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To: Attorneys
From: Stephen Presnell, General Counsel
Date: June 9, 2011
RE: Changes to 2011/2012 Indigent for Costs Agreements

Previously, an attorney executed a separate contract for each privately retained client who was declared indigent for costs. For those attorneys who have a substantial number of clients declared indigent for costs, the volume of individual contracts can be significant. To reduce the burden on attorneys and JAC staff regarding multiple contracts for indigent for costs cases, JAC is replacing the current single client indigent for costs contract with an annual indigent for costs contract covering all cases for which the attorney has a client declared indigent for costs pursuant to s. 27.52(5), F.S., or other applicable provision of Florida law.

JAC has implemented annual contracts in a fashion similar to the registry agreements currently in place for private court appointed counsel. Once an attorney executes the new annual indigent for costs agreement, the attorney will not need to execute any further agreements during the term of the contract. The single agreement will cover any of the attorney's clients declared indigent for costs under s. 27.52(5), F.S., or other applicable provisions of Florida law authorizing due process costs for indigents through JAC. The agreement will remain in place for existing and new cases found indigent for costs through the term of the agreement (even after the term of the agreement expires) unless the attorney executes a superseding agreement. (Similar to the registry contracts, JAC anticipates issuing a new annual contract each fiscal year which will supersede prior agreements.)

Once an attorney executes the new annual indigent for costs agreement, it will supersede any prior indigent for costs agreements executed by the attorney. This will allow the attorney to function under a single agreement covering all of his or her indigent for costs clients including those clients found indigent for costs prior to the execution of the new agreement.

The additional changes to the contract are as follows:

- **Requirement to serve JAC.** Consistent with s. 27.52(5), F.S., attorneys are required to serve JAC with the written motion to declare a client indigent for costs and the attachments thereto prior to the court considering whether to declare a client indigent for costs. JAC is entitled to notice and an opportunity to be heard before a court declares a person indigent for costs.
- **A finding of indigency for costs is prospective only.** Except in limited circumstances, a finding that a client is indigent for cost is prospective. It only authorizes the defense to

incur costs to be paid by JAC from the date the court declared the client indigent for costs. JAC is not liable for any costs incurred prior to the finding of indigency for costs.

- **A finding of indigency for costs is attorney specific.** Under s. 27.52(5), F.S., one of the factors a court must consider is the amount of fees an attorney has received. If the client hires a new attorney for additional compensation, this is a factor the court should consider before determining whether the defendant remains indigent for costs. In such situations, a new motion for indigency for costs will need to be filed by the successor counsel.
- **Mileage reimbursement.** Reimbursement for travel expenses remains limited to due process providers and attorneys providing services on a *pro bono* basis. Travel expenses of privately retained and paid counsel do not constitute due process costs. When authorized, mileage reimbursement will only be authorized for trips in excess of 50 miles one way. Effective July 1, 2011, JAC will no longer be accepting mileage logs. Instead, any request for mileage must be submitted using the travel voucher form approved by the Florida Department of Financial Services pursuant to s. 112.061, F.S. Information on how to complete the travel voucher will be posted on the JAC's website. Additionally, clarification language is added clearly stating that reimbursement for mileage is limited to actual mileage regardless of the number of cases involved.

This memorandum is provided for informational purposes only to alert attorneys to contract changes. Attorneys should refer to the revised contracts and JAC policies and procedures for the precise language involved as well as any other applicable requirements.

As a reminder, a registry contract for court appointed cases does not cover any privately retained or *pro bono* indigent for costs cases. A registry attorney with such cases will need to execute the indigent for costs contract in addition to any registry agreements.

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