



(850) 488-2415
Toll Free (866) 355-7902

FAX (850) 488-8944
Toll Free FAX (866) 355-7906

Victoria A. Montanaro
Executive Director

STATE OF FLORIDA
JUSTICE ADMINISTRATIVE COMMISSION

Post Office Box 1654 (32302)
227 North Bronough Street, Suite 2100
Tallahassee, Florida 32301

COMMISSIONERS

Dennis Roberts, Chair
Public Defender

Diamond R. Litty
Public Defender

Jerry Hill
State Attorney

Brad King
State Attorney

September 22, 2009

To whom it may concern:

In recent months, concerns have arisen regarding investigator billings. In order to help ensure that JAC can adequately review investigator billings, all investigator billings must contain certain essential information. The purpose of this letter is to advise attorneys and investigators (including mitigation specialists) of these requirements.

First, any investigator billing must include a detailed hourly statement setting forth the date of each service, the service provided on that date, and amount of time worked. If an investigative firm uses more than one investigator in a case, then the hourly statement must indicate which investigator provided the service on each date. Additionally, the billing must provide the license number of any investigator who worked on the case. All investigators providing investigative services must be properly licensed under Florida law.

The hourly statement must be sufficiently detailed so that JAC can assess the reasonableness of the billing. In short, the same requirements applicable to attorneys seeking to bill on an hourly basis apply to investigators. Those requirements are available in the JAC Policies and Procedure Manuals posted on JAC's website. The billing should be sufficiently detailed for JAC to objectively review the work performed by the investigator without disclosing privileged information. It is the attorney's responsibility to review the billing prior to submission to JAC to ensure there is no breach of attorney-client or work product privilege and to redact any such information as appropriate.

All services must be billed by date the service was rendered. It is impermissible to bill for services over multiple days without indicating the number of hours worked on a particular date. Also, all entries in a billing must be in hours and tenths of an hour. If an investigator provided multiple services on a particular date, the amount of time spent on each service must be identified. For entries relating to review of documents such as police reports, witness statements, and court pleadings, the billing must also indicate the approximate number of pages reviewed. Effective October 1, 2009, all investigator billings must comport with these requirements.

Second, an investigator can only bill for investigative services. An investigator cannot be used in lieu of a paralegal or administrative assistant. If an investigator provides such services to an attorney, then those services cannot be billed to JAC. Simply put, an investigator is retained to assist the defense in locating and interviewing witnesses, obtaining evidence, running background checks, and other investigative services. An investigator cannot be used to provide paralegal or secretarial services.

Third, the issue of investigator interns with CC licenses was addressed by JAC's Commissioners at the meeting on September 15, 2009. Absent a court order authorizing another rate, any work performed by an investigator intern with a class CC license must be billed at 60 percent of the rate authorized for private investigators with a class C license. This rate goes into effect immediately.

Fourth, JAC staff has noted that some investigators are seeking reimbursement for clerk of court charges to obtain court or other recorded documents. Under section 57.081, the clerk must provide a copy of any court document to an indigent without requiring prepayment. Similarly, the clerk must provide case-related services without requiring any prepayment. Under section 57.081, an investigator obtaining documents or clerk services on behalf of an indigent defendant should not be required to pay the clerk to obtain those documents or services. As such, effective October 1, 2009, JAC will no longer reimburse an investigator for any charges from the clerk of court. It is the attorney's responsibility to ensure that the investigator has the documentation necessary to establish that the client is indigent so that prepayment will not be required.

Fifth, as previously indicated, except in extraordinary circumstances, private service of process on in-county law enforcement is not authorized. An attorney must use the services of the sheriff to serve in-county law enforcement. Under section 57.081, the sheriff must provide case-related services to an indigent without requiring any prepayment. This includes services of process. The sheriff should be used to serve all witnesses and must be used to serve in-county law enforcement.

JAC will object to payment of any private process server serving in-county law enforcement. Law enforcement includes employees of a sheriff or police department, fire fighters, correctional officers, probation officers, and employees of the Florida Department of Law Enforcement (FDLE). To the extent that service of process is necessary, such service must be through the sheriff rather than a private process server.

If there are exceptional circumstances, an attorney must file a motion specifically delineating the exceptional circumstances requiring use of a private process server. In most cases, JAC will object to private service of process and will request that the matter be set for hearing.

Additionally, private service of process at the rates authorized by the Indigent Services Committee is only paid for actual service or lawful substitute service upon a witness as well as attempts for such service. However, JAC does not pay for private service of process by mail. Any fee set by the ISC was authorized for service or an attempt at service at a physical location rather than service through the United States Mail. Moreover, if the ISC did not set a rate for private service of service, then the attorney must use the services of the sheriff unless the court finds extraordinary circumstances requiring the use of a private process server. As noted above, such motion must be in writing and served upon JAC.

Sincerely;

Stephen M Presnell

Stephen M. Presnell
General Counsel