



# Justice Administrative Commission Reference Guide

For Judges, Law Clerks, and Judicial Assistants

Alton L. “Rip” Colvin, Jr.  
Executive Director

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## ***Overview of the Justice Administrative Commission***

Created in 1965, the Justice Administrative Commission (JAC) provides administrative services to and on behalf of 49 judicial-related offices (JROs) including the 20 Offices of State Attorney, 20 Offices of Public Defender, 5 Offices of Criminal Conflict and Civil Regional Counsel, 3 Offices of Capital Collateral Regional Counsel and the Statewide Guardian ad Litem Office. See s. 43.16, F.S. Services provided to the JROs are primarily in the areas of accounting, budget, financial, and human resources. Overall, JAC annually performs over 421,000 financial transactions for approximately 20,000 employees and vendors throughout the state.

The Commission is comprised of two State Attorneys, appointed by the President of the Florida Prosecuting Attorneys Association, and two Public Defenders, appointed by the President of the Florida Public Defender Association. The Commission appoints an Executive Director, who is charged with oversight of approximately 85 staff to efficiently and effectively carry out the JAC's duties.

In 2004, JAC's duties were expanded to provide compliance and financial review of invoices for services provided by private court-appointed attorneys and associated due process vendors representing indigent citizens. In 2011, JAC became responsible for maintaining the registry for private court-appointed counsel for capital collateral appointments for state courts. Subsequently, in 2013, JAC was directed to provide compliance and financial review of invoices submitted by private court-appointed counsel in capital collateral cases from the Florida Department of Financial Services (DFS).

The services JAC provides to the 49 JROs are separate and distinct from JAC's role when reviewing and processing invoices for state payment of attorneys and due process services vendors in private court-appointed and indigent for costs cases. Each JROs manages its own office, budget and personnel. Although JAC assists the JROs, JAC does not supervise, direct, or control those offices.

## ***Case Types***

JAC is responsible for reviewing and processing invoices for payment of attorney fees, costs, and related expenses in private court-appointed and indigent for costs cases in accordance with ss. 27.5304, 29.007, and 27.52, F.S. Generally, JAC processes invoices for fees and costs in cases where the person is indigent, is entitled to state-funded court-appointed counsel, and the offices of the Public Defender and Criminal Conflict and Civil Regional Counsel have a conflict precluding representation; or the defendant has been found indigent for costs pursuant to s. 27.52(5), F.S. JAC has no authority to process invoices for any fees or costs unless there is a statutory or constitutional right to state-funded appointed counsel under Florida law.

## ***Appointment of Counsel***

### **Judicial Circuits Court Appointed Registries**

As directed by s. 27.40, F.S., the trial court appoints an attorney from the judicial 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 attorneys for inclusion in the circuit's court-appointed counsel registry. 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.

### **No Registry Attorneys Available**

When no registry attorneys are available for appointments, 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 no registry attorneys were available to accept the appointment. Generally, an order appointing an off-registry attorney should reflect specific findings demonstrating good cause for the off-registry appointment.

### **JAC Registry Contract for Payment of Court-Appointed Cases**

In either case, the attorney will need to execute a contract with JAC for payment. Any attorney may execute a JAC Registry Contract. This contract will then apply to any registry or off- registry appointments received during the fiscal year (July 1 – June 30). In most instances, an attorney will only need to execute a single, statewide Registry Contract during a fiscal year. Once an attorney signs the Registry Contract, the attorney may be eligible for compensation for all court appointments, including off-registry appointments, from any circuit provided they are on the circuit's court-appointed registry or provide an appropriate off-registry order of appointment.

### **Order of Appointment – Public Defender and/or Regional Counsel Conflict Required**

Except in limited circumstances, in criminal cases (including delinquency) private counsel can only be appointed where both the offices of the Public Defender and Regional Counsel have a conflict or are otherwise not authorized to provide representation. In the few instances where the Public Defender is authorized to provide representation in civil cases (such as Baker Acts and Involuntary Commitment of Sexually Violent Predator cases), both offices must have a conflict.

For dependency, termination of parental rights, and other civil cases for which the Public Defender is not authorized to provide representation, the Regional Counsel must have a conflict precluding representation for the court to appoint private counsel. There are four proceedings/case types that are exempt from this requirement (i.e., court appointment does not require Regional Counsel conflict language):

1. Guardianship proceedings under Ch. 744, F.S., where the court cannot determine indigency at the time of appointment;
2. Guardian advocacy proceedings under s. 393.12, F.S.;
3. Parental notice of abortion proceedings under s. 390.01114, F.S.; and
4. Dependent children with certain special needs appointments as the attorney for the child under s. 39.01305, F.S.

### **Appointments to Dependent Children with Special Needs Cases**

An order appointing an attorney under s. 39.01305, F.S., to represent a dependent child with special needs must include one of the following findings:

- a. The child resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;
- b. The child is prescribed a psychotropic medication, but declines assent to the psychotropic medication;
- c. The child has a diagnosis of a developmental disability as defined in s. 393.063, F.S.;
- d. The child is being placed in a residential treatment center or being considered for placement in a residential treatment center; or,
- e. The child is a victim of human trafficking as defined in s. 787.06(2)d, F.S.

The order must further find that the court requested a recommendation from the Statewide Guardian Ad Litem Office for an attorney who is willing to represent the child without compensation and that such an attorney is unavailable. Although the Court retains discretion to appoint attorneys for children in other circumstances, JAC lacks statutory authority to provide compensation for those cases.

A sample Order Appointing Counsel for a Child with Special Needs may be found at: <https://www.justiceadmin.org/registry/Order-Appointment-CwSN.pdf>.

### **Appointment of Co-Counsel (Second Chair)**

In capital death cases and occasionally other cases, an attorney will seek appointment of co-counsel (second chair). Florida law allows the appointment of a second lawyer. In death-eligible cases where the State has not waived the death penalty, JAC generally does not object to the court's appointment of co-counsel where lead counsel is court-appointed and the proposed co-counsel is on the registry for capital death cases and has a current JAC Registry Contract. In cases where death has been waived or in other criminal cases not involving death, the attorney has the burden to show that the complexity of the case warrants a second attorney. Generally, the attorney would need to show that the case is sufficiently complex that a single lawyer would be unable to provide effective assistance of counsel. Generally, JAC objects to the appointment of co-counsel in non-death cases.

### **Request for Appointment of Co-Counsel when Lead Counsel is Privately Retained**

JAC lacks statutory authority to process payment for appointment of co-counsel where lead counsel is privately retained. Therefore, JAC typically objects to any appointment co-counsel where the defendant is represented by privately retained lead counsel. Section 27.52(5)(h), F.S., specifically provides that a court "may not appoint an attorney paid by the state based on a finding that the defendant is indigent for costs if the defendant has privately retained and paid counsel."

### **When Death is Waived Co-Counsel Must Seek to Withdraw**

If the State waives the death penalty, then appointed co-counsel is contractually required to seek withdrawal from the case. Absent exceptional circumstances warranting continued representation, the court should grant the motion to withdraw. An imminent trial is an

example of an exceptional circumstance. Otherwise, the attorneys would need to show that the case is sufficiently complex to warrant the continued involvement of the second attorney.

### ***Capital Collateral Private Attorney Registry Appointments***

Capital Collateral appointments in postconviction death cases function differently. For these cases, the court first appoints the Office of Capital Collateral Regional Counsel for the region designated in s. 27.701, F.S. If that Office has a conflict, the court shall appoint one of the other two Offices as directed by s. 27.703(1), F.S. If two of the Offices have a conflict, the court shall appoint private counsel from the Capital Collateral Registry maintained by JAC pursuant to ss. 27.710 and 27.711, F.S. at <https://www.justiceadmin.org/registry/attorneys.xlsx>. When applying for inclusion on this registry, attorneys must certify that they meet the requirements of ss. 27.704(2) and 27.710(1), F.S., and Rule 3.112(k), Fla. R. Crim. P. JAC does not independently verify this information.

Under s. 27.711(9), F.S., an attorney is not authorized to have more than 10 active capital collateral appointments. In selecting an attorney, the court may wish to address this issue before entering an order of appointment.

### **Capital Collateral Registry Attorneys Required to Execute a JAC Capital Collateral Registry Contract**

Pursuant to ss. 27.710 and 27.711, F.S., private counsel appointed by the court in a postconviction capital collateral case shall execute a contract with JAC within 30 days. If the attorney fails to enter into such a contract, JAC is responsible for notifying the court pursuant to s. 27.710(4), F.S. In 2021, JAC adopted an electronic Capital Collateral Registry Contract replacing the case-specific contracts previously used.

### **Capital Collateral Invoice Stages**

Section 27.711, F.S., governs billing for attorney fees and related expenses in capital collateral cases. The statute places attorney fee limits for different stages of the representation and places limits of \$15,000 for investigator fees and \$15,000 for miscellaneous expenses. These limits may only be exceeded if the court finds that the case involves extraordinary and unusual circumstances. Unlike appointments under s. 27.5304, F.S., there is no requirement that requests for extraordinary fees be heard by the chief judge or designee.

### ***Indigent for Costs (IFC)***

JAC is responsible for compliance review and processing of invoices for due process costs pursuant to s. 29.007, F.S., in cases where a defendant is found to be indigent for costs (IFC) by the trial court. Under s. 27.52(5), F.S., a person who is eligible to be represented by the public defender, but who is represented by privately retained or pro bono counsel or is proceeding pro se, may be found by the court to be IFC for purposes of due process services. For cases involving privately retained or pro bono counsel, the attorney must serve a copy of the written motion requesting that their client be determined IFC on JAC prior to the court declaring the client IFC. Per the JAC IFC Contract, the motion and the attachments are served through MyJAC (JAC's online portal). (Pro se defendants are addressed below.)

Attached to the motion must be:

1. A completed Clerk's Application for Criminal Indigent Status, and
2. An Affidavit attesting to the estimated amount of attorney's fees, the amount paid, and the source of those fees.

The attorney must also provide JAC with a copy of the charging document.

A private or pro bono attorney's client IFC determination under s. 27.52(5), F.S., must be done by court order and differs from a Clerk's determination of indigency for appointment of counsel under s. 27.52(1), F.S. As directed by s. 27.52(5)(d), F.S., the court must consider the following factors in making a IFC determination:

- Whether the defendant applied for a determination of indigent status and the outcome of such application.
- The extent to which the defendant's income equals or exceeds the income criteria prescribed in s. 27.52(2), F.S.
- The factors prescribed in s. 27.52(4), F.S., including: (1) whether the defendant has been released on bail in an amount of \$5,000 or more; (2) whether bond has been posted, the type of bond, and who paid the bond; (3) whether paying for private counsel or other due process services creates a substantial hardship for the defendant or the defendant's family; and (4) any other relevant financial circumstances of the defendant or the defendant's family.
- Whether the defendant is proceeding pro se.
- When the defendant retained private counsel.
- The amount of any attorney fees and the identity of the person paying the fees.

As directed by s. 27.52(5)(d), F.S., there is a statutory presumption of non-indigency when the estimated amount of attorney fees exceeds a certain threshold:

There is a presumption that the applicant is not indigent for costs if the amount of attorney's fees exceeds \$5,000 for a noncapital case or \$25,000 for a capital case in which the state is seeking the death penalty. To overcome this presumption, the applicant 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 determining the reasonableness of the fees, the court shall consider the amount that a private court-appointed attorney paid by the state would receive for providing representation for that type of case.

(Emphasis supplied). It is the defense's burden to present evidence to rebut this presumption.

A copy of the motion to determine whether a defendant is IFC must be served on JAC prior to any hearing. Because the statute requires a written motion, oral (*ore tenus*) motions for

IFC are not authorized. JAC has standing to participate in any hearing on the motion and is authorized to appear telephonically. The attorney should include a copy of JAC's response when submitting the matter to the Court for its consideration. If JAC's response has not been provided, the Court should inquire of the attorney before ruling on the matter.

In most instances, JAC does not request a hearing on these motions. However, JAC may file a formal response requesting a hearing in instances when the fees significantly exceed the statutory threshold; the defense has failed to provide the necessary documents with the motion; the income or assets of the defendant raise questions about their indigency; or when the request for court authorization of state payment of due process costs in the motion warrant a hearing.

An IFC finding pursuant to s. 27.52(5), F.S., is through a written court order. To facilitate the processing of invoices for such costs, JAC should be provided with a copy of this order as soon as feasible. IFC determinations are prospective only. The defense is not entitled to seek payment or reimbursement for costs incurred prior to the date the court found the client IFC. In extraordinary circumstances, the date of the IFC determination may relate back to the date the attorney filed the written motion requesting IFC determination. In such instances, the order must indicate the effective date of the IFC determination.

The court order declaring a defendant IFC may include specific authorization for due process costs in addition to the IFC determination. For example, the order determining a defendant IFC could include an authorization for \$1,000 for a private investigator. For the Court to authorize any specific costs, the requested costs must be included in the motion with specificity. With respect to submission of invoices for due process costs, IFC counsel follow the same procedures as private court-appointed counsel.

### ***Pro se defendants***

To have JAC process a due process cost invoices, the court must determine the defendant IFC under s. 27.52(5), F.S. This determination must occur before a defendant seeks the court's authorization for state-funded due process services. A clerk of court's determination of indigence for appointment of counsel under s. 27.52(1), F.S., is not sufficient. The defendant must obtain a separate order from the trial court declaring the defendant IFC under s. 27.52(5), F.S.

JAC provides the same types of costs to pro se defendants as those provided to defendants represented by private court-appointed counsel authorized by s. 29.007, F.S. JAC has no authority to process invoices for legal materials, office supplies, access to legal research materials, postage, or telephone charges. A defendant is not entitled to additional costs because the defendant is in jail. To the extent required by law, such supplies are provided by the institution in which the defendant is incarcerated.

As with attorneys, a pro se defendant must serve JAC with requests for costs. JAC will typically respond to the motion with a formal written response with a copy mailed to the defendant and served on standby counsel if appointed. This response will indicate whether JAC requests a hearing on the motion.

In some pro se cases, the court may appoint standby counsel or court-appointed counsel may become standby counsel when the defendant decides to represent themselves. In those instances, standby counsel can assist the defendant with requesting and obtaining state-funded due process costs. This includes filing motions and certifying invoices on MyJAC on behalf of the defendant to help ensure that due process vendors in these cases are timely compensated for their work.

In post-conviction cases, JAC is not authorized to process any invoices for costs until a motion for post-conviction relief has been filed with the trial court and the trial court has issued an order determining that there are issues requiring an evidentiary hearing. Until the court makes a preliminary determination that there are issues which are not refuted by the record, there is no right to due process costs. Please note that once that determination has been made, the right to due process costs is limited.

### ***Attorney Fees, Costs, and Related Expenses***

Payment of attorney fees, due process costs, and related expenses is governed primarily by ss. 27.5304 and 29.007, F.S. Pursuant to s. 27.5304, F.S., the attorney or due process vendor submits an invoice to JAC. JAC then reviews the invoice for compliance with statutory and contractual requirements. All invoices must be submitted on JAC's secure internet portal, MyJAC, using the appropriate JAC Invoice along with the necessary supporting documentation for the invoice type.

Payment of attorney fees for private court-appointed counsel is generally on a flat fee basis with the flat fees set annually by the Legislature in the General Appropriations Act. In accordance with s. 27.5304, F.S., JAC may administratively approve, without need of a court order, payment of a flat fee invoice for attorney fees and costs that meets statutory and contractual requirements. There are a few instances in which a court order is necessary for JAC to process an invoice for payment. Under s. 27.5304(11), F.S., there is a presumption that an attorney is not entitled to the full flat fee when the attorney is discharged or withdraws prior to the completion of the case. Additionally, when there are multiple private court-appointed attorneys assigned over the course of case (other than lead and co-counsel in capital death cases), the flat fee needs to be divided between the attorneys absent proceedings under s. 27.5304(12), F.S. Therefore, JAC will issue a Letter of Objection in those instances. This letter will indicate whether JAC requests a hearing on the matter.

Pursuant to s. 27.5304(12), F.S., provision is made for compensation exceeding the flat fee for cases that involve unusual and extraordinary effort. To obtain compensation in excess of the flat fee and bill hourly, the attorney must comply with all requirements of s. 27.5304(12), F.S. Prior to filing a motion for compensation in excess of the flat fee (extraordinary fees), the attorney must submit an intended invoice to JAC as well as all other necessary supporting documents, including a contemporaneous and detailed hourly accounting of time spent representing the client and supporting affidavits. Upon completion of its review of a compliant invoice, JAC will then issue a Letter of Objection. In criminal cases, an hourly invoice above the flat fee is statutorily authorized only if the number of



hours worked exceeds 75 or the number of the state's witnesses deposed exceeds 20 per s. 27.5304(12)(b)(1), F.S.

Occasionally, confusion arises between the statutory limitations listed in s. 27.5304, F.S., and the flat fees in the General Appropriations Act. The statutory limitations in s. 27.5304, F.S., are not flat fees. Pursuant to s. 27.5304(1), F.S., the flat fees for each fiscal year are established in the General Appropriations Act. Because the flat fees do not exceed the statutory limitations, the statutory limitations do not impact attorney compensation.

Extraordinary fee invoices must also include an Explanatory Statement addressing the extraordinary and unusual efforts involved in representing the case. A model Explanatory Statement form is posted at:

[https://www.justiceadmin.org/court\\_app\\_counsel/Forms/XI\(1\)\\_Explanatory\\_Statement\\_Form\\_052821.pdf](https://www.justiceadmin.org/court_app_counsel/Forms/XI(1)_Explanatory_Statement_Form_052821.pdf)

After receipt of JAC's Letter of Objection, the attorney will then file a motion for attorney fees, costs, or related expenses. JAC's Letter of Objection letter must be attached to this motion along with any supporting documentation the attorney intends to present to the court including the hourly invoice and the Explanatory Statement addressing the extraordinary and unusual efforts involved in the case. Pursuant to s. 27.5304(12), F.S., the attorney must provide JAC with at least 20 days' notice of any hearing on a motion for attorney fees. If an attorney intends to provide less notice, the attorney must clear the date with JAC Legal.

Under s. 27.5304(12), F.S., the chief judge or designee must hold an evidentiary hearing and make specific factual findings based upon the evidence presented in order to find the case extraordinary and unusual. The attorney seeking additional compensation must prove by competent and substantial evidence that the case required extraordinary and unusual efforts. These provisions are generally construed to conform with the requirements of the Makemson v. Martin County, 491 So.2d 1109 (Fla. 1986), line of cases which allow for compensation in excess of statutory limitations based on a showing of extraordinary and unusual effort.

It is the role of the private court-appointed attorney to present evidence at the hearing to justify compensation exceeding the flat fee. Although JAC objects to the invoice, JAC generally cannot determine nor advise as to: (1) the reasonableness of the number of hours expended; or (2) the extraordinary and unusual nature of the case. Instead, JAC conducts a review of the invoice and raises objections based upon objective criteria set forth in the JAC contract and the policies and procedures promulgated thereto. It is the attorney's burden to demonstrate to the court the factual and legal complexities of the case that warrant a finding that the case involved extraordinary and unusual effort. Pursuant to s. 27.5304(12)(b)(2), F.S.:

Objections by or on behalf of the JAC to records or documents or to claims for payment by the attorney shall be presumed correct by the court unless the court determines, in writing, that competent and substantial evidence exists to justify overcoming the presumption. The fact that the JAC has not objected

to any portion of the billing or to the sufficiency of the documentation is not binding on the court.

Because the length of an extraordinary fee hearing depends on the scope of JAC's objections, attorneys are required to make a good faith effort resolve any line item or other objection prior to the hearing by (1) submitting an amended invoice with additional information; (2) providing a separate statement addressing the objections or (3) addressing JAC's objections in the motion. If the attorney fails to make a good faith effort to resolve JAC's objections, the attorney is contractually deemed to have accepted them.

Based on JAC's experience, the evidence presented at a hearing is typically limited to the testimony of the attorney, the possible the testimony of one or more experts, the submission of the attorney's billing records, and JAC's Letter of Objection. Although JAC may cross-examine any attorney or expert witnesses, JAC typically does not present additional evidence.

In some instances, JAC's presentation may be more extensive when JAC Legal has identified issues of serious concern with an attorney's billing practices such as (1) failure to keep detailed contemporaneous records as required by s. 27.40(7)(b), F.S., and the JAC Registry Contract; (2) repetitive billing practices across extraordinary fee invoices that, when viewed collectively, raise concerns about the accuracy and veracity of the invoices; and (3) failure to provide an explanation for billing more than 10 hours a day or 50 hours a calendar week across all court-appointed cases without providing any explanation for the need to bill these excess hours as required by the JAC Registry Contract. These issues often arise when JAC conducts a post-payment review of an attorney's invoices.

Depending on the complexity of the invoice and the extent of JAC's objections, attorney fee hearings can range from as little as five minutes to an hour.

Upon appropriate findings, the chief judge or designee shall order that compensation be paid at a percentage above the flat fee rate, depending on the extent of the extraordinary and unusual effort required. The percentage shall be only the rate necessary to ensure that the fees paid are not confiscatory of the attorney's time and effort. Total compensation may not exceed 200 percent of the established flat fee absent a specific finding this amount of compensation would be confiscatory. If the chief judge or designee determines that double the flat fee would be confiscatory of the attorney's time and effort, the judge shall order the amount of compensation using an hourly rate not to exceed \$75 per hour for a non-capital or non-death case and \$100 per hour for a capital death case.

For JAC to process an invoice that exceeds the flat fee, the order must contain certain written findings. Pursuant to DFS Chief Financial Officer Memorandum No. 04 (2003-04), an invoice cannot be processed for payment unless it includes "a court order directing payment of the fees which contains specific findings that the fees claimed are reasonable and incurred as the result of unusual or extraordinary circumstances associated with the representation." Model motions and orders can be found at:

[https://www.justiceadmin.org/court\\_app\\_counsel/motionorder.aspx](https://www.justiceadmin.org/court_app_counsel/motionorder.aspx).

Once an order is entered, JAC needs to be provided with a copy. JAC's email address for service of motions, orders, and other legal pleadings is [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).

### ***Motions to Authorize Due Process Services and Costs***

JAC is a necessary party on any motion for court-appointed attorney fees, due process costs, or related expenses, as well as any motion to declare a defendant indigent for costs. JAC has standing to raise objections and concerns before a court authorizes the defense to incur any state-funded due process costs.

For purposes of e-service, JAC has designated [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org) as the email address for service of any motion or other legal pleading. It is not necessary to serve pleadings on a JAC attorney's personal email account. If service is provided through the Florida Courts E-Filing Portal, an attorney does not need to send an additional copy via email or mail. When a document is served on JAC through email, the attorney does not need to send a follow-up email to JAC. Any motion for attorney fees or due process services must be served on JAC prior to a court considering a motion.

JAC responds to motions in two ways. First, JAC usually emails the attorney advising that JAC has received the motion and indicates JAC's position on the motion. Often, JAC indicates that it takes no position in the request or objects without requesting a hearing. This does not mean that JAC is stipulating or agreeing to entry of an order. It is still the attorney's burden to establish the need for the requested costs. JAC is simply not requesting to participate in any proceedings related to the request because JAC Legal has not identified any issues that require JAC to request a hearing in the matter.

Under these circumstances, JAC typically emails an Informal Response. When JAC sends an informal response, the attorney must provide JAC's response along with the motion to the court. When a hearing is not requested, the attorney often provides the court with a courtesy copy of the motion, JAC's informal response, and a proposed order. If the motion and proposed order have already been provided, the attorney will forward a copy of JAC's informal response to the court.

The attorney must include a copy of JAC's response when submitting the matter to the Court for its consideration. If JAC's response has not been provided, the Court should inquire of the attorney before ruling on the matter.

Regardless of whether JAC requests a hearing, the determination whether to authorize any due process costs or services is within the discretion of the trial court. If the trial court needs more information, the trial court may require that a hearing be held. The trial court may also request that JAC participate in any such hearing to provide pertinent information.

Other times, JAC will file a formal written response. In those instances, JAC has specific concerns regarding the motion that warrant such a response. In these instances, JAC will also request a hearing on the motion. For requests for due process costs, JAC typically requests a hearing in instances where JAC has a statutory or contractual objection to the request, such as a request for: (1) rates that significantly exceed the rates established by

law; (2) out-of-state experts, where in-state experts are available; (3) jury selection or legal experts; (4) attorney travel in indigent for costs cases; (5) expedited transcripts when the need for expedited rates appears to be the result of attorney inaction; and (6) private service of process.

In addition to service through the Florida Courts E-Portal, JAC can provide the court with a courtesy copy of formal written responses through email. If a judge wishes that courtesy copies be sent, please contact JAC's paralegals at (866) 355-7902 or at [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).

Occasionally, confusion arises when an attorney seeks court authorization of due process costs **after** the services have been performed, rather than before. This causes confusion. Under the JAC Registry and IFC Contracts, an attorney cannot seek court approval of a due process vendor's bill until the invoice has been submitted to JAC, and JAC has audited the bill and issued a Letter of Objection. Prior to that occurring, the attorney should only seek court authorization to incur state-funded costs. Even though the costs may have already been incurred, the attorney is still limited to seeking authorization for those costs subject to JAC's review of a properly submitted invoice.

### ***Payment of Due Process Costs***

Generally, invoices for due process costs must be supported by a court order authorizing the expenditure of the due process costs. Except where prior court approval is not required, due process services must be authorized by court order. As such, the motion should be filed and resolved prior to the defense incurring the costs. Allowable state-funded due process costs under s. 29.007, F.S., include:

- Court reporting and transcription costs;
- Interpreters and translators at depositions or witness interviews;
- Private service of process when the sheriff is not available or unable to provide service;
- Private investigator services including costs to obtain case-related materials or documents;
- Mitigation specialist services in capital death cases;
- Witness and expert witness fees;
- Mental health professionals;
- Reasonable pretrial consultation fees and costs; and
- Travel costs for witnesses.

JAC processes invoices for court reporter appearance fees for payment without the need of prior court authorization based on the notice of taking deposition. However, invoices for transcription services require a court order. Generally, an order authorizing transcript needs to indicate sufficient information so that JAC can accurately identify the transcript authorized. Information required is:

- the date of deposition and the name of the deponent for deposition transcripts;
- the date and type of hearing for hearing transcripts;

- the date and witness name for recorded statements; and
- the date and recording type (such as 911 or jail calls) for other recordings.

For deposition transcripts, the order must include the first and last name of each witness (including law enforcement) unless the name of the witness is confidential. The use of first initial and last name is not sufficient for JAC payment purposes. If the name of the witness is confidential, initials may be used along with the basis for confidentiality (such as minor witness or crime victim).

For appellate transcripts only, the trial attorney's designation of the record/directions to the court reporter may be used in lieu of a court order. If an attorney is seeking expedited transcripts, the motion must specifically indicate the request and basis for expedited rates, and the order must reflect authorization for expedited rates.

For other due process services such as investigators, mitigation specialists, and experts, the order should reflect the amount authorized for the particular due process service. If the attorney is seeking a rate in excess of the established rates or there is no rate established for the service, then the order must also reflect the rate authorized by the court. JAC cannot pay any rate in excess of the established rates without court approval.

Each year, the Legislature sets the rates for all due process services in the General Appropriations Act pursuant to ss. 27.425 and 27.5305, F.S. The same rates that apply to private court-appointed cases apply to indigent for costs (IFC) cases. The Legislature has adopted uniform statewide rates for investigators, mitigation specialists in capital death cases, and court reporting services. For other due process services, the established rates in effect are the rates approved by each judicial circuit's Indigent Services Committees as of June 30, 2006. Rate charts by judicial circuit are available on JAC's website:

[https://www.justiceadmin.org/court\\_app\\_counsel/formsandrates.aspx](https://www.justiceadmin.org/court_app_counsel/formsandrates.aspx).

When there are no specific rates established by law, JAC relies on the recommendations from the Indigent Services Advisory Board (ISAB) for guidance. The ISAB's recommendations are as follows:

<b><i>Expert Witness Categories</i></b>	<b><i>Average</i></b>	<b><i>Suggested Ranges</i></b>
Expert Witness Fees - Per Hour	\$154.17	\$150 - \$200
Expert Witness Fees - In Court - Per Hour	\$147.17	\$125 - \$150
Expert Witness Fees - Out of Court- Per Hour	\$111.20	\$50 - \$150
Exp. Wit. Fee - Waiting to Testify - Court - Per Hour	\$71.33	\$50 - \$75
Exp. Wit. Fee - Waiting to Testify - Depo. - Per Hour	\$66.83	\$50 - \$75
Expert Witness Fee - Travel - Per Hour	\$63.50	\$50 - \$75
Expert Witness Fees - Per Case	\$1,580.00	\$1,500-\$2,000
Psychological Exam - Per Exam	\$246.88	\$150 - \$400
Psychologist - In Court/Testify - Per Hour	\$136.60	\$125 - \$150
Psychologist - Waiting to Testify - Per Hour	\$84.80	\$50 - \$75
Medical Doctors - In Court or Depo. - Per Hour	\$156.43	\$150 - \$200

<b><i>Expert Witness Categories</i></b>	<b><i>Average</i></b>	<b><i>Suggested Ranges</i></b>
Medical Doctors - Out of Court - Per Hour	\$128.33	\$100 - \$125
Other Pre-Trial Expert - In Court - Per Hour	\$102.67	\$75 - \$100
Other Pre-Trial Expert - Out of Court - Per Hour	\$77.00	\$50 - \$75

To assist the defense, JAC maintains lists of due process vendors with current JAC contracts.

An attorney may use this information to search for potential vendors for his or her cases. The information on the list is from the vendors and has not been verified by JAC. It is the responsibility of the defense using the services of a listed vendor to check their professional qualifications and ensure that they are current. For example, JAC cannot pay unlicensed private investigators and, if payment is made to an unlicensed investigator, JAC will recoup the payment. The listing of a vendor on JAC's list does not mean that JAC recommends or approves the hiring of the vendor or that the vendor will accept the established rates.

For investigators, interpreters, experts, and similar vendors who bill on an hourly basis, it is the attorney's burden to establish and request court authorization for a reasonable amount for services of that vendor. In instances where there is not an established rate for services, or where the defense is seeking to exceed those rates, the attorney also has the burden to establish an appropriate rate. Generally, the attorney should consult with the vendor to determine an appropriate hourly rate and amount based upon the facts and complexities of the case. For payment purposes, the court order authorizing the services needs to contain the amount authorized (cap) for due process vendors who bill on an hourly basis. The order should also reflect the hourly rate(s) authorized when there is not an established rate for services, or where the defense is seeking to exceed those rates.

A common misperception is that JAC directly pays the invoices submitted by attorneys and due process vendors. Rather, the Department of Financial Services (DFS) is the state agency that issues payments. Pursuant to ss. 27.5304 and 29.007, F.S., JAC is responsible for reviewing invoices for compliance with statutory and contractual requirements. Once JAC staff has completed its review, the invoice is uploaded to the state accounting system for DFS review. Pursuant to s. 215.422, F.S., DFS may independently audit any invoice before approving it for payment. If the invoice does not meet DFS requirements, it is returned to JAC for further action. Even if a court order directing payment is entered, an invoice that does not meet DFS requirements may be rejected upon DFS audit.

### ***JAC Due Process Contracts***

Pursuant to ss. 27.40 and 27.425, F.S., due process vendors desiring direct payment from JAC must execute a due process contract with JAC. JAC only makes direct payment to those due process vendors who have executed a due process contract. If a due process vendor or other entity providing services to the defense does not have a due process contract with JAC or is unwilling to bill JAC directly, then the attorney must pay the due process vendor and then seek reimbursement from JAC.

JAC has established two types of vendor contracts.

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

JAC only contracts with vendors for the purpose of authorizing direct payment for due process services through JAC. JAC does not approve, endorse, or certify any specific vendor. Furthermore, JAC does not verify the professional qualifications of vendors. It is the sole responsibility of the party using the vendor's services to verify professional qualifications including current licensure.

### ***Mental Health Experts***

An instance that generally causes confusion is when a court authorizes the services of a mental health expert. When an expert is authorized to assist an assistant public defender or regional counsel, the expert's invoice is not processed by JAC. Instead, the expert submits his or her invoice to the applicable office. After review, the office then forwards the invoice in the appropriate format to JAC's Accounting Section to process the invoice. Experts only submit their invoices directly to JAC when the case involves private court-appointed counsel, indigent for costs counsel, or a pro se defendant (private court-appointed and indigent for costs cases).

At times, the issue of whether the defense or Court Administration is responsible for payment of a court-appointed expert arises. The appointment of mental health experts for purposes of sanity and competency evaluations is governed by s. 916.115, F.S. Under this provision, the Court can appoint up to three non-confidential experts to evaluate the defendant's competency to proceed. However, the defense is only entitled to retain a single confidential expert to assess competency and sanity issues. If the defendant then waives confidentiality, the Court may appoint up to two additional experts to assess competency to proceed. Section s. 916.115, F.S., provides:

1. The court shall appoint no more than three experts to determine the mental condition of a defendant in a criminal case, including competency to proceed,

insanity, involuntary placement, and treatment.

2. The court shall pay for any expert that it appoints by court order, upon motion of counsel for the defendant or the state or upon its own motion. If the defense or the state retains an expert and waives the confidentiality of the expert's report, the court may pay for no more than two additional experts appointed by court order. If an expert appointed by the court upon motion of counsel for the defendant specifically to evaluate the competence of the defendant to proceed also addresses issues related to sanity as an affirmative defense, the court shall pay only for that portion of the expert's fees relating to the evaluation on competency to proceed, and the balance of the fees shall be chargeable to the defense.
3. An expert retained by the defendant who is represented by private counsel appointed under s. 27.5303 shall be paid by the Justice Administrative Commission.
4. An expert retained by a defendant who is indigent for costs as determined by the court and who is represented by private counsel, other than private counsel appointed under s. 27.5303, on a fee or pro bono basis, or who is representing himself or herself, shall be paid by the Justice Administrative Commission from funds specifically appropriated for these expenses.

Thus, pursuant to s. 916.115, F.S., the Court may allow the defense to retain a confidential expert, which is paid for by the defense (JAC in private court-appointed and indigent for costs cases). If the defense waives confidentiality, the Court can appoint up to two more experts. These experts will be paid by court administration, except to the extent the experts' evaluations relate to an affirmative defense of sanity (assuming the defense is the party who moved for the appointment of the expert). Generally, JAC is primarily responsible for payment of defense/confidential experts in private court-appointed and IFC cases.