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Victoria A. Montanaro
Executive Director

[Link to 2010-2011 IFC Contract](#)

To: Florida Attorneys
From: Stephen Presnell, General Counsel
Date: June 1, 2010
RE: Changes to Indigency for Costs for Criminal Cases

In the recent legislative session, the legislature substantially amended section 27.52, Florida Statutes, including significant amendments to the provision allowing for a person represented by privately retained counsel to be declared indigent for costs. See CS/HB 5401 (2010 legislative session). These amendments will go into effect on July 1, 2010 and will impact any person declared indigent for costs on or after July 1, 2010.

A brief summary of these changes is as follows:

- Section 27.52(5)(a) now specifically requires that a **written motion** be filed with the court. Attached to this motion should be a completed application for indigency and an affidavit attesting to the estimated amount of attorney's fees and who paid those fees.
- A copy of the motion must be served on JAC prior to any hearing on the motion. JAC has standing to participate in any hearing on the motion and is authorized to appear telephonically.
- If the defendant did not previously seek a determination of indigency from the clerk of court, the defendant becomes liable for the application fee upon the filing of the motion.
- If the estimated fees are greater than \$5,000.00 in a non-capital case or greater than \$25,000.00 in a capital case where the state is seeking death, there is a presumption of non-indigency. To overcome this presumption, the defense has the burden to show through clear and convincing evidence that the fees are reasonable based on the nature and complexity of the case. In making this determination, the trial court shall consider the amount of fees a private court-appointed attorney would receive for that type of case.
- Costs shall be reimbursed at the rates established by law in sections 27.425 and 27.5305, F.S. An attorney representing an indigent for costs client must comply with the procedures and requirements governing private court-appointed counsel as set forth in Chapter 27.
- A court may not appoint an attorney based upon a finding of indigency for costs where the person has privately retained and paid counsel.
- If the defendant is convicted, the defendant is liable for reimbursement of due process costs expended by the state. The attorney is responsible for providing an accounting to the court of all costs paid or to be paid within 90 days after disposition of the case notwithstanding any appeals. The court shall then enter an order determining the amount of costs paid which will thereafter be recorded as a lien against the defendant.

- If the attorney fails to provide a complete accounting such that costs are omitted from the lien, then JAC is not authorized to pay or reimburse any such costs that remain unpaid and the attorney is personally liable to repay the state for any such costs already paid. The clerk of court is authorized to place the attorney on a payment program to obtain repayment of those costs.

This memorandum is provided for informational purposes only in order to alert attorneys to significant statutory changes that were enacted this legislative session. An attorney seeking to have a criminal defendant declared indigent for costs should refer to the statutory language, the revised contracts, and JAC policies and procedures for the precise language involved as well as any other applicable requirements.

In order to facilitate the provision of an accounting under section 27.52(5)(i), JAC upon application will provide a certificate indicating the amount of invoices paid through JAC and the amount of invoices received by JAC that have not been processed for payment. The certificate will only address those billings that JAC has received as of the date of application. It will be the attorney's responsibility to ensure that all billings have been submitted prior to JAC's issuance of a certificate. The forms to apply for a certificate will be posted on JAC's website after July 1, 2010.

JAC will also be posting a new contract for indigent for costs cases on its website. Under section 27.52(5) and 29.007, an attorney representing an indigent for costs client must execute the JAC Agreement. JAC cannot pay any costs either directly to the attorney or reimburse any due process providers until the attorney executes the contract.

The revised contract has been updated and takes into account the statutory changes set forth above as well as other statutory and policy changes. This version of the contract must be executed for any person found indigent for costs on or after July 1, 2010.

If you have any questions or concerns, feel free to contact the JAC Help Desk at (866) 355-7902.

[Click here for the 2010-2011 IFC Agreement](#)