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Link to 2010-2011 Due Process Contracts

To: Florida Attorneys, Due Process Providers
From: Stephen Presnell, General Counsel
Date: June 1, 2010
RE: 2010/2011 Due Process Agreements

In the recent legislative session, the legislature passed several provisions relating to due process costs in private court-appointed and indigent for cost cases. See HB 5001 & CS/HB 5401 (2010 legislative session). These enactments will go into effect on July 1, 2010 and will impact any due process services rendered on or after July 1, 2010. A major component of these changes is the adoption of uniform statewide rates. In fiscal year 2010/2011, the legislature has adopted statewide rates for court reporting and private investigator services. The legislature may adopt additional statewide rates in future legislative sessions.

For services other than court reporting services and private investigator services, the rates that were in effect on June 30, 2006, will continue to apply as directed by section 27.425, F.S. In those instances where there are no set rates, JAC may adopt rates based upon the rates recommended by the Indigent Services Advisory Board or based upon other pertinent information. The rates applicable to each circuit will be posted on JAC's website.

In order to implement statewide rates, JAC has adopted three different due process agreements. These agreements will be utilized for due process services rendered on or after July 1, 2010.

- The Type 1 Due Process Agreement will be used for those vendors providing ordinary due process services in private court-appointed cases such as court reporters, interpreters, videographers, private investigators, and private process servers. This Agreement provides that all services will be provided at the rates established by the legislature or by JAC where the legislature has not established a rate. If a provider bills in excess of the established rates, JAC will be authorized to correct the billing to the correct rates and then process the billing for payment.
- The Type 2 Due Process Agreement is generally used for vendors providing extraordinary services such as psychologists, psychiatrists, medical doctors, mitigation specialists, and experts. Although these services should be at the established rates, the Agreement provides a mechanism to exceed those rates where the expertise of the provider or other factors warrants compensation at a rate higher than the established rates. Except in exceptional circumstances, the Type 2 Due Process Agreement will not be executed with providers of ordinary due process services such as court reporters and private investigators.

- The Non-Standard Due Process Agreement is case specific. It will only authorize due process services in relation to a particular case. It otherwise mirrors the Type 2 Due Process Agreement. This Agreement is generally used with out-of-state vendors and in other instances where JAC is unwilling to enter a Type 1 or Type 2 Agreement with a vendor.

The newly enacted section 27.5305 has several other provisions related to court reporting services. Because of the recent statutory changes, as well as policy concerns, the JAC Agreements have also been amended in relation to due process services. A brief overview of the amendments is as follows:

- Transcription of a deposition transcript requires a specific court order finding that preparation of the transcript is necessary. JAC is only authorized to pay for an original and one copy of any deposition transcript. The order authorizing transcription should indicate the date of the deposition and the name of the deponent.
- The state only pays the costs of preparing an original transcript once. Regardless of which state entity obtained the original transcript; the amount paid for any subsequent copies or originals shall be paid at the copy rate.
- A motion seeking authorization to retain a private investigator, mitigation specialist, or expert must set forth the particularized need for the services.
- An investigator providing services in Florida must be properly licensed. Any payment is contingent on any and all persons providing private investigator services being properly licensed under Florida law.
- An investigator is only authorized to perform investigative services such as locating and interviewing witnesses; locating and securing documents and other evidence relevant to the case; performing background checks; and researching any other factual issues relevant to the case including credibility and character of witnesses.
- An investigator is not a substitute for a paralegal or secretary and cannot bill for such services including retrieving discovery from the state attorney; copying documents from a court file; delivering materials to the defendant; or any other tasks that are paralegal or secretarial in nature.
- Pursuant to section 28.345, F.S., a private court-appointed attorney is exempt from charges by the clerk of court for case-related services. Similarly, pursuant to section 57.081, F.S., an indigent defendant is entitled to receive the services of the clerk of court, the court, and the sheriff without any prepayment. The attorney is responsible for providing sufficient documentation or filing appropriate motions with the trial court to obtain such services pursuant to the exemption or without prepayment. JAC will not reimburse the attorney or a due process provider acting on behalf of the attorney for clerk of court charges that should have been provided pursuant to the exemption or waiver of prepayment.
- Service of process should be through the sheriff unless the sheriff is unable or unavailable to provide service. The sheriff must be used to serve in-county law enforcement absent exceptional circumstances authorized pursuant to court order. If there is adequate time for the sheriff to perfect services on non-law enforcement, the sheriff should be used absent exceptional circumstances.
- In those circuits where private service of process is authorized, a private investigator may serve non-law enforcement when appropriate and reasonable but can then only bill the

flat rate applicable for service of process. The private investigator may not bill hourly for the time spent serving the subpoena.

- An out-of-state mitigation specialist or expert may not be retained absent findings in a court order that there are no such providers with appropriate skills or expertise available, first, in the county in which the case was filed and, second, in any other county in the State of Florida.
- By January 1, 2011, attorneys and due process providers 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. If an attorney or due process provider seeks an exemption from this provision, the attorney or due process provider must submit in writing a request for exemption specifically delineating why he or she cannot comply with this provision.
- An attorney and the attorney's immediate family must not have a material interest in any due process provider used as a provider of services in the attorney's court-appointed or indigent for costs cases. An attorney cannot solicit or receive anything of value to the attorney including a gift, loan, reward, promise of future employment, favor, or service, from a due process provider. A due process provider is prohibited from offering or providing anything of value to the attorney except for the services rendered on behalf of the indigent client. Any compensation for services is waived if services are provided in violation of these provisions.
- For cases that reach disposition on or after July 1, 2010, two additional contractual penalties for untimely billing apply if the billing is submitted more than one year after final disposition and then if the billing is submitted more than two years after final disposition. The Agreement also addresses when the right to compensation accrues for purposes of the applicable statute of limitations.

This memorandum is provided for informational purposes only to alert attorneys and firms providing due process services to significant statutory changes that were enacted during this legislative session as well as contract changes. Attorneys and firms providing due process services 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.

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 Due Process Contracts](#)