



# POINTS OF INTEREST

## JAC'S NEWSLETTER FOR COURT-APPOINTED AND INDIGENT FOR COSTS ATTORNEYS AND DUE PROCESS VENDORS

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### A Word from JAC's Executive Director

Greetings from the Justice Administrative Commission (JAC)! I hope you find this latest edition of ***Points of Interest*** helpful and informative. Included is information about updates to JAC's Registry, Capital Collateral, IFC, and Due Process Vendor Contracts, submissions through *MyJAC*, and other pertinent information.

JAC does not anticipate any funding issues related to payment of attorney fees, due process vendors, or related expenses this fiscal year (ending June 30, 2022).



**Alton L. "Rip" Colvin, Jr.**

## Updates to JAC Contracts for Fiscal Year 2022-23

JAC is implementing several amendments to JAC's Contracts for payment of services provided in court-appointed and indigent for costs cases for the upcoming Fiscal Year 2022-23. The contracts being amended are as follows:

1. Contract for Payments Related to Attorney Services Related to Indigent Defendants (Registry Contract);
2. Contract for Payments Related to Attorney Services Provided to Capital Collateral Defendants (Capital Collateral Contract);
3. Attorney Contract for Payments Related to Due Process Services Provided to Persons Who Are Indigent for Costs in Criminal Cases and Civil Cases Where



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There Is a Statutory or Constitutional Right to Appointed Counsel or Due Process Costs (IFC Contract);

4. Contract for Payments Related to Due Process Services Provided to Indigent Defendants (Other than Attorney Fees) (Due Process Contracts)
  - a. Type 1 – Due Process Costs Limited to Established Rates (Court Reporters, Investigators, Mitigation Specialists); and
  - b. Type 2 – For Vendors Providing Extraordinary Services (Experts).

The substantive amendments are as follows and their location is specified in *italics*:

### **1) Enhanced Superseding Language**

All JAC contracts for payment of services provided in court-appointed and indigent for costs cases contain a provision that execution of a new contract supersedes all prior agreements. The amendment strengthens the existing provision by specifying that services rendered prior to the effective date of the contract but billed after the effective date of the current year's contract, are covered by the most recently executed contract.

*Preamble to all Contracts*

### **2) Language Requiring Attorneys to Submit Documents in the Fashion Directed by JAC Policies and Procedures**

As JAC continues to implement more online document submission systems, JAC will transition from document submission through email to submission through *MyJAC*. This amendment allows JAC to amend its procedures for document submission as JAC implements improvements to *MyJAC* allowing attorneys to submit more types of documents online. Also, to conform to existing practices, attorneys and vendors are directed to submit responses to audit deficiencies through *MyJAC*, instead of email.

*Registry Contract II(9) & XIII(3); Capital Collateral Contract II(10) & XIV(3); IFC Contract II(5 & 13) & IX(3); Due Process Contracts VII(15)*

### **3) Time Frame for Attorney Case Opening After Discharge from Case**

Although court-appointed attorneys are required to open their cases through *MyJAC* within 90 days of appointment, many attorneys fail to do so. This creates an issue for JAC audit staff when an attorney is discharged from a case and a new attorney is appointed particularly where the first attorney is only on the case for a short period of time. When the new attorney submits a billing, JAC places the billing on hold pending receipt of a fee waiver or billing submission from the prior attorney even if the prior attorney never opened the case with JAC. The amendment requires an attorney to open a case within 90 days of discharge or withdrawal from the case. **The attorney's failure to open the case within 90 days will be deemed a contractual waiver of the right**



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**to attorney fees when the case reaches disposition.** The amendment will allow JAC audit staff to process billings for payment without delay when the prior attorney did not open the case with JAC within 90 days of withdrawal or discharge and new counsel bills upon disposition of the case.

*Registry Contract II(5)*

### **4) Requirement to Provide Case Opening Documents in Ch. 39 Proceedings**

Previously, JAC did not require attorneys to provide dependency or termination of parental rights (TPR) petitions. In implementing the requirements of Title IV-E, attorneys must now submit Title IV-E Forms with the names and dates of birth of the client's children involved in the case exactly as specified in the petitions. In order to verify the pertinent information, JAC needs the case opening documents. JAC audit staff already requests these documents as part of the audit process. This amendment conforms the contract to existing processes.

*Registry Contract II(5)*

### **5) Requirement to File Motion to Withdraw Where Private Counsel Is Retained**

Under s. 27.5304(11), F.S., an attorney is presumed not to be entitled to the full flat fee when the attorney withdraws from the case prior to the case reaching final disposition. At times, when privately retained counsel assumes representation, some attorneys have contended that they are entitled to the full flat fee because they never moved to withdraw from the case. This amendment requires private court-appointed counsel to move to withdraw when private counsel is retained. If a defendant retains a private attorney, the defendant no longer needs the services of a court-appointed attorney. If an attorney does not move to withdraw, the attorney is contractually deemed to have withdrawn effective as of the date of the notice of appearance or assumption of representation by privately retained counsel.

*Registry Contract III(2 & 4)*

### **6) Replacing Language About JAC Adopting Due Process Rate**

Although JAC's contracts have historically contained a provision allowing JAC to adopt rates for due process costs when there are no established rates, typically JAC has not done so. Instead, JAC will cite to the rates recommended by the Indigent Services Advisory Board for guidance. This amendment conforms the contracts to existing practices.

*Registry Contract IV(2 & 3); Capital Collateral Contract IV(2 & 3); IFC Contract III(2 & 3); Due Process Contracts III(2)*



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## **7) Increasing Time Frame for Service of Due Process Motions to 10 Business Days**

Historically, the Registry and IFC Contracts have required 5 business days' notice of a hearing on a motion for due process costs or ordinary attorney fees. Per s. 27.5304(12), F.S., extraordinary attorney fee motions require 20 business days' notice. Due to volume, JAC Legal has found the 5 business days' notice problematic. Accordingly, JAC is increasing the time frame to 10 business days for motions other than extraordinary fee motions. In either case, lesser notice can be accepted as long as JAC affirmatively consents. Duplicative provisions have also been consolidated and deleted. The notice for motions filed subject to the Capital Collateral Contract remains at 5 business days' pursuant to s. 27.711(13), F.S., but the requirement for JAC to affirmatively consent to lesser notice has been added.

**As long as an attorney provides at least 10 business days' notice of a motion other than for extraordinary attorney fees which requires at least 20 business days' notice, the date of the hearing does not need to be cleared with JAC Legal.**

If an attorney needs to set a hearing with less notice, the attorney needs to clear the date and time with JAC through an email request to [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).

*Registry Contract IV(6), X(16), XI(1) & XVIII(1); Capital Collateral Contract IV(6), XII(13) & XIX(1); IFC Contract II(5), III(6), VII(11) & XIV(1)*

## **8) Requiring Use of the Sheriff for Service of Process**

Section 57.081, F.S., requires the sheriff to provide service of process in cases involving indigent persons without requiring prepayment. Currently, the contractual language only mandates use of the sheriff for service on in-county law enforcement. The amendment requires that an attorney use the sheriff for service of process unless the sheriff is unable or unavailable. If an attorney seeks to use a private process server, the attorney must serve a motion on JAC setting forth the exceptional circumstances warranting use of a private process server.

*Registry Contract IV(12); Capital Collateral Contract IV(12); IFC Contract III(12); Due Process Contracts II(13)*

## **9) Requiring Attorney or Vendor to Notify of Change in Status**

This amendment requires an attorney or vendor to notify JAC of any change in licensure status or information pertinent to the contract. This amendment also cross-references the termination provisions of the contract if the attorney or vendor fails to maintain necessary qualifications essential to the contract such as active Florida Bar membership or required professional licensure.



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To notify JAC of a change in status, please email: [contracts@justiceadmin.org](mailto:contracts@justiceadmin.org).

*Registry Contract V(3); Capital Collateral Contract V(3); IFC Contract IV(3); Due Process Contracts IV(3)*

## **10) Clarifying Final Disposition Language**

This amendment clarifies when a case reaches final disposition for purposes of the penalty for untimely billing or the statute of limitations by adding language addressing the situation where rendition of judgment is stayed by the filing of a motion for rehearing or for a new trial. The time frame would commence upon resolution of the motion.

*Registry Contract X(4) & XV(4); IFC Contract VII(4) & XI(3); Due Process Contracts VII(4) & X(4)*

## **11) Ongoing Applicability of JAC Policies and Procedures**

This amendment places attorneys and vendors on notice that they are bound by the JAC Policies and Procedures in effect at the time they execute the contract and as they are amended during the course of the contract.

*Registry Contract X(5); Capital Collateral Contract XII(3); IFC Contract VII(5); Due Process Contracts VII(5)*

## **12) Requirements for Supporting Documentation**

Attorneys and vendors are required to keep supporting documentation to substantiate payments. This proposed amendment provides that the general requirements for supporting documentation shall be set forth in JAC Policies and Procedures.

Please know that, for attorneys and vendors seeking hourly compensation, maintaining a contemporaneous and detailed hourly accounting of time spent (timesheet) is separate and distinct from the requirement to maintain supporting records that substantiate the time billed. Merely maintaining timesheets, even if done contemporaneously, is not sufficient to meet the requirement to maintain supporting records. The attorney or vendor must maintain supporting documentation that substantiates and verifies the time billed beyond simply maintaining contemporaneous timesheets.

*Registry Contract XII(1); Capital Collateral Contract XIII(1); IFC Contract VIII(1); Due Process Contracts VIII(1)*



### **13) In-Court Time for Capital Collateral Appointments**

This amendment adds a provision to the Capital Collateral Contract already in place for the Registry Contract that limits attorney billing for in-court time to time spent on the merits of the case and not more than half-an-hour wait-time. For routine hearings, attorneys would need to provide a detailed explanation for any request in excess of one hour for a routine hearing.

*Capital Collateral Contract XII(7)*

### **14) Requirement for IFC Attorneys to Have Access to Basic Computer Equipment, Internet Access, and Email**

This amendment requires attorneys under an IFC contract to have access to basic computer equipment including portable hard drives, a printer, and a scanner. The amendment also requires internet access and an email account. These provisions are present in the Registry, Capital Collateral, and Due Process Contracts. With the transition to online contracting, case opening, and billing, these basic tools are necessary for an attorney to communicate with and submit documentation to JAC.

*IFC Contract II(10)*

### **15) Requirement to Notify JAC of Disciplinary Action or Ineffective Assistance of Counsel in IFC Case.**

This amendment requires indigent for costs attorneys to notify JAC of a disciplinary action or finding of ineffective assistance of counsel related to an indigent for costs case. The amendment tracks a similar provision in the Registry Contract.

*IFC Contract IV(2)*

### **16) Miscellaneous General Contractual Provisions**

These amendments incorporate general contractual provisions including:

- Failure to enforce a contractual provision does not constitute a waiver to enforce that contractual provision in the future;
- Language related to the severability of contractual provisions;
- Requirement to execute the contract using electronic signatures; and
- Language allowing only written modifications.

*Registry Contract XV(2), XVI, XIX & XX(2); Capital Collateral Contract XVI(2), XVII, XX & XXI(2); IFC Contract XI(2), XII, XV & XVI(2); Due Process Contracts X(2), XI, XIV & XV(2)*



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Please know that JAC's Online Contracting System in *MyJAC* will be unavailable starting June 1, 2022, through June 15, 2022, to allow for the posting of the Fiscal Year 2022-23 Contracts and other system updates. Attorneys and due process vendors will still have the ability to submit their invoices through *MyJAC* during this time period.

## **Short Guide to Submitting Contracts and Opening Cases through *MyJAC***

Attorneys and due process vendors can execute JAC contracts, submit case opening documents, submit billings, track billings, and obtain other pertinent information through JAC's secure website, *MyJAC*.

### **Executing a Registry Contract**

#### *Requirements:*

- Active Florida Bar Membership
- Federal Employer Identification Number (FEIN)
- Submitted application for Electronic Funds Transfer (EFT) and a Substitute Form W-9 with the Florida Department of Financial Services

#### *Process:*

- Click "Go to Registry Contract Submission"
- Review and verify information in "Attorney Details" box
- Verify FEIN information on file or update FEIN, if necessary
- Check the box to certify you have verified all the information on the form
- Read and check the certification boxes
- Click on "Preview Draft Contract"
- Check the acknowledgment of contract preview box
- Execute the contract electronically

When JAC receives the contract, you will receive an email confirming receipt to the email address on file. Once the contract has been approved by JAC, an email notification will be sent to you. You may view a copy of the signed contract by logging onto *MyJAC*.



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### **Executing an Indigent for Costs Contract**

#### *Requirements:*

- Active Florida Bar Membership
- Federal Employer Identification Number if seeking attorney reimbursement for costs incurred (FEIN)
- Submitted application for Electronic Funds Transfer (EFT) and a Substitute Form W-9 with the Florida Department of Financial Services if seeking attorney reimbursement

#### *Process:*

- Click “Go to IFC Contract”
- Review and verify information in “Attorney Details” box
- If intending to seek reimbursement for due process costs, check the box certifying your intent to seek reimbursement and verify FEIN information on file or update FEIN, if necessary
- Check the box to certify you have verified all the information on the form
- Read and check the certification boxes
- Click on “Preview Draft Contract”
- Check the acknowledgment of contract preview box
- Execute the contract electronically

When JAC receives the contract, you will receive an email confirming receipt to the email address on file. Once the contract has been approved by JAC, an email notification will be sent to you. You may view a copy of the signed contract by logging onto *MyJAC*.

### **Executing a Due Process Contract**

#### *Requirements:*

- Federal Employer Identification Number (FEIN) registered with JAC
- Submitted application for Electronic Funds Transfer (EFT) and a Substitute Form W-9 with the Florida Department of Financial Services
- Active occupational and/or professional license(s) necessary to provide services (see below for specific requirements for investigators and mitigation specialists)

#### *Type of Contract to Execute:*

- Type 1 Due Process Contract is for vendors providing ordinary due process services such as court reporters, interpreters, videographers, private





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investigators, mitigation specialists, and private process servers

- Type 2 Due Process Contract is for vendors providing extraordinary services such as psychologists, psychiatrists, medical doctors, and experts

### *Process:*

- Click “Vendor Contracts”
- Certify that you have applied for EFT (Electronic Funds Transfer) and a Substitute Form W-9 directly with the Florida Department of Financial Services
- Select whether you are a Florida Retirement System (FRS) member
- Click “Go to Vendor Contract Submission”
- Complete the vendor information fields regarding services you provide and circuits and counties in which you are willing to provide services
- Verify and update vendor information
- Click the check box if you want your information published in JAC’s Due Process Vendor with Contract list on JAC’s website
- In the next section, enter the INDIVIDUAL License Number and the FIRM License Number, if applicable
  - Investigators: Valid A-license and C-license numbers of the investigator who owns the investigative firm are required to be listed on the Due Process Contract
  - Mitigation Specialists: Must provide either (1) valid A-license and C-license numbers, (2) a Florida Bar number and be in good standing with the Florida Bar, or (3) a professional Florida license in a field such as mental health or psychology (i.e., Licensed Clinical Social Worker)
  - Experts: Applicable licenses and experience
- Click the License Certification box
- Under the “Payee Information,” Legal Entity or Sole Proprietor (Principal Owner) section, you must select one option, either “Legal Entity” or “Sole Proprietor”
- Enter the name of the Authorized Representative which must be the name of the person authorized to execute the contract, not the company name
- Read and check the certification boxes
- Click on “Preview Draft Contract”
- Check the acknowledgment of contract preview box
- Execute the contract electronically

When JAC receives the contract, you will receive an email confirming receipt to the email address on file. Once the contract has been approved by JAC, an email notification will be sent to you. You may view a copy of the signed contract by logging onto *MyJAC*.



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### **Opening a Court-Appointed Case**

#### *Documents needed:*

- Order of appointment finding conflict with the Office of Public Defender and/or Office of Regional Counsel, as applicable
- Charging document, petition, or other case initiation document if available

#### *Process:*

- Click on “Open a New Appointed Case”
- Complete New Appointed Case Submission Form
- Upload Supporting Documents
- Click “New Case Opening Packet Submission”

Once your request to open a new case is successfully submitted, you will receive a pop-up confirmation message indicating “Case Submission Successful.” A confirmation email will be sent. After JAC reviews your submission, a follow-up email will be sent letting you know that either the case was opened successfully or the case opening was rejected including the reason(s) for the rejection.

### **Opening an Indigent for Costs Cases**

#### *Documents needed:*

- Motion to declare defendant indigent for costs
- Clerk’s application for indigency
- Attorney fee affidavit
- Charging document, petition, or other case initiation document if available

#### *Process:*

- Click on “Open a New IFC Case”
- Complete New IFC Case Opening Submission Form
- Upload Supporting Documents
- Click “New Case Opening Packet Submission”

Once your request to open a new case is successfully submitted, you will receive a pop-up confirmation message indicating “Case Submission Successful.” After JAC reviews the documents, if there is a deficiency in the case submission, you will receive an email indicating the reason(s) for the rejection. If the submission is complete, you will receive a response indicating JAC’s position on the motion.



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When the order declaring the client indigent for costs is received, submit the order through *MyJAC* as follows:

- Search for case through *MyJAC*
- Verify Order of Indigence has not already been received
- Upload IFC Order Declaring Indigent

More detailed instructions as well as additional information and tutorials are posted on JAC's website.

## Flat Fee Settlement Agreement in Multiple Attorney Cases

In some court-appointed cases, the Court appoints more than one private court-appointed attorney over the course of the case. Under s. 27.5304(11), F.S., the flat fee must be divided between the attorneys. To help resolve these situations without a hearing, JAC will be posting a flat fee settlement agreement for use by court-appointed attorneys who wish to divide the flat fee among themselves. The settlement agreement will permit JAC to administratively process payment without the need of a court hearing or court order. The settlement agreement and instructions will be found at:

[https://www.justiceadmin.org/court\\_app\\_counsel/forms/attorney-settlement-agreement.pdf](https://www.justiceadmin.org/court_app_counsel/forms/attorney-settlement-agreement.pdf)

In order for the attorney fee invoices to be administratively paid, the attorneys must provide a complete and executed settlement agreement. Absent previously submitted fee waivers, all attorneys, even those who are waiving all fees, must sign the settlement agreement. For the attorneys who are waiving all fees, they should indicate \$0.00 as their apportioned share. The settlement agreement must be submitted via *MyJAC* as directed in the instructions for the settlement agreement.

## Setting Hearings with JAC

Pursuant to the term of the Fiscal Year 2022-23 JAC Registry and IFC Contracts, an attorney must provide at least 10 business days' notice of a motion for ordinary attorney fees, indigency for costs, or due process costs and at least 20 business days' notice of a motion for extraordinary attorney fees. **The motion must be served on JAC prior to or contemporaneously with the notice of hearing.**

If an attorney provides the minimum amount of notice required under the JAC Registry and IFC Contracts, the attorney's office does not need to clear the date in advance with JAC. The attorney's office will submit the notice of hearing in the manner directed by JAC Policies and Procedures, currently via email to [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).



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If an attorney's office desires to set a hearing with less notice than required by the JAC Registry or IFC Contracts, the attorney's office must clear the date and time first with JAC by sending an email as noted above. Please include in the subject line information indicating the email relates to a request to set a hearing with short notice.

In submitting a notice of hearing, it is also helpful to include with the notice the manner in which JAC will contact the Court including Zoom or Microsoft Teams information or the Court's phone number.

## Dependency and TPR Billing Submission Changes

As provided in the Fiscal Year 2022-23 Registry Contract, all attorneys opening dependency and termination of parental rights (TPR) cases must submit, along with the order of appointment, a sufficient portion of the petition that initiated the case identifying the client's children involved including their full names and dates of birth. Usually, the attorney would submit the first two or three pages of the dependency or TPR petition. If not available at the time the attorney opens the case, the necessary pages of the petition must be submitted with or prior to the first billing on the case (including due process vendor billings such as court reporter fees).

The purpose of this submission is to ensure the accurate audit of the Title IV-E Form. This will also reduce the number of rejected billings due to inaccurate spelling of children's names and date of births, and other necessary information. Please continue to review and ensure any submission includes accurate information at the time of submission.

**When completing the Title IV-E Form, the children's names and dates of birth must match the dependency or TPR petition. Each child listed must be a child or prospective child of your client.** JAC will be posting a Title IV-E Checklist and Guide by July 1, 2022, to assist attorneys and their staff in the accurate completion and submission of the Title IV-E Form. This form is required with every dependency and TPR billing submission.