances, a court may appoint an attorney to a portion of the proceeding such as a resentencing upon remand from an appellate court. In those instances, JAC may issue an objection letter based on full performance. The court would then award a fee based upon the amount of work completed not to exceed the amount the attorney would have received if the attorney had been appointed to the full case.
- The categories in the General Appropriations Act are the only case types for which JAC has been appropriated funds for payment of attorney fees. If a court appoints private counsel to a matter for which JAC is not authorized to pay for appointed counsel, JAC cannot process for payment attorney fees and costs related to the appointment.

# Flat Fees (Criminal):

- The applicable flat fee is determined by the highest charge in the information or indictment during the course of the attorney's representation.
- With the exception of misdemeanors for which a notice to appear may constitute a charging document, JAC does not process for payment a flat fee based upon a police report or similar document. The applicable flat fee is determined solely by the actual information or indictment.
- If the highest charge in the indictment or information is increased during the attorney's representation, then the attorney would be entitled to compensation at the rate for the increased charge.

## Flat Fees (Criminal) Continued:

- If the highest charge in the indictment or information is decreased during the attorney's representation, then the attorney would still be compensated at the fee applicable for the highest charge in effect during the attorney's representation.
- For cases in which no information or indictment is filed in a criminal case, the flat fee for no information filed applies.

# Flat Fees (Criminal) Continued:

- The flat fee for capital (death) cases only applies to cases in which the potential sentence is death, the state has filed a notice listing the aggravating factors, and the state has not waived seeking the death penalty and the appointed attorney is on the capital (death) registry or is otherwise death-qualified.
- If the attorney is not on the registry for death penalty cases, the appointment shall be deemed a capital (non-death) appointment unless the order of appointment specifically indicates that the attorney is qualified to accept appointment to death penalty cases.
- For capital cases that do not qualify as death cases (other than capital sexual battery), the applicable flat fee is the fee for capital (non-death).



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# Flat Fees (Criminal) Continued:

- If the attorney provides services related to more than one case, the attorney must apportion the time spent among all the cases even if some of those cases are billed on a flat fee basis. The attorney cannot bill all the time to a case on an hourly basis and seek flat fee compensation on the other cases.
- If the attorney has been appointed to more than one case for the same defendant, the attorney should bill simultaneously for all cases appointed to that defendant. For purposes of the contractual penalty for untimely billing, the date of final disposition is the date the last case reaches final disposition.
- The attorney cannot seek to bill one or more of the cases on a flat fee basis while seeking unusual and extraordinary compensation as to other cases appointed to the same defendant. The attorney should either bill all cases on a flat fee basis or submit a single intended billing seeking unusual and extraordinary compensation covering all cases.



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# Flat Fees (Criminal) Continued:

- Generally, the flat fee for criminal cases is payable once the case reaches final disposition.
- There are three exceptions to the requirement to wait until final disposition:
  - The defendant failed to appear;
  - The defendant was adjudicated incompetent; or
  - The defendant entered a pre-trial diversion program.
- In these circumstances, the attorney may submit a billing for attorney fees 180 days after the defendant failed to appear, was adjudicated incompetent, or entered a pre-trial diversion program as long as the situation has remained unchanged. If the attorney submits a billing prior to the passage of 180 days, the billing will be placed on hold until the time period has passed.



# Flat Fees (Criminal) Continued:

- By accepting payment prior to final disposition, the attorney is responsible for completing the case for no additional flat fee compensation if the matter comes back before the court. If the defendant is later arrested after failing to appear, is adjudicated competent, or fails to complete pre-trial diversion, then the attorney is responsible for completing the case.
- The attorney may still seek compensation in excess of the flat fee if the case involves unusual and extraordinary effort pursuant to s. 27.5304(12), F.S. In such circumstances, the attorney would submit a billing from the commencement of representation with a reduction for the flat fee previously paid in the matter.



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# Flat Fees (Criminal) Continued:

- In appellate cases, the flat fee may be billed upon the filing of the initial brief. The attorney is still responsible for completing the case through issuance of the appellate court mandate.
- The flat fee for postconviction proceedings applies to any postconviction proceedings in which the court has appointed counsel including but not limited to motions for postconviction relief, motions to correct illegal sentence, motions for additional jail credit, petitions for habeas corpus, and petitions for belated appeal. It does not apply to capital clemency proceedings.
- The flat fee for postconviction proceedings applies to trial level appointments and appellate appointments.



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# Flat Fees (Criminal) Continued:

- The applicable fee for an appointment to a motion to withdraw plea depends on when the motion to withdraw plea was filed.
- If the motion was filed before sentencing or within 30 days of sentencing, then the appointment is considered to be an appointment to the underlying case and the attorney is compensated at the flat fee applicable for the case. If there was more than one private court-appointed attorney involved during the pendency of the case, then the flat fee would be apportioned between the attorneys.
- If the motion to withdraw plea was filed more than 30 days after sentencing, then the appointment is considered to be an appointment to a motion for postconviction relief and compensated as such.

# Flat Fees (Dependency and Termination of Parental Rights):

- In dependency and termination of parental rights proceedings, JAC is only authorized to pay for representation of indigent parents. JAC has no authority to pay for representation of other persons including but not limited to stepparents, grandparents, other relatives, and the children (except for appointments relating to children with special needs under s. 39.01305, F.S.).
- Payment of a flat fee is based upon representation of a parent. Under s. 27.5304(6)(a) and (b), F.S., fees in dependency or termination of parental rights proceedings are for representation of the parent irrespective of the number of case numbers involved or the number of children involved including children born during the pendency of the case.



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# Flat Fees (Dependency and TPR) Continued:

- For billing purposes, an attorney is only authorized to receive a single flat fee for the case type regardless of the number of case numbers assigned or the number of children involved. A case is generally considered either a dependency case or a termination of parental rights case.
- If the attorney is properly appointed to a termination of parental rights proceeding, then any ongoing dependency proceedings merge into the termination of parental rights case for billing purposes even if the termination of parental rights case is later dismissed. The case would remain a termination of parental rights case for billing purposes.



# Flat Fees (Dependency and TPR) Continued:

- JAC is only authorized to pay fees where an attorney is properly appointed to a dependency or termination of parental rights case. As a general rule, the parent must be present before the court and must establish indigency as prerequisites to the appointment of counsel. The appointment of counsel to a prior proceeding does not justify a later appointment unless the parent appears before the court and establishes current indigency.
- A prior appointment in dependency proceedings will not justify an appointment in termination of parental rights proceedings where the parent failed to appear at the advisory hearing (or any other hearing subsequent to the filing of the TPR petition) and was thereby deemed to have consented to termination of parental rights.



# Flat Fees (Dependency and TPR) Continued:

- The amount of the flat fee includes a base flat fee to take the case to disposition and provide representation for the first year as well as additional flat fees if the case lasts more than a year.
- The interplay between dependency and termination of parental rights cases is often complex. JAC has posted various scenarios to assist attorneys in determining when and how much to bill JAC on a flat fee basis:

[http://www.justiceadmin.com/court\\_app\\_counsel/dependencytpr/Dependency%20and%20TPR%20billings%20scenarios.pdf](http://www.justiceadmin.com/court_app_counsel/dependencytpr/Dependency%20and%20TPR%20billings%20scenarios.pdf)

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# Flat Fees (Dependency and TPR) Continued:

- When an attorney is appointed post-disposition to a dependency case, the amount of the flat fee will vary depending on the circumstances.
  - If the attorney was the first private attorney appointed to represent the parent, the attorney would bill the full flat fee for dependency at the first judicial review.
  - If the attorney was not the first private attorney appointed to represent the parent and the first attorney already received the first year flat fee for dependency, the attorney would bill the second-year flat fee at the first judicial review.



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# Flat Fees (Dependency and TPR) Continued:

- If the attorney was not the first private attorney appointed to represent the parent and the first attorney has not been paid, the court will need to apportion the first year flat fee between the first and second attorney.
- If the attorney is appointed to represent a parent in reactivation of protective supervision proceedings, the rate depends on two factors:
  - If the attorney was not previously appointed to the case, the attorney can bill the full first year flat fee for dependency at the first judicial review.



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# Flat Fees (Dependency and TPR) continued:

- If the attorney was previously appointed and the case was closed less than a year, the attorney can bill the second-year flat fee at the first judicial review.
- If the attorney was previously appointed and the case was closed more than a year, the attorney can bill the full first year flat fee for dependency at the first judicial review.
- If a case remains open for more than a year following the last date of appointment, the attorney may be eligible for additional flat fee payments depending on how long the case remains open. These flat fee payments can be billed at the first judicial review in the second year and each year thereafter or at case closure.



# Flat Fees (Dependency and TPR) Continued:

- In determining whether the attorney is eligible for flat fee payments for the second or later years, the date used is the last compensable date of appointment.
  - For example, if the attorney is appointed to dependency proceedings and then is later appointed to a compensable termination of parental rights proceedings, the date of appointment to the termination of parental rights proceedings would be used to determine if the attorney is eligible for further flat fee payment(s).
- If the attorney receives a subsequent compensable appointment, the later appointment date becomes the date of appointment to the case for future billings even if the proceedings are later dismissed.

# Flat Fees (Guardianship):

- There are two different flat fees authorized for guardianship proceedings.
  - A flat fee for emergency guardianship proceedings.
  - A flat fee for regular guardianship proceedings.
- If an attorney is appointed to an emergency guardianship and then provides representation in the regular guardianship proceeding, the attorney can bill both the flat fee for the emergency guardianship and the flat fee for the regular guardianship.
- If the attorney is appointed to proceedings to determine whether a person previously found incapacitated remains incapacitated, the flat fee for regular guardianship proceedings applies.

# Flat Fees (Guardianship) Continued:

- A finding of conflict is not necessary when the court cannot determine indigency at the time of appointment. The court is authorized to appoint private counsel if the court cannot ascertain indigency at the time of appointment.
- JAC is only responsible for payment of attorney fees where the alleged incapacitated person is indigent. If the person is not indigent, then any attorney fees will be paid from the person's assets. It is the attorney's responsibility to take those steps necessary to obtain payment from the ward's assets if the ward is not indigent.
- If the attorney fails to act diligently in enforcing the right to payment of fees from the assets of a non-indigent ward, JAC is not liable for payment of fees if the ward later becomes indigent.



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# Flat Fees (Guardianship) Continued:

- JAC is only responsible for payment related to representation of the alleged incapacitated person. JAC is not responsible for payment to any other attorney including an attorney representing the petitioner even if the petitioner is indigent.
- JAC also is not responsible for payment to attorneys appointed as guardians or guardians ad litem.
- The scope of representation in guardianship proceedings is limited. An attorney appointed to represent a person only provides representation during proceedings to determine whether the person is incapacitated or to determine whether the person remains incapacitated. Once those proceedings are complete, the attorney should be discharged. As a general rule, once the person is found incapacitated and a guardian appointed, the attorney's role is complete.



# Flat Fees (Other Civil):

- JAC is only responsible for payment of attorney fees in those cases for which there is a flat fee established in the General Appropriations Act. If the attorney is appointed to another type of case, then JAC is generally not authorized to make payment for that appointment.
- JAC is not authorized to pay attorney fees absent a conflict.
- The order of appointment must reflect that the Office of Criminal Conflict and Civil Regional Conflict had a conflict precluding representation in the matter except in guardianship and parental notice of abortion cases as previously addressed.



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## Flat Fees (Other Civil) Continued:

- If a case involves confidential information, then that information should be redacted from any documents submitted to JAC for payment.
- In particular, any information in pleadings in parental notice of abortion cases that would tend to reveal the identity of the petitioner or her family should be redacted to ensure that confidentiality is maintained.

# Hourly Billing:

- Hourly billing is only authorized in cases involving unusual and extraordinary effort. Moreover, any billing seeking more than the flat fee under the General Appropriations Act must be supported by an hourly statement justifying the requested compensation.
- When submitting an hourly billing, the attorney will need to complete the appropriate JAC Invoice/Voucher cover. The attorney will also need to provide JAC with the dispositional document, a detailed hourly statement, and the court's progress docket as well as the order of appointment and charging document if not previously supplied to JAC.



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# Hourly Billing Continued:

- When the attorney is seeking compensation in excess of the flat fee, the billing packet should also include an explanatory statement setting forth the basis for extraordinary compensation.
- The explanatory statement should identify the factual and legal issues that render the case extraordinary and unusual including the number of witnesses, the number of days of trial, the complexity of factual and legal issues presented to the court, and any other pertinent information.
- The billing packet should also include any other documentation that the attorney intends to submit to the court in support of a motion for fees.



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# Hourly Billing Continued:

- If the attorney intends to seek hourly compensation on a case, the attorney must maintain contemporaneous records for the time spent on the case. ***Failure to keep such records constitutes a waiver of the opportunity to seek extraordinary or hourly compensation on a case.*** See § 27.40(7)(b), F.S.
- JAC's determination as to whether an attorney has waived the opportunity to seek extraordinary or hourly compensation in a case is entitled to deference and may only be overturned if a court concludes that JAC's determination is not supported by any competent substantial evidence.

# Hourly Billing Continued:

- The hourly statement must be sufficiently detailed so that JAC can assess the reasonableness of the billing. Generic descriptions such as *trial preparation, research, or prepare for hearing* are usually insufficient. The attorney should include in the hourly statement the following information:
  - Name and number of persons deposed/interviewed;
  - Name or type of pleading or motion prepared;
  - Type and number of pages of document reviewed;
  - Length or duration of audio or recorded statements;
  - Type or purpose of hearing attended;
  - Legal issue(s) researched; and
  - Detailed description of other activities performed.



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# Hourly Billing Continued:

- ***Each entry in the billing must be in hours and tenths of an hour.*** The attorney cannot bill in quarter hour increments or in hours and minutes. JAC will round down for any submitted hourly billing that is not billed in tenths.
- The attorney should avoid abbreviations, shorthand, or other terms unique to the attorney in the hourly statement because JAC staff may not understand or recognize what this language means. This can lead to confusion or unnecessary objections.
- The information provided in the hourly statement needs to be sufficiently detailed so that a person unfamiliar with the case can assess the objective reasonableness of the billing.
- A general lack of detail in a billing could result in JAC determining that an attorney has failed to keep detailed contemporaneous records as required by s. 27.40(7)(b), F.S.



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# Hourly Billing Continued:

- A billing may not contain entries in which the attorney bills for services across multiple dates in a single entry (a.k.a. **block billing**).
- Each billing entry must indicate the precise date that the service was rendered and cannot contain any language suggesting ambiguity regarding the date the activity was performed.
- The use of “on or about” or comparable language is prohibited.
- A billing containing block billing entries or “on or about” type language may result in JAC finding that the attorney has failed to maintain detailed contemporaneous records as required by s. 27.40(7)(b), F.S.



# Hourly Billing Continued:

- The total time billed on a case cannot exceed the amount of actual time expended during that date for that case. For example, if the attorney reviewed three separate pleadings in a day for a total of five minutes, then the attorney should bill .10 hours for the totality of that activity of reviewing all three pleadings. The attorney should not individually bill .10 hours three separate times for review of each separate pleading.
- Similarly, the time billed across court-appointed cases cannot exceed the actual amount of time worked.
- If the attorney appears before the court on multiple cases, then the time spent in court must be apportioned between those cases even if the attorney later bills some of the cases on a flat fee basis.



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# Hourly Billing Continued:

- When submitting a detailed hourly statement, attorneys are required to provide a single entry for in-court time and a single entry for out-of-court time by date. When attorneys provide multiple services on the same date, they would provide the amount of time worked on each service in the description of the services.
- Attorneys are required to bill the actual amount of time spent on each date rounded to the nearest tenth of an hour. Attorneys are limited to billing the actual time worked in a day, rather than numerous entries for each task performed over the course of a day. Sufficient detail is still be required to support in-court and out-of-court entries.



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# Hourly Billing Continued:

- Administrative activities are not billable time even if performed by an attorney.
- For purposes of the registry contract and pursuant to JAC Policies and Procedures, the following constitute administrative activities:
  - Services performed by support staff, paralegals, law clerks, and secretaries;
  - Time related to or in furtherance of billing, or time related to defending a disputed bill;
  - Time spent reviewing invoices of due process vendors;
  - Time spent on activities not reasonably related to the merits of the underlying case including time spent



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# Hourly Billing Continued:

- preparing and reviewing routine pleadings and documents such as notices of hearings and depositions, notices of unavailability, subpoenas, and returns of service; calendaring hearings and setting depositions; and providing instructions to staff;
- Time spent on office or administrative functions including secretarial and administrative work performed by any person, including the attorney;
- Time spent defending against a bar complaint, 3.850 motion, or other grievance filed by the client;
- Time spent on any other activity not reasonably related to the defense of the case; and
- Time spent on correspondence with JAC and conversations with JAC personnel.



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# Hourly Billing Continued:

- For criminal cases in which the attorney is appointed to represent a defendant on multiple cases, and the attorney is seeking to bill hourly, the attorney must submit a single hourly billing covering the cases utilizing the hourly Invoice/Voucher cover with the multi-case addendum attached.
- ***The attorney is not authorized to bill one or more of the cases on a flat fee basis while seeking hourly compensation as to other cases appointed to the same defendant.*** The attorney must either bill all cases on a flat fee basis or submit a single intended billing for all cases seeking unusual and extraordinary compensation.



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# Hourly Billing Continued:

- In some instances, the attorney may have received a prior flat fee payment. This typically occurs in dependency and termination of parental rights cases.
- In those instances where a flat fee payment was previously received, the attorney will need to offset the amount of that payment from any subsequent hourly billing. The attorney cannot receive a flat fee and hourly compensation for the same case.



# Hourly Billing Continued:

- For cases appointed prior to July 1, 2007, the rates established by the local Indigent Services Committee remain in effect as long as those rates are or remain consistent with the law.
- For cases appointed on or after July 1, 2007, the rate for hourly billings cannot exceed \$75 per hour in a non-capital case and \$100 per hour in a capital case.
- For billing purposes, a capital case is any offense for which the potential sentence is death, the state has filed a notice listing the aggravating factors, and the state has not waived seeking the death penalty and the appointed attorney is on the capital (death) registry or is otherwise death-qualified.



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# Hourly Billing Continued:

- There are minimum thresholds in order to exceed the flat fees under the General Appropriations Act.
  - For criminal cases, to exceed the flat fee under the General Appropriations Act, the attorney must establish that the case involved unusual and extraordinary effort. Upon such a showing, the court may award up to double the flat fee depending on the nature of the case and the work involved. Pursuant to the registry contract, the amount awarded cannot exceed the amount the attorney would receive on a hourly basis at the rates set forth in s. 27.5304(12)(d), F.S.



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# Hourly Billing Continued:

- In criminal cases, in order to receive compensation on an hourly basis in excess of double the flat fee, the attorney must have deposed more than 20 state witnesses or worked more than 75 hours. For those cases in which the attorney was appointed to represent the same defendant on multiple cases, all of the cases shall be considered in assessing whether the matter meets this minimum standard.
- In civil cases pursuant to the registry contract, the number of hours worked on the case or cases appointed to the same client must allow for payment of at least double the total flat fee at the hourly rate of \$75 per hour. If the number of hours worked does not meet this minimum threshold, the compensation is limited to the flat fee.



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# Hourly Billing Continued:

- For dependency and termination of parental rights cases, the applicable flat fee is the total flat fee payment from the date of the compensable appointment. If the attorney has provided representation for more than a year, then the additional flat fee payments will be considered in determining whether the case meets the minimum threshold for billing in excess of the flat fee under the General Appropriations Act.
- The meeting of these minimum thresholds does not necessarily constitute competent substantial evidence of extraordinary and unusual effort. The attorney still has the burden to demonstrate to the court through competent substantial evidence that the case involved unusual and extraordinary effort.



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# Hourly Billing Continued:

- The attorney must demonstrate by clear and convincing evidence that the case involved extraordinary and unusual effort. If the court agrees, the court may award up to double the flat fee. To exceed double the flat fee and permit hourly billing, the court must find that awarding double the flat fee would be confiscatory of the attorney's time and efforts.

# Hourly Billing Continued:

- Pursuant to s. 27.5304(12), F.S., an evidentiary hearing is required where the attorney is seeking compensation in excess of the flat fee under the General Appropriations Act.
- ***The chief judge for the circuit or designee is responsible for holding this hearing.*** If the chief judge has designated a judge to hear the matter, this is typically done through administrative order or through a specific order for the case. The attorney is responsible for setting the matter before the proper tribunal. JAC maintains a list of [designated extraordinary fee judges](#).
- The attorney has the burden to establish through competent substantial evidence that the matter involved unusual and extraordinary effort including establishing that the case meets the minimum thresholds established pursuant to s. 27.5304(12), F.S., and the registry contract.

# Capital Collateral Registry Billing

- Effective July 1, 2013, JAC is responsible for processing payments for capital collateral postconviction cases to which private counsel is appointed pursuant to ss. 27.710 and 27.711, F.S.
- The court appoints private counsel from the Capital Collateral Registry maintained by JAC.
- Pursuant to s. 27.703, F.S., two of the Offices of Capital Collateral Regional Counsel must have a conflict prior to a court appointing private counsel. For appointments on or after July 1, 2013, the order of appointment must reflect these conflicts.



# Capital Collateral Registry Billing continued:

- The Department of Financial Services is no longer directly responsible for payments. For appointments after July 1, 2013, the attorney must execute a contract with JAC. This contract is available at:  
[http://www.justiceadmin.org/court\\_app\\_counsel/agreementscontracts.aspx](http://www.justiceadmin.org/court_app_counsel/agreementscontracts.aspx)
- Payment requests for services provided prior to July 1, 2013 will be processed and audited by JAC according to DFS practices and procedures.
- Payment requests for services provided on or after July 1, 2013 need to comply with the terms of the JAC Policies and Procedures for Capital Collateral Private Court-Appointed Counsel.



# Capital Collateral Registry Billing continued:

- For existing cases, an order of appointment and the Florida Supreme Court opinion affirming the sentence of death must be submitted along with the JAC contract.
- For new appointments, the attorney must submit the order of appointment and Florida Supreme Court opinion affirming the sentence of death along with Counsel's current e-mail address to JAC's Contract Manager at:

[Contracts@justiceadmin.org](mailto:Contracts@justiceadmin.org)

Upon receipt of these documents, JAC's Contracts Section will forward the attorney an executable copy of the JAC contract.

- Any attorney with a pending case must execute the case specific contract for each appointment to receive any payment through JAC.

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# Capital Collateral Registry Billing continued:

- Billable stages and caps are the following:
  - \$2,500 from appointment to filing notice of appearance.
  - \$20,000 through filing motion for postconviction relief.
  - \$20,000 through issuance of final order on motion for postconviction relief.
  - \$20,000 through filing briefs on appeal of order on motion for postconviction relief.
  - \$10,000 through issuance of a final order on motion for postconviction relief upon remand from appellate proceedings.
  - \$4,000 through denial of appeal.
  - \$2,500 for petition for writ of certiorari to the U.S. Supreme Court.
  - \$5,000 for proceedings following issuance of a death warrant.



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# Capital Collateral Registry Billing continued:

- The hourly statement must be sufficiently detailed so that JAC can assess the reasonableness of the billing. Generic descriptions such as *trial preparation, research, or prepare for hearing* are usually insufficient. The attorney should include in the hourly statement the following information:
  - Name and number of persons deposed/interviewed;
  - Name or type of pleading or motion prepared;
  - Type and number of pages of document received;
  - Length or duration of audio or recorded statements;
  - Type or purpose of hearing attended;
  - Legal issue(s) researched; and
  - Detailed description of other activities performed.
- For further information please see JAC Policies & Procedures for Capital Collateral Private Court-Appointed Counsel at [http://www.justiceadmin.org/court\\_app\\_counsel/policies/Policies%20and%20Procedures%20for%20Private%20Court-Appointed%20Counsel,%20Indigent%20for%20Costs%20Counsel,%20and%20Capital%20Collateral%20Private%20Court-Appointed%20Counsel.pdf](http://www.justiceadmin.org/court_app_counsel/policies/Policies%20and%20Procedures%20for%20Private%20Court-Appointed%20Counsel,%20Indigent%20for%20Costs%20Counsel,%20and%20Capital%20Collateral%20Private%20Court-Appointed%20Counsel.pdf)



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# Capital Collateral Registry Billing continued:

- Under s. 27.711, F.S., the attorney may designate a single attorney to assist the attorney. If the attorney designates an attorney, the attorney must identify and certify that the attorney meets the [qualifications of s. 27.710, F.S. by submitting a written designation form.](#)
- The designated attorney will not enter into a contract with JAC. The attorney's JAC contract includes the services of the designated attorney.
- The attorney will submit a single billing incorporating both of the attorneys' services. This billing must clearly indicate which attorney provided the services either through (1) separate hourly statements or (2) a single hourly statement with each entry indicating who provided that service through initials or other designation.



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# Capital Collateral Registry Billing continued:

- When submitting an hourly billing, the attorney will need to complete the appropriate JAC Invoice/ Voucher cover. The attorney will also need to provide JAC with the billing stage dispositional document, a detailed hourly statement, and the court's progress docket.
- The billing packet should also include any other documentation that the attorney intends to submit to the court in support of a motion for fees.

# Costs and Related Expenses:

- In some instances, the attorney may also have reimbursable costs in addition to attorney fees.
- Overhead costs are considered part of the fee and are not reimbursed separately. Overhead costs include but are not limited to postage, internal or in-house copying, telephone charges including long distance and collect calls, and computerized research services such as Westlaw and Lexis/Nexis.
- The attorney is also not reimbursed for costs such as computer and office equipment, office supplies, legal materials, books, personal items, haircuts, manicures, or other such personal services for the client. The attorney shall not bill for any purchase of computer equipment including portable flash and hard drives.

## Costs and Related Expenses Continued:

- Ordinary copying costs are not reimbursable. Copying charges from an outside vendor to obtain discovery-related documents or other records may be compensable upon appropriate court order.
- Since court-appointed counsel is exempt from clerk of court charges pursuant to s. 28.345, F.S., JAC does not reimburse for such charges. The attorney is responsible for providing the clerk with the documentation necessary to obtain case-related documents without the need for any payment.

## Costs and Related Expenses Continued:

- JAC may reimburse the attorney for travel expenses necessary for the defense of the case. All travel must comport with the requirements of s. 112.061, F.S.
- Reimbursement for travel expenses (including mileage) must be submitted on the uniform travel voucher as promulgated by the Department of Financial Services. The travel voucher and other travel-related information is available on JAC's website at:
  - [https://www.justiceadmin.org/court\\_app\\_counsel/formsandrates.aspx#travel](https://www.justiceadmin.org/court_app_counsel/formsandrates.aspx#travel)
- Use of the DFS travel voucher is mandatory for any reimbursement of travel expenses. JAC no longer accepts mileage logs in lieu of the DFS travel voucher.



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## Costs and Related Expenses Continued:

- As to mileage, JAC reimburses the attorney for mileage if a trip is more than 50 miles one way. A request for mileage must be supported by appropriate documentation. In-state, city-to-city mileage calculations can be found at  
– <https://fdotewp1.dot.state.fl.us/CityToCityMileage/viewer.aspx>
- If an in-state travel destination is not included or available on the DOT website, or if the travel is out-of-state, mileage may be calculated using an internet map website such as [www.mapquest.com](http://www.mapquest.com). Alternative sources may only be used when there is no entry on the DOT website.
- Reimbursement for mileage is limited to actual mileage traveled using a personal vehicle. JAC reimburses for the actual mileage incurred during a trip. When an attorney or due process vendor travels on multiple cases, the total amount of mileage billed across those cases cannot exceed the actual distance traveled.



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# Costs and Related Expenses Continued:

- If the attorney is approved for a registry outside of the circuit in which the attorney's office is located, JAC reserves the right to object to mileage to travel to the circuit of the case. Generally, the attorney will not be paid for mileage to travel to the circuit of a case because the attorney made a business decision to participate in that registry. Mileage may be appropriate where the attorney is traveling to a rural county where no or limited registry attorneys are available to accept court appointments.
- If the attorney is seeking other travel expenses including tolls, parking, lodging, airline tickets, or meals, the attorney must submit a properly completed travel voucher along with copies of all receipts or other documentation establishing the amount incurred as required by s. 112.061, F.S.
- A request for travel expenses seeking reimbursement for airline tickets, lodging, or other comparable expenses other than mileage needs to be authorized by the court prior to the travel.



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## Costs and Related Expenses Continued:

- Before the court authorizes travel expenses, consideration should be given to alternatives to travel. In particular, before seeking authorization for travel expenses to attend depositions or witness interviews, the attorney should evaluate whether the depositions or interviews can be conducted through the use of communications equipment.
- As to reimbursement for due process costs for which the attorney has paid and is seeking [reimbursement, please see the Guide to Obtaining Due Process Costs posted on JAC's website for additional information.](#)

# Submission of Billings:

- The JAC Invoice/Voucher cover is essential for the satisfactory billing for attorney fees, costs or related expenses. The attorney must appropriately complete, execute, and submit the applicable JAC Invoice/Voucher cover as well as all necessary supporting documentation.
- JAC only accepts billings submitted using JAC Invoice/Voucher cover. Any submission of an invoice without a JAC Invoice/Voucher cover is deemed a nullity and is not considered or reviewed for payment purposes.



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# Submission of Billings Continued:

- It is the responsibility of the attorney to use the correct and current Invoice/Voucher cover. These Invoice/Voucher covers are updated from time to time to take changes in law and policy into account. Current Invoice/Voucher covers are posted on JAC's website.
- The JAC Invoice/Voucher cover include essential information necessary for JAC to review a billing for compliance with statutory and contractual requirements.
- The failure to use the appropriate Invoice/Voucher cover can result in essential information being omitted from the billing. This can delay the processing of the billing.

# Submission of Billings Continued:

- It is important that an attorney submitting a billing on a flat fee basis use the applicable flat fee Invoice/Voucher cover and that an attorney submitting an hourly billing use the applicable hourly Invoice/Voucher cover. ***An hourly billing cannot be submitted using a flat fee Invoice/Voucher cover.***
- When submitting billings for representation of a defendant for more than one case, the attorney should either use separate flat fee Invoice/Voucher covers for all the cases or use a single hourly Invoice/Voucher cover with the multi-case addendum if billing on an hourly basis. All the cases should be billed at the same time.
- Detailed instructions on how to complete the Invoice/Voucher covers are available on JAC's website. Instructions are provided for each type of Invoice/Voucher cover.

# My JAC (JAC's Secure Website):

- JAC has created a secure website through which the attorney can submit billings and obtain information regarding both unpaid and paid bills submitted to JAC. Through *My JAC*, the attorney can determine whether JAC has received a billing and whether JAC has approved the billing for payment. The attorney can also access letters and notices related to the billing, such as audit deficiencies and letters of objection.
- Instruction on how to setup access to *My JAC* is available at:  
<https://www.justiceadmin.org/login/login/Quick%20Reference%20Guide-Attorney%20Login.pdf>
- The JAC Online Support Team can assist the attorney in setting up an account and in using *My JAC*.

# Online Billing Submission System:

- JAC accepts attorney fee billing electronically. When a case has reached a billable point, the attorney can submit the billing through *My JAC*.
- Prior to submitting the billing, the supporting documents must be scanned as electronic files. All files must be in PDF or TIFF format only.
- To submit a billing online, the case must have been previously opened. A case can be opened through the Case Opening system in *My JAC*.



# Online Billing Submission System Continued:

- To submit a billing, search for the opened case and follow the steps on *My JAC*.
- During the billing process, JAC Invoice/Voucher cover will be generated and then electronically signed.
- All electronic document files submitted must be separate and unique (i.e. please do not scan the charging document with the dispositional document).
- Once the billing has been successfully submitted, a confirmation message will appear and a confirmation e-mail will be sent which contains a unique tracking number that should be retained.
- Please DO NOT mail the billing packet to the JAC as duplicate submission may delay payment.

# Billing Audit Deficiencies:

- When JAC receives a billing for attorney fees which lacks necessary documentation or requisite information, JAC may send the attorney a Billing Audit Deficiency. It will indicate the reason JAC is unable to process the billing and will request that the attorney provide the lacking documentation or information.
- When JAC issues a Billing Audit Deficiency, the attorney needs to provide the additional documentation or otherwise resolve the Billing Audit Deficiency in an expeditious fashion. Failure to resolve the Audit Deficiency may result in JAC rejecting the bill.



# Billing Audit Deficiencies Continued:

- When responding to a Billing Audit Deficiency, the attorney must use the Audit Deficiency as the cover page for any submission. This will allow JAC staff to identify the appropriate case for which the submission was provided.
- JAC receives numerous documents and submissions on a daily basis so that the failure to use the Audit Deficiency as the cover sheet could result in further delay in payment.
- Responses to Audit Deficiencies should be submitted either by appending the response to the billing through the Online Billing Submission system on My JAC or via e-mail to [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).

# Letters of Objection:

- If JAC has an objection to an attorney's billing, JAC may issue a letter of objection. The letter will indicate JAC's objection(s) and whether JAC desires a hearing on the matter.
- A billing audit deficiency is not a letter of objection and may not be the basis for filing a motion for payment.
- Upon receipt of a letter of objection, the attorney is responsible for filing a motion for attorney fees with the court. A copy of JAC's letter of objection must be attached to the motion. JAC must be served with a copy of the motion.



# Letters of Objection Continued:

- JAC may object to the compensability of the appointment, the rate charged by the attorney, the reasonableness of the attorney's billing, the sufficiency of the documentation, or any other aspect of the billing that fails to comport with statutory and contractual requirements.
- If JAC requests a hearing, then the motion must be set for a hearing before the court decides the motion. As with other motions, JAC is entitled to reasonable notice of any hearing on a motion for fees and to appear telephonically if JAC requests to appear.

# Direct Deposit:

- Private court-appointed attorneys must participate in a direct deposit program which allows for transfer of funds electronically to an account at a federal-chartered or state-chartered financial institution (EFT). If an attorney seeks an exemption from this provision, the attorney must submit in writing a request for exemption specifically delineating why compliance with this provision cannot be accomplished.
- JAC does not review or process the application to set up electronic funds transfer. ***The application must be submitted directly to the Department of Financial Services (DFS).*** Information and the forms necessary are available on DFS's website:

<https://www.myfloridacfo.com/Division/AA/Vendors/>

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# Direct Deposit Continued:

Once completed, the form should be sent to:

Direct Deposit Section

Department of Financial Services

200 E. Gaines Street

Tallahassee, Florida 32300-0359

- Please do not send these forms to JAC. JAC cannot process or review these forms.
- After setting up an EFT with DFS, if there are any changes to the payee name submitted to DFS, please submit the updated information to JAC's contract section.
- The payee name in JAC's database must match exactly with the EFT information in order for payment to be received.

