



Justice Administrative Commission  
Policies and Procedures for  
Private Court-Appointed Counsel (Part 1);  
Indigent for Costs Counsel (Part 2); and  
Capital Collateral Private  
Court-Appointed Counsel (Part 3)

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## Section I – Introduction

### A. Introduction

The Sixth Amendment of the United States’ Constitution and Article 1, section 9, of the Florida Constitution guarantee each person’s right to due process of law. In 1963, the United States Supreme Court in Gideon v. Wainwright, 372 U.S. 335, held that the Sixth Amendment’s right to counsel extended to felony defendants in state court. Over time, state and federal law has expanded this right to court-appointed counsel to other types of court proceedings, such as dependency, termination of parental rights, guardianship, and representation of dependent children with special needs. Prior to 2004, Florida counties paid for the costs (attorney fees and due process vendor services such as court reporters, investigators, expert witnesses) associated with the representation of persons who could not afford counsel. In 2004, when the state took over the payment of indigent representation pursuant to the 1998 Constitution Revision Commission’s Revision VII to Article V of the Florida Constitution, the Justice Administrative Commission (JAC) was assigned to review and process invoice from private court-appointed counsel and due process vendors statewide for their work on these cases. The purpose of this document is to present JAC’s Policies and Procedures for Private Court-Appointed Counsel, Capital Collateral Counsel and Indigent for Costs Counsel to register, contract, open cases with, and submit their invoices to JAC for review, processing, and approval for state payment.

### B. [MyJAC](#)

To assist private court-appointed attorneys and due process vendors with registering, contracting, and submitting invoices, JAC developed [MyJAC](#). [MyJAC](#) serves as a secure statewide access point for private court-appointed attorneys, indigent for cost attorneys, and due process service vendors (court-reporters, interpreters, investigators, and expert witnesses) representing indigent persons. [MyJAC](#) contains information and electronic forms to register, contract, open court-appointed and indigent for costs cases, and submit invoices to JAC for processing.

## Section II - Becoming a Private Court-Appointed Attorney

### A. Registering with JAC

Attorneys who have not already set up a [MyJAC](#) account must do so before they can execute a JAC Court-Appointed Registry Contract for Payment (Registry Contract). A [reference guide](#) on how to set up a [MyJAC](#) account is available on JAC’s website.

#### **Substitute Form W-9**

Prior to executing the Registry Contract, the attorney must complete and submit a Substitute Form W-9 with the Department of Financial Services (DFS). As part of

completing the Registry Contract, attorneys are required to certify that they have submitted a Substitute Form W-9 to DFS. Information and the Substitute Form W-9 are available on [DFS's website](#). The form may be submitted electronically through [DFS's vendor website](#).

If you have any questions regarding the Substitute Form W-9, please contact DFS's Vendor Management Section at [FLW 9@myfloridacfo.com](mailto:FLW_9@myfloridacfo.com) or (850) 413-5519.

The JAC Online Support Team cannot answer questions or help with the completion or submission of this form.

Due to identity theft and statutory limitations regarding the requirement and collection of social security numbers (SSNs), attorneys and due process vendors must use a federal employer identification number (FEIN) rather than a SSN when completing the Substitute Form W-9. However, if an attorney or due process vendor is permitted to use a SSN as a tax identification number, the attorney or due process vendor assumes the risk associated including the potential interception, misuse, inadvertent disclosure, and identity theft of the SSN.

### **Direct Deposit/Electronic Funds Transfer (EFT)**

Attorneys and due process vendors seeking direct payment from JAC must participate in a direct-deposit program under which the attorney or due process vendor authorizes the transfer of funds electronically to an account in the attorney's or due process vendor's name at a federal-chartered or state-chartered financial institution.

The information and forms necessary to enroll in the Direct Deposit (formerly Electronic Funds Transfer (EFT)) Program are available on the [Department of Financial Services \(DFS\) website](#).

The forms for enrollment in the Direct Deposit Program must be sent to the DFS. **JAC does not process these forms.** The contact information for DFS is as follows:

Direct Deposit Section  
Department of Financial Services  
200 E. Gaines St.  
Tallahassee, Florida 32399-0359  
Telephone (850) 413-5517

**These forms must be completed accurately in order for DFS to enroll a person into the Direct Deposit Program.**

If an attorney or due process vendor seeks an exemption from this provision, the attorney or due process vendor must submit a written request explaining why the attorney or due process vendor cannot comply with this provision. The [Application for Exemption of Direct Deposit/EFT Requirement](#) is posted on JAC's website.

**As long as an attorney or due process vendor has applied with DFS for Direct Deposit, an exemption does NOT need to be requested for the period during which the Direct Deposit application is being processed.**

## **B. Contracting with JAC**

Once the attorney has registered with and logged onto [MyJAC](#), the attorney will click on the link for the JAC Contract for Payments related to Attorney Services provided to Indigent Defendants (Registry Contract). The attorney should review and complete the contract, or if the attorney has previously executed a contract with JAC, the attorney should verify the information on the contract. If information needs to be updated, the attorney should do so at this time. Once the attorney has verified the information, the attorney will be able to generate a preview of the contract. Once the review is complete, the attorney may electronically sign the contract and submit it to JAC through [MyJAC](#). Please know that under Florida law, an electronic signature is deemed equivalent to a physical signature. The attorney, rather than an assistant, must be the person who electronically signs the contract. The attorney will receive an email confirmation that the contract has been submitted and another when JAC takes action on the contract.

## **C. Court-Appointed Registry**

### **Registry**

The chief judge of each judicial circuit maintains a registry of private attorneys who are eligible for court appointment to represent indigent persons that cannot afford to hire an attorney. The court appoints private counsel from the circuit's registry as compiled and approved by the chief judge and as maintained by the Clerk of Court. See, s. 27.40(3)(a), F.S. The court shall appoint private counsel in rotating order as the names appear on the registry, unless the court makes a finding of good cause on the record for appointing counsel out-of-order. JAC is not involved in the selection of attorneys for a judicial circuit's court-appointed registry.

To be included on a circuit's registry, private counsel shall certify that they meet any minimum requirements established in general law and by the circuit for court appointment, are available to represent indigent defendants in cases requiring appointed counsel, and are willing to abide by the terms of JAC's Registry Contract.

Pursuant to s. 27.40(3), F.S., the chief judge for each circuit is responsible for selecting the attorneys for inclusion in the circuit's registry for private court-appointed counsel. 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 a JAC Registry Contract for that fiscal year in order to be compensated by the state. The Registry Contract runs with the state fiscal year (commencing on July 1<sup>st</sup> and concluding on June 30<sup>th</sup>).

Attorneys seeking to be included on a court-appointed registry for a specific circuit must

contact circuit registry personnel to obtain an application. Similarly, to be removed from a circuit registry, attorneys must also contact circuit registry personnel. To assist attorneys, JAC has compiled a [Circuit Registry Contact list](#).

Additional circuit specific information regarding the process to become a registry attorney may be available on a judicial circuit's website. The JAC Online Support Team cannot provide assistance in this regard.

### **Registry Contract for Services**

Pursuant to ss. 27.40, 27.52, and 27.5304, F.S., to be included on a circuit's private court-appointed registry, private counsel must enter into a JAC Contract for Payments related to Attorney Services provided to Indigent Defendants (Registry Contract). A review copy of the Registry Contract is available [on JAC's website](#) and an executable copy of the contract is available through [MyJAC](#). Failure to execute a contract in a timely fashion may result in an attorney being removed from a registry. JAC's maintains current [lists](#) on its website of the attorneys in each circuit who have executed a Registry Contract for each fiscal year.

JAC's Registry Contracts have a term corresponding with the state's fiscal year commencing upon execution and ending on June 30<sup>th</sup>. The contract for the next fiscal year is typically posted on JAC's website in mid-June. Each fiscal year's contract terminates and supersedes any prior Registry Contract an attorney executed with JAC. Except as otherwise provided by the policies and procedures and the contract, 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 and the policies and procedures in effect at the time billed. JAC does not post an executable copy of the Registry Contract on the JAC public website. Instead, executable Registry Contracts are only available on [MyJAC](#).

Once an attorney signs the statewide Registry Contract, the attorney would be eligible for compensation for all court appointments, including off-registry appointments, made during that fiscal year by any circuit. Attorneys are able to execute a new contract each year immediately after it is posted. Attorneys will also be able to advise the local circuit registry personnel that he or she has executed a current Registry Contract.

### **Cases Involving Off-Registry Appointments**

Once an attorney's statewide Registry Contract is approved and signed by JAC's Executive Director, the attorney is eligible for compensation for all court appointments from any circuit, including off-registry appointments, provided they are on the circuit's court-appointed registry or provide an appropriate off-registry order of appointment. Off-registry orders of appointment must include language that no registry attorneys were available for representation. See, s. 27.40(7)(a), F.S.

If an attorney receives an off-registry appointment, the attorney is responsible for verifying

there is language justifying the off-registry appointment in the order of appointment. In the event the order is insufficient to justify an off-registry appointment, payment will be delayed until the attorney provides JAC with an appropriate order. The attorney shall open cases in [MyJAC](#) involving off-registry appointments in the same fashion as registry appointments.

### **Electronic Communications**

An attorney must maintain sufficient internet capability, including an email account, to communicate, correspond, and submit documentation to JAC. The attorney must be prepared to accept and respond to communications including Billing Audit Deficiencies and Letters of Objection or No Objection by email. The attorney must also be capable of accepting, scanning, and uploading legal pleadings including but not limited to responses to motions for attorney fees, due process services, or other related documents by email.

### **Required Due Diligence – Public Defender and Regional Counsel Withdrawal from the Case**

The court-appointed attorney is responsible for verifying that, as applicable, the Office of the Public Defender (Public Defender) and/or the Office of Criminal Conflict and Civil Regional Counsel (Regional Counsel) have properly withdrawn from the case. Per the Registry Contract, any payment for a criminal or civil case is contingent on the Public Defender and Regional Counsel being authorized to withdraw, were discharged from the case, or a court's *sua sponte* finding a conflict of interest precluding representation when the respective offices are authorized to provide representation. If the attorney fails to verify that the Public Defender and Regional Counsel have been properly relieved or discharged from the case, the attorney may not receive any compensation for the case. Under the terms of the Registry Contract, the attorney waives the right to compensation under those circumstances.

The withdrawal of the Public Defender or Regional Counsel from an earlier proceeding does not create a presumption that those offices continue to have a conflict of interest for later proceedings including, but not limited to, appeals, violation of probation or community control proceedings, motions for post-conviction relief, and any other extraordinary remedies for which private court-appointed counsel is authorized under Florida law. Absent a *sua sponte* finding of conflict by the Court as authorized by s. 27.5303, F.S., the Court must appoint the Public Defender and Regional Counsel, as applicable, prior to appointing a private attorney.

### **No Assignment**

An attorney may not assign or subcontract work on a court-appointed case. The attorney appointed to a case is expected to perform all of the legal services on the case. The attorney may not bill or be paid for any legal services performed by another attorney. See, s. 27.5304(8), F.S. An attorney waives the right to seek compensation for any work done by a lawyer who is not appointed to the case. This includes partners and associates

of the attorney's firm even if those attorneys are also on the registry.

In cases in which an attorney is seeking hourly compensation, the attorney is only authorized to bill for services personally performed by the attorney and is not permitted to seek hourly compensation for work done by any other attorney or staff.

### **Reappointment**

A re-opened matter requires a new order of appointment. If an attorney embarks upon a new phase of representation, which entitles the attorney to a new compensation structure, such as moving from the trial phase to the appellate phase for the same case, then a new order of appointment is required.

### **Appointment of Co-Counsel**

Where the State has filed a notice containing a list of the aggravating factors the State intends to prove per s. 782.04(1)(b), F.S. and has not otherwise waived the death penalty, JAC generally does not object to the court's appointment of co-counsel where lead counsel is court-appointed. Any motion to appoint co-counsel prior to the filing of the list of the aggravating factors is premature. However, JAC lacks statutory authority to pay for appointment of co-counsel where lead counsel is privately retained. Therefore, JAC objects to any appointment of co-counsel where 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."

If the State waives the death penalty, then appointed co-counsel must withdraw from the case. If appointed co-chair counsel does not withdraw, JAC will object to any hourly or extraordinary attorney fees incurred after the State waived the death penalty.

JAC will not process any attorney fees until the case reaches a billable point or final disposition, at which point both appointed lead counsel and appointed co-counsel must complete and submit the applicable JAC Invoice, as well as all necessary supporting documents. Per the Registry Contract, lead and co-counsel are responsible for coordinating the submission of their bills so that JAC can conduct a simultaneous review of both billings. The attorneys cannot file any motion for fees until JAC has received, reviewed, and responded to the invoices submitted by both of the attorneys on the case.

If one of the attorneys seeks interim compensation and the other attorney does not, the attorney not seeking interim compensation must provide JAC with an hourly statement if the attorney intends to seek hourly compensation at the conclusion of the case.

### **Withdrawal / Full Performance involving Multiple Court-Appointed Attorneys (Flat Fee Cases Only)**

An attorney who is discharged, removed, or otherwise withdraws prior to final disposition

is presumed not to be entitled to payment of the full flat fee set forth in the General Appropriations Act. See, s. 27.5304(11), F.S. If the attorney is permitted to withdraw and the court appoints subsequent private counsel, the combined total compensation for all private court-appointed counsel may not exceed the flat fee absent proceedings to declare the case involved unusual and extraordinary effort pursuant to s. 27.5304(12), F.S.

When a case involves multiple court-appointed attorneys, JAC will not process any intended billing for attorney fees until the case reaches final disposition (or a billable point in cases under Ch. 39, F.S.). Any bill received prior to final disposition will be held until the case reaches final disposition and all private court-appointed counsel have either submitted their bills or waived compensation. All private court-appointed counsel having served on the case should appropriately complete and submit the applicable JAC Invoice as well as all necessary supporting documents. JAC will not commence review of any of the intended billings until all private court-appointed attorneys have submitted their bills for that case, have elected to waive compensation for that case by submitting a fee waiver, or have executed an [Attorney Settlement Agreement for Splitting Flat Fee](#).

When an attorney is permitted to withdraw from a case and another private attorney is appointed to represent the client, the attorney must indicate on the JAC Invoice that he or she was not the only appointed attorney on the case. Similarly, if an attorney is appointed to represent a client who was previously represented by another private court-appointed counsel, the attorney must indicate on the JAC Invoice that he or she was not the only appointed attorney on the case. If an attorney fails to accurately indicate he or she was the only appointed attorney on a case and JAC issues payment in error based upon that representation, then the attorney may be required to return the payment to JAC.

In those cases where more than one attorney is appointed to represent the same client, the trial court is required to apportion the flat fee among all the attorneys. Once all the attorneys have submitted their bills, JAC will issue an objection letter so that the attorneys can file the appropriate motions with the court.

If an attorney does not intend to seek compensation, the attorney should submit a fee waiver form in lieu of a billing. The [Court-Appointed Attorney Fee Waiver form](#) is posted on JAC's website.

If an attorney is discharged, removed, or otherwise withdraws prior to final disposition, the attorney must open the case with JAC no later than 90 days from discharge or withdrawal from the case. **The attorney's failure to open the case within 90 days is deemed a contractual waiver of the right to attorney fees when the case reaches disposition.**

#### **Withdrawal / Full Performance involving Privately Retained Counsel (Flat Fee Cases Only)**

If a defendant hires private counsel after appointment of court-appointed counsel, the

court-appointed attorney must move to withdraw from the case. If a court-appointed 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.

An attorney who is discharged, removed, or otherwise withdraws prior to final disposition is presumed not to be entitled to payment of the full flat fee set forth in the General Appropriations Act. See, s. 27.5304(11)(a), F.S. (If court-appointed counsel moves to withdraw prior to the full performance of his or her duties through the completion of the case, the court shall presume that the attorney is not entitled to the payment of the full flat fee established under this section and the General Appropriations Act.).

Per Paragraph III(2) of the JAC Registry Contract, "For the cases compensated on a flat fee basis, if Attorney withdraws or is discharged prior to the full performance of his or her duties through the completion of the case, the court shall presume that the attorney is not entitled to payment of the full flat fee. If the client retains private counsel, Attorney shall file a motion to withdraw. Attorney shall serve the motion to withdraw on JAC. If privately retained counsel files a notice of appearance or assumes representation of the client, Attorney is deemed to have withdrawn from the case as of the date of the notice of appearance or assumption of representation if Attorney does not file a motion to withdraw."

### **Limited Appointment**

If private counsel is appointed by the court to represent the defendant in a limited portion of an existing case, such as re-sentencing, restitution hearing, or shelter hearing, the attorney will only be paid for that portion of the flat fee as determined by the court. If the case is still pending final disposition, then the case will be treated in the same fashion as other full performance cases.

### **Scope of Representation**

With the exception of a petition for writ of certiorari following affirmance of a death sentence by the Florida Supreme Court, JAC only has authority to pay for representation in state court proceedings pursuant to s. 29.007, F.S. JAC is not liable for payment of attorney fees, costs, or related expenses for other representation in federal court.

### **Death of Private Court-Appointed Counsel**

Upon the death of private court-appointed counsel, the inventory attorney assigned pursuant to Rule 1-3.8 of the Rules Regulating the Florida Bar, or the personal representative or other administrator of the estate, shall provide JAC a copy of the death certificate. If the personal representative or other administrator of the estate is seeking payment for to counsel's representation in a private court-appointed case, then that person shall also provide JAC with a copy of the letters of administration or other documents authorizing the person to administer the attorney's estate.

The following is required for each court-appointed case for which payment of attorney fees is sought posthumously:

1. Copy of the death certificate and letters of administration.
2. Copy of the docket sheet.
3. Copy of counsel's time report for any case payable on an hourly basis.
4. Appropriately completed and executed JAC Invoice, as well as all necessary supporting documents.

The following is required for each court-appointed case for which due process services may have been ordered and not yet paid, and for which payment of due process services is sought posthumously:

1. Copy of documentation that indicates due process services were ordered.
2. Inventory attorney or the administrator of the estate may certify receipt of those due process services ordered and rendered prior to death. Because this person will not have access to the attorney's [MyJAC](#) account, any billings shall be submitted by U.S. Mail with a cover letter explaining the situation and supporting documentation establishing the authority of the party to act on behalf of the deceased attorney.
3. Private counsel subsequently appointed by the court to any open case of deceased counsel may certify receipt of those due process services ordered prior to death regardless of when services were rendered.

### **Private Court-Appointed Counsel Separates from Law Firm**

If an attorney is named in the order of appointment and the attorney is the payee under the Registry Contract, then the attorney retains the case even if the attorney changes law firms absent further court order.

If an attorney is named in the order of appointment, but the payee under the Registry Contract is a law firm or other legal entity, then the attorney retains the case even if the attorney changes law firms absent further court order. If the attorney desires direct payment to the new legal entity, the attorney will have to execute a new Registry Contract.

If a legal entity is named in the order of appointment, and the legal entity's assigned attorney handling the case leaves the firm, then the case remains with the legal entity absent further court order. If a new order of appointment is entered, the order shall be timely provided to JAC.

### **Private Court-Appointed Counsel Becomes Magistrate or Judge**

When private court-appointed counsel becomes a magistrate or judge, the new magistrate or judge may be unable to conclude JAC's payment process after assuming his or her official duties. If a motion and court order are required for compensation, the

new magistrate or judge may be prohibited from filing such a motion. Judicial Canon (5)(G) prohibits a judge from practicing law.

Another attorney may act on behalf of the new magistrate or judge to complete the payment process. The order to pay needs to reflect that payment will be made to the person or legal entity identified in the Registry Contract executed by the new magistrate or judge (former private court-appointed counsel).

### **Discharge for Malfeasance or Suspension**

If an attorney is discharged from a case due to malfeasance, misfeasance, or nonfeasance, or due to a suspension or disbarment by the Florida Bar, the attorney must notify JAC. Further, JAC may object to payment of attorney fees and costs relating to the attorney's representation of the client. JAC's liability for payment shall be limited to activities and services that will not have to be duplicated by successor counsel.

Additionally, for cases paid on a flat fee basis, successor counsel is presumed to be entitled to the full flat fee in those cases where prior counsel was discharged due to malfeasance, misfeasance, or nonfeasance, or due to a suspension or disbarment by the Florida Bar. Prior counsel has the burden to show that he or she provided services warranting compensation to receive a portion of the applicable flat fee for the case.

## **Section III. Appointments/Opening a Case**

### **A. General Practices and Procedures**

#### **Hierarchy of Appointment**

JAC has no authority to review and process case costs to which private counsel has not been properly appointed. When appointed, the attorney has an obligation to verify that the Offices of the Public Defender and Regional Counsel, as applicable, have been properly relieved or discharged from the case.

The court must first appoint the Office of the Public Defender to criminal cases and certain other civil cases where the law provides for state-funded appointed counsel and the Public Defender is authorized to provide representation. For other civil cases where the law provides for state-funded appointed counsel, the court must first appoint the Office of Criminal Conflict and Civil Regional Counsel (Regional Counsel) with a few exceptions.

In those instances where the law provides for state-funded appointed counsel, and where the Public Defender is unable to provide representation due to a conflict of interest, the court shall then appoint Regional Counsel. If Regional Counsel is unable to provide representation due to a conflict of interest, only then may the court appoint state-funded private counsel.

Thus, if the Public Defender is not authorized to provide representation or withdraws due to a conflict, and the Regional Counsel withdraws due to a conflict, only then may the court appoint private counsel from the registry. See generally, s. 27.5303 and 27.511, F.S. In particular, the order of appointment should reflect whether Regional Counsel had a conflict or was otherwise unable or unauthorized to provide representation. Absent such a finding, JAC is not authorized to review and process private court-appointed counsel's invoices for state payment. See, s. 27.40 & 29.007, F.S. Except in very limited circumstances, JAC's authority to pay is contingent upon a finding of conflict.

As a rule, Regional Counsel has primary responsibility for providing representation to indigent persons in civil cases. Two limited exceptions to this requirement are for guardianship proceedings under Chapter 744, F.S., where the court cannot determine indigency at the time of appointment, and for parental notice of abortion proceedings under s. 390.01114, F.S. Another limited exception applies to attorneys appointed to represent children with certain special needs pursuant to s. 39.01305, F.S. In these instances, a finding of conflict is not necessary.

## **B. Definition of "Case"**

### **Generally**

In general, a "case" is each matter assigned a case number by the Clerk of the Court to an indigent person. However, assignment of a case number is not dispositive as to whether it constitutes a case for payment purposes. All cases which are consolidated, contain multiple counts, and are combined or collapsed into a single case number shall be considered one case under that case number.

If cases are consolidated prior to the appointment of an attorney, the case shall be considered a single case for billing purposes even if separate information or other documents were previously filed in the matter.

### **Criminal**

Section 27.5304(1), F.S. prohibits the stacking of fees in cases involving more than one offense. Therefore, if an attorney is representing a defendant charged with more than one offense in the same case, the attorney shall be compensated at the rate provided for the most serious offense, even if the offenses arose from separate transactions. Payment is based on the most serious offense charged in an information, indictment, or petition for delinquency. JAC does not determine payment based on the arrest affidavits, police reports, order of appointments, or other documents unless that document constitutes a charging document under Florida law. An offense severed for trial or any other purpose is not considered a separate case for billing purposes.

In misdemeanor cases, an information or indictment is not necessary for JAC to process a flat fee payment. A notice to appear or other similar document is sufficient for JAC to process payment of a flat fee billing.

In felony cases, an information or indictment must be provided. If the case is dismissed without the filing of an information or indictment, then the attorney may submit arrest affidavits, police reports, or other documentation to establish the existence of the case.

The applicable flat fee is based on the most serious charge set forth in the information or indictment at the time of the appointment or in a subsequently filed information or indictment if it was not filed at the time of the appointment. If the state reduces the charges prior to the time of appointment, the applicable flat fee will be based upon the highest charge in effect at the time of appointment. If an information or indictment is filed increasing the charges following the date of appointment, the flat fee will be based upon the most serious charge in the amended information or indictment. If no information, indictment, or petition for delinquency is filed, the flat fee is the no information/petition filed flat fee.

### **Capital/Death Penalty**

The flat fee or hourly fees for capital (death) cases including capital appeals only apply to any offense for which the potential sentence is or remains death and the state has not waived seeking the death penalty at the time the Attorney is appointed to represent the Defendant. For cases initiated after March 7, 2016 (the effective date of Chapter 2016-13, Laws of Florida), the state must also have filed notice listing the aggravating factors per s. 782.04(1)(b), F.S., as a prerequisite to a case being defined as a capital death case for billing purposes. An attorney will need to provide this notice to JAC either along with the charging document or thereafter, if the attorney seeks the enhanced compensation authorized for a capital death case.

In order for JAC to process a flat fee or hourly fees payment for a capital case, an attorney must be death-qualified and eligible to accept appointment to death penalty cases. If a capital case appointment does not meet these criteria, then the case is considered a capital (non-death) appointment or felony appeal for billing purposes. If the attorney is not on the judicial circuit's registry for death penalty cases, the appointment shall be deemed a capital (non-death) appointment unless the order of appointment specifically indicates that the attorney is qualified to accept appointment to death penalty cases.

If an appointment qualifies as capital (death) appointment at the time of appointment, or thereafter during the pending of the private court-appointed attorney's representation, the state's withdrawal or waiver of death does not impact the case type for billing purposes. As long as the state sought death during the pendency of the attorney's appointment and the attorney was eligible to accept appointments to death penalty cases, the case remains a death penalty case for billing purposes even if the state later waives death.

### **Violation of Probation (VOP) or Violation of Community Control (VOCC)**

Each case for which the state petitions to revoke probation or community control constitutes a separate case for billing purposes. The affidavit of violation of probation or

community control should be provided as the charging document when opening these cases.

### **Post-Conviction Proceedings**

Each case for which the attorney is appointed to provide representation to a defendant in a post-conviction proceeding shall constitute a separate case for billing purposes as long as the motion contains allegations as to each case. Similarly, if an attorney is appointed only to certain counts of the motion for post-conviction relief, the attorney shall only be compensated for the cases related to those counts.

For example, if a motion for post-conviction relief lists all of the case numbers for which a defendant is currently incarcerated but only contains allegations as to one of those case numbers, then the attorney is only entitled to payment of a single flat fee.

Additionally, when a court appoints an attorney only as to specific counts of a motion for post-conviction relief, the attorney acts beyond the scope of authorized representation by providing legal assistance as to any other counts until and unless the court appoints the attorney to represent the defendant on those counts. JAC may object to hourly or extraordinary compensation based upon work done in relation to any counts to which the attorney was not appointed.

### **Dependency/Termination of Parental Rights**

Attorney fees shall be paid based upon representation of a parent irrespective of the number of case numbers that may be assigned or the number of children involved, including any children born during the pendency of the proceeding. See, s. 27.5304(6)(a), F.S. If the mother and father are represented by the same private court-appointed counsel, the case shall be considered one case for billing purposes. If a case is closed for more than a year, and the trial court retained jurisdiction, upon reactivation of protective supervision, the case is considered a new case for billing purposes.

For billing purposes, once an attorney is appointed to represent a parent in relation to a petition to terminate parental rights, any ongoing dependency proceedings shall be billed under the termination of parental rights case. The attorney's date of appointment to the termination of parental rights proceeding becomes the date of appointment to the case for future billing purposes. In essence, any dependency proceedings cease for billing purposes once an attorney is appointed to represent the parent in termination of parental rights proceedings. This continues to apply even if the termination of parental rights proceedings are later dismissed. For purpose of calculating future flat fee payments, the date of appointment to the termination of parental rights proceeding generally controls.

For example, if an attorney was appointed to a dependency case on July 1, 2007, was appointed to a termination of parental rights case on April 1, 2009, the termination of parental rights proceeding was dismissed on June 1, 2009, and the case closed on October 1, 2009; the attorney would receive the flat fee payment for the first year of the

dependency case, the flat fee payment for the second year of the dependency case, and the flat fee payment for the termination of parental rights case. Because the attorney was appointed to the termination of parental rights case prior to the commencement of the third year of the dependency case, the attorney would not receive the third year payment for the dependency case. The appointment to the termination of parental rights proceeding superseded the prior appointment to the dependency proceeding.

For more information, see the [Quick Checklist for Dependency/Termination of Parental Rights Billing](#) and the [Dependency and Termination of Parental Rights Billings Scenarios](#).

### **Dependency – Children with Special Needs**

Section 39.01305, F.S., allows for compensation of attorneys appointed to represent dependent children with certain special needs. Any right to compensation is limited to those appointments made pursuant to s. 39.01305, F.S. As a precondition to compensation, the order of appointment must contain findings, which include a finding that the child qualifies as a child with certain special needs and a finding that there was no pro bono attorney available to take the appointment. The order also must reflect the type of special need that justifies the appointment under s. 39.01305, F.S. It is the appointed attorney's sole responsibility to verify that the prerequisites for appointment are met before accepting appointment to one of these cases.

The representation will continue until the attorney is allowed to withdraw, is discharged, or the case is closed or dismissed. The General Appropriations Act sets the flat fee for these appointments at \$1,000 per child per year. Billing may be submitted after the first judicial review following the date of appointment and then after the first judicial review in the second and subsequent years of representation in the same manner as other private court appointments in dependency cases.

For more information, see the [Quick Checklist for Dependency – Children with Special Needs Billing \(page 2\)](#).

## **C. Case Opening Documents**

### **Mandatory Documentation**

Upon appointment, the attorney must open the case in [MyJAC](#) (JAC's secure website). The attorney shall use the Case Opening system on [MyJAC](#) in order to provide JAC with the following required case opening documents:

- (1) order of appointment; and
- (2) charging document in criminal cases or initial pleading (initial petition) in dependency, termination of parental rights, and other civil cases.

For more information, see the Instructions for [New Case Opening](#) in [MyJAC](#).

## **Timely Submission**

The attorney must submit the required case opening documents **within 30 days of the date of appointment**. Pursuant to the Registry Contract, if the attorney fails to open the case and provide JAC with the order of appointment within 90 days of the date of appointment or prior to submitting any motion or billing on the case, the allowable attorney fees may be reduced by \$25 as an administrative processing fee. This fee shall not apply if the attorney fees are subject to a penalty for untimely billing under the terms of the Registry Contract.

## **Submission of Documents**

Unless an original is requested by JAC, legal pleadings such as motions or court orders should be submitted by email to [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org). Legal pleadings including orders will not be deemed served on JAC until an electronic copy has been provided by email to [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).

## **Responsibility**

An attorney is responsible for verifying and ensuring that the required case opening documents are timely and properly submitted to JAC, that JAC has received the required case opening documents, and that JAC has entered the case into JAC's database. The attorney may verify that a case has been opened through [MyJAC](#).

## **Case Numbering Consistency**

The case number that appears on the order of appointment provided by an attorney must be used on all further submissions by the attorney for that case. If the court consolidates the original case with any subsequent case, or the case receives a new case number when it enters a new stage, any case-related submissions should reference both the original **and** any subsequent case numbers.

For example, if the order of appointment in a chapter 744 guardianship case has an "MH" designation in the case number, but later converts into a guardianship "GA" case number, the attorney must continue to reference both the "MH" and "GA" numbers in all documents provided to JAC.

## **D. Order of Appointment**

### **General Requirements**

An order of appointment is required for every case in which an attorney is seeking attorney fees, due process costs, or related expenses from the State of Florida. The order of appointment must be dated and indicate the name of the judge, the style of the case, and the case number. It is the attorney's responsibility to ensure that his or her orders of

appointment are provided to JAC in a timely fashion.

Please note that no payment for hourly billing can be processed which precedes the date of an order of appointment. However, an order appointing counsel *nunc pro tunc* to the date the court orally made the appointment is generally acceptable. **JAC will not accept a *nunc pro tunc* order authorizing an appointment prior to the date a court actually appointed counsel orally.**

### **Termination of Parental Rights (TPR) Requirements**

In chapter 39 termination of parental rights (TPR) cases, an attorney should obtain an order of appointment for the TPR proceedings, even if the attorney is already appointed to the dependency case. In the event that an attorney does not obtain a separate order of appointment, the date of appointment shall be presumed to be the date of the advisory hearing at which the parent first appeared.

For purposes of termination of parental rights cases, the parent must be present at the time of the appointment to the termination of parental rights proceeding. If the parent fails to appear at the advisory hearing and is deemed to have consented, then JAC has no authority to pay an attorney to represent the parent in the termination of parental rights proceeding even if the attorney previously represented the parent in relation to dependency proceedings. A parent who has defaulted does not have a right to appointed counsel until and unless the parent appears before the court during the pendency of the termination of parental rights proceedings.

Similarly, JAC has no authority to pay compensation for a termination of parental rights proceeding initiated following the voluntary execution of surrender by a parent. If the basis for the termination of parental rights proceedings is a parent's voluntary surrender of parental rights, then the parent is not entitled to court-appointed counsel in a proceeding based upon the voluntary surrender.

For more information, see the [\*\*Dependency & Termination of Parental Rights Billing Scenarios\*\*](#).

## **E. Charging Documents**

### **Criminal Cases**

An indictment or information is required for all criminal matters or cases where such a pleading is filed.

Where a "Notice of No Information" has been filed, the attorney shall supply the necessary supporting documentation to establish the existence of the case, such as the police report, booking report, face-sheet of the docket, or any other court document, which delineates the charges against the defendant. If the state attorney does not file formal charges, then the flat fee for "no information" cases applies.

## **Juvenile Delinquency Cases**

The petition for delinquency is required.

Where a “No Petition” has been filed, the attorney shall supply the necessary supporting documentation to establish the existence of the case, such as the police report, booking report, face-sheet of the docket, or any other court document, which delineates the charges against the minor child. If the State elects to “Direct File,” the direct file document must be submitted to JAC. If the state attorney does not file a petition then the flat fee for “no information” or direct file applies.

Compensation in direct file cases depends on whether the attorney continues to provide representation after the case is direct filed.

1. If the attorney continues to represent the defendant in the adult case, then the attorney will be compensated at the appropriate rate for the criminal case based upon the degree of the offense. The attorney will not be entitled to an additional flat fee in relation to the delinquency case. The delinquency case merges into the adult case for billing purposes.
2. If the attorney does not continue to represent the defendant in the adult case, then the attorney will receive the flat fee applicable for direct files.

If a delinquency petition is filed and then dismissed upon the filing of adult charges, then the attorney can bill the flat fee for the delinquency case based upon the dismissal. If the attorney continues to represent the defendant in the adult case, the attorney may also be compensated for the adult case.

## **Violation of Probation (VOP) or Violation of Community Control (VOCC)**

The petition or affidavit seeking to revoke probation or community control is required for all criminal and delinquency VOP and VOCC cases.

## **Post-Conviction Proceedings**

The attorney is responsible for providing enough of the motion so that JAC can identify the type of motion and the issues presented therein. If the motion is less than 10 pages, then the entire motion should be provided.

## **Dependency Cases / Termination of Parental Rights Cases (TPR)**

The attorney opening a dependency or termination of parental rights case must submit, 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).

### **General Civil Cases**

A copy of the initial pleading (initial petition) is required.

### **Appeals**

A copy of the Notice of Appeal is required including the order(s) being appealed, as well as a copy of the charging document for the underlying case.

## **Section IV – Due Process Services**

### **A. General Practices and Procedures**

#### **Due Process Services Checklist**

For due process services to be paid, JAC must have received the following documents:

=> Order of Appointment. See § III-D, above.

=> Charging Document. See § III-E, above.

=> JAC Invoice. See § IV-A, below.

=> Order authorizing specific due process services is generally required. See § IV-C, below.

\*For more information, see the [JAC Due Process Vendor Billing Flowchart](#).

#### **Obligation**

The attorney billing for due process services shall follow the requirements of Florida Law, the Registry Contract, and JAC's Policies and Procedures. Any forms and documents submitted to JAC should include the attorney's name and Florida Bar number.

#### **Due Process Vendor Contracts**

Pursuant to ss. 27.40 and 27.425, F.S., those due process vendors who desire direct payment from JAC must execute a due process contract with JAC to facilitate direct payment. JAC only makes direct payment to those due process vendors who have

executed a due process contract with JAC. Although a contract is generally not required for other state entities providing due process services in a court-appointed case, a Florida state entity must be willing to bill JAC directly in order for JAC to make direct payment to the due process vendor.

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 or other entity and then seek reimbursement from JAC. To the extent that the attorney pays in excess of the established rates or in excess of the amounts authorized by the court, JAC shall reimburse the attorney for the amounts reimbursable under Florida law or the court order.

JAC has established two types of vendor contracts.

- The 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 provided at the rates established by the legislature or by JAC where the legislature has not established a rate. If a due process vendor bills in excess of the established rates, JAC is authorized to correct the billing to the correct rates and then process the billing for payment.
- The 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 expertise of the due process vendor or other factors warrant compensation at a rate higher than the established rates. Except in exceptional circumstances, the Type 2 contract will not be executed with ordinary due process services vendors, such as court reporters and private investigators.

JAC only contracts with vendors for the purpose 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. Attorney shall not indicate to the court that a vendor is a JAC approved vendor, a JAC certified vendor, or otherwise suggest that JAC endorses or approves of a Vendor for services.

The JAC Due Process contracts are posted on the JAC website.

For more information, see the [JAC Due Process Vendor Billing Flowchart](#) and the [Guide to Obtaining Due Process Costs](#).

### **Methods of Paying Due Process Services**

JAC will process payments for due process services in one of two ways: (1) JAC pays the

vendor after the attorney certifies due process services; or (2) the attorney pays the vendor and is subsequently reimbursed by JAC.

### **JAC Invoice**

The JAC Invoice is essential for the billing of due process services. The attorney and the due process vendor must appropriately complete and submit the applicable JAC Invoice, as well as all necessary supporting documents.

JAC Invoices for due process services and corresponding instructions are available on the JAC website and on [MyJAC](#).

An intended billing for due process services is not considered submitted to JAC until and unless JAC receives the JAC Invoice signed by the due process vendor **and** the attorney, along with all necessary supporting documents.

The JAC Invoice may not be signed prior to the receipt of the services requested. For example, the attorney may not sign a JAC Invoice for a transcript until after the attorney has actually received and reviewed the transcript. Any JAC Invoice signed prior to the receipt of the service will be rejected.

An attorney should keep a copy of any JAC Invoice that he or she signs for a court-appointed or indigent for cost case. Under the registry and due process contracts, the attorney and vendor are required to maintain copies of all records and these records are subject to inspection by JAC.

Billing submissions by due process vendors shall be submitted through the Online Billing Submission system in [MyJAC](#). In most instances, due process vendors will complete and submit their billings online by generating an electronic JAC Invoice. During the billing process, the due process vendor will provide the information necessary to complete the JAC Invoice. Once a due process vendor submits an electronic JAC Invoice, the attorney is notified by email that the billing is pending attorney review.

The attorney then logs into [MyJAC](#) and reviews the billing and supporting documentation and either approves the invoice by signing the "Certification for Receipt of Services" section on the invoice or rejects the invoice. Please know that approving a JAC Due Process invoice is not a ministerial act. By approving the invoice, as an officer of the court the court-appointed attorney is certifying that: (1) the services performed were satisfactory; (2) the services performed were necessary for the defense of the case; (3) the amount due is accurate; (4) transactions were in accordance with Florida law, and (5) payment is appropriate. Attorneys are required to approve or reject due process vendor billings within 10 business days.

If the attorney approves the billing, it is then submitted for review by JAC staff. If the attorney rejects the billing, the vendor will be notified of the reason for the rejection by email. The vendor must contact the attorney to resolve the issue. The JAC Online Support

Team cannot assist in this regard. If the billing is neither approved nor rejected within 10 business days, then the billing will stay in the queue until resolved by an attorney. The attorney will be alerted of the bills needing review when logging into [MyJAC](#).

There are two main instances where scanned JAC invoices may be submitted. First, in cases involving pro se defendants because the pro se defendant will have to sign a physical document to certify the billing. Second, in cases involving appellate transcripts when the JAC Invoice is signed by an employee of the Clerk's office instead of the attorney. Other than those two exceptions, due process vendor billings must be submitted using the JAC Invoice generated during the online billing submission in [MyJAC](#).

### **Certification of Due Process Services Costs**

Generally, intended billings for due process services shall be certified by the attorney (and the vendor when the vendor is billing JAC directly). Certification is provided on the applicable JAC Invoice available on the JAC website. Additionally, corresponding instructions are also available on the JAC website.

The attorney cannot execute the certification on the JAC Invoice until the work is actually completed. **If JAC receives a JAC Invoice that was executed prior to the date the vendor completed the service, then JAC will reject the intended billing.** Also, see JAC Invoice, above.

### **Original Invoice**

All intended billings for due process services must be submitted using the applicable JAC Invoice. Due process vendors may use their own original invoices as support for the intended billing as long as the invoice contains sufficient detail to support the intended billing.

### **Prompt Review of Invoices**

Any direct payment to a due process vendor is contingent upon the attorney providing any and all necessary documentation in support of a billing to JAC in an expeditious fashion. The attorney shall promptly review any billing for direct payment to a due process vendor for accuracy and completeness and must certify that the work was satisfactorily performed. In the event JAC issues a Billing Audit Deficiency regarding any billing, the attorney or the due process vendor shall promptly resolve the deficiency so that JAC can process the billing for payment. The attorney must comply with all JAC Policies and Procedures in the submission of billings in order for JAC to make direct payment to a due process vendor. For billings submitted through the [MyJAC](#) Online Billing Submission system, attorneys are required to approve or reject due process vendor billings within 10 business days.

### **Prohibited Practices**

In order to protect indigent persons' Sixth Amendment rights, certain practices are prohibited by the JAC Registry Contract. These include:

**Attorney:**

**Retaining a due process service vendor in which the attorney or attorney's family has an ownership interest.** An attorney is prohibited from obtaining due process services for his or her court-appointed clients from a due process vendor or other business entity of which the attorney or the attorney's spouse or child is an officer, partner, director, or proprietor or in which the attorney or the attorney's spouse or child, or any combination of them, has a material interest in any form whatsoever.

**Soliciting or accepting anything of value from a due process service vendor.** An attorney is prohibited from soliciting or accepting anything of value to the attorney, including a gift, loan, and reward, promise of future employment, favor, or service, from a due process vendor or other business entity who provides due process services to the attorney's court-appointed clients other than the services rendered on behalf of the indigent client. The attorney shall not procure services from a due process vendor with whom the attorney shares a financial interest such as joint ownership of property.

**Provide anything of value to a due process service vendor.** An attorney shall not provide anything of value to a due process vendor, including a gift, loan, reward, promise of future employment, favor, or service, to a due process vendor or other business entity who provides due process services to the attorney's court-appointed clients.

**Due Process Vendor:**

**Soliciting or accepting anything of value from a court-appointed attorney.** A due process vendor is prohibited from paying, offering or giving anything of value to an attorney including a gift, loan, reward, promise of future employment, favor, or service, as consideration or other remuneration for providing services in court-appointed or indigent for costs cases other than the services rendered on behalf of the indigent client. A due process vendor is prohibited from providing anything of value to an attorney beyond the scope of the JAC contract as consideration for the attorney retaining the vendor.

Attorneys and due process vendors waive compensation for due process services in any form whatsoever where either the attorney or the due process vendor has engaged in these aforementioned prohibited practices.

**JAC employees:**

If an officer, employee, or agent of JAC solicits anything of value from the attorney, including a gift, loan, reward, promise of future employment, favor, or service, the attorney shall notify JAC immediately. JAC maintains a [TIPS FORM](#) on its website, which can be used anonymously, through which the attorney may notify JAC.

A person who, in good faith, reports wrongful activity meeting the provisions of s. 112.3187, F.S., (Whistle-blower's Act), is protected against retaliation for making such a report. The law also provides for the individual's identity to remain confidential. Regardless as to whether the provisions of the Whistle-blower's Act are met, it is a violation of JAC employment policy for any employee to retaliate against a person for reporting, in good faith, allegations of wrongdoing, or participating in the investigation of such allegations.

For more information, see the [Guide to Obtaining Due Process Costs](#).

## B. Service and Notice

### JAC Standing

JAC shall only pay for due process services, as set forth in s. 29.007, F. S., reasonably required for the defense of the case. JAC has standing to contest the authorization, proposed rate, and amount for any due process services. The attorney has the burden to establish that the due process services are reasonable and necessary for the defense of the case.

If a court-appointed attorney obtains services without prior court approval, then the attorney may be personally liable to pay the due process vendors. JAC is not privy to any contract or agreement between the attorney and any due process vendor and in no way accepts responsibility or liability for the quality of service, terms and conditions, or any other aspects of any contract or agreement between the attorney and due process vendors.

### Notice

The attorney must serve JAC with a copy of the motion for due process services prior to a court hearing or entering an order regarding due process services. All due process costs must have a court order except in limited circumstances as noted herein (such as court reporter deposition appearance fees and appellate transcripts). The existence of an administrative order or local rules authorizing costs without prior court approval does not relieve an attorney from filing a motion seeking prior approval or authorization for due process services. Absent express waiver from JAC, all due process services must be approved by a specific court order.

A written motion for due process service services must specify: (1) the type of due process services requested, (2) the rate requested, and the (3) maximum amount of costs that may not be exceeded without court order authorizing additional funds. **The motion shall be properly served on JAC a minimum of ten (10) business days prior to the date of the hearing on the motion.** Pursuant to JAC's Registry and Due Process contracts, to be considered served, an electronic copy of the pleading must be submitted by email to [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org). JAC's failure to respond to such a motion shall not

constitute a waiver of JAC’s right to be heard regarding the matter. Similarly, JAC’s rejection of a bill does not constitute a waiver of its right to a hearing unless the notice of rejected voucher specifically indicates JAC does not wish to participate in a hearing on the matter. If an attorney obtains an order in violation of this notice requirement, the attorney shall not contest any motion to vacate filed by JAC.

JAC will not pay for due process vendors that are obtained in violation of these requirements. The attorney is solely responsible for compensating a due process vendor obtained in violation of these requirements.

### Contents of Motion Seeking Authorization for Due Process Services

In addition to specifying the type of service, rate and maximum amount that may not be exceeded without an additional hearing for due process services, the motion seeking authorization for due process services must establish the basis for the requested services. The motion must indicate how the requested services are necessary for the defense of the case. A motion seeking authorization or additional funds for a private investigator, mitigation specialist, or an expert shall set forth the particularized need for the requested services based on the circumstances of the case.

The defense has the burden to establish that the requested services are reasonable and necessary for the defense of the case. For experts and mitigation specialists, the defense also has the burden to establish the particularized need for these services. Due process services are those services necessary to ensure a defendant’s meaningful access to the courts.

## C. General Compensation

### Rates and Vendors for Due Process Services

JAC reviews submitted due process service invoices to verify compliance with the established rates and amounts authorized as established pursuant to Florida law. The rates are established annually in the General Appropriations Act. The current rates are be posted on the JAC website. If the rate for a particular due process service has not been established, JAC relies on the recommendations of the Article V Indigent Services Advisory Board (ISAB), in determining the appropriateness of a rate charged and the total amount of compensation. The ISAB’s recommendations are as follows:

<b>Expert Witness Categories</b>	<b>Average</b>	<b>Suggested Range</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. W it. Fee - Waiting to Testify - Court - Per Hour	\$71.33	\$50 - \$75
Exp. W it. 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
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

For more information, see the [Quick Checklist for Expert Billing](#) and the [Expert Billing Guide](#):

### Minimum Billing Amount for Experts, Investigators, and Mitigation Specialists

JAC's Due Process contracts limit the submission of billings by experts, investigators, and mitigation specialist by requiring that a billing represent an unpaid amount of at least \$500 or that the billing is submitted at the completion of services on a case. If an expert, investigator, or mitigation specialist, submits a billing for less than \$500 prior to completion of services on a case, the billing may be rejected.

### Investigators

**Licensing:** Any private investigator providing services in Florida must be licensed pursuant to Florida law. JAC is not authorized to pay for any private investigator services provided in Florida by a person not properly licensed pursuant to Florida law. If a vendor is providing services that require investigator licensing under Florida law, the vendor shall comply with the requirements to be licensed as an investigator. During the initial contract phase, the vendor shall provide the investigative firm license (A license) and the private investigator license (C license) of the primary investigator desiring to contract with JAC. If the private investigative firm employs more than one private investigator who will be providing services under the JAC Due Process contract, the vendor shall provide the private investigative license (C license) of the primary investigator for the firm and the private investigator licenses numbers (C and CC licenses) of all investigators who will be providing services to be compensated through JAC.

**Role:** The role of a private investigator is limited to providing 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 such as credibility and character of witnesses. Where private service of process is authorized, an investigator can also serve subpoenas on ordinary non-law enforcement witnesses; however, the investigator can only bill the flat rates applicable for private service of process regardless of the amount of time spent serving the subpoena.

An investigator is not a substitute for a paralegal or secretary and cannot be used to perform administrative tasks including, but not limited to, retrieving discovery from the

state attorney; copying documents from a court file; delivering materials to the defendant; or any other tasks of a paralegal or secretarial nature.

**Multiple Investigators:** When multiple investigators are assigned to the same case, only one investigator will be compensated for completing a single task. If multiple investigators attend the same meeting, only one investigator will be compensated for that time. If an investigation firm decides to divide the work, any extra time spent as a result of using multiple investigators will be non-billable. Also, JAC will not pay for time associated with training investigators or investigator interns.

**Travel:** Absent specific court authorization, an investigator from another circuit will not be reimbursed for travel time or travel expenses for an investigator to travel to the circuit of the case. If an investigator makes a business decision to accept cases outside the investigator's home circuit, the investigator will generally not be compensated for time and expenses related to travel to the circuit of the case. Absent a showing that no local investigators are available to accept appointment to a case, an investigator waives any right to travel time or expenses. Generally, such travel time and expenses are only permissible when an investigator is traveling to a rural county where investigative services are unavailable.

A private investigator providing services on a case shall not provide expert or mitigation specialist services on the same case. A person serving as an expert or mitigation specialist on a case is prohibited from also functioning as a defense investigator.

For more information, see the [Quick Checklist for Investigators and Process Servers](#) and the [Investigator Billing Guide](#).

### **Service of Process upon Witnesses**

Service of process upon witnesses shall be through the sheriff unless the sheriff is unable or unavailable to provide service of process. Under s. 57.081, F.S., the sheriff is available to provide service of process without prepayment in cases involving indigent persons (court-appointed cases). The sheriff must be used to serve in-county law enforcement absent exceptional circumstances. In order to use a private process server, the attorney must file with service upon JAC a motion setting forth the exceptional circumstances requiring use of a private process server.

If there is adequate time for the sheriff to perfect service on ordinary or law enforcement witnesses, the sheriff must be used absent exceptional circumstances. JAC may object to reimbursement of private process server fees if there appears to have been adequate time for the sheriff to handle service.

### **Mitigation Specialists**

State-funded payment of mitigation specialists is only authorized in capital death cases. In other cases, an investigator should be retained to handle the development of mitigating evidence. A mitigation specialist is a specialty related to capital cases where the state is

seeking a potential sentence of death. (With the exception of capital death cases, the rate for mitigation specialists cannot exceed the rate for investigators.)

Prior to the authorization of a mitigation specialist, the attorney should file a motion setting forth the specialized expertise, skills and education of the mitigation specialist that warrants compensation in excess of the rate normally authorized for a private investigator. The motion should also indicate the hourly rate requested for the mitigation specialist. **This hourly rate cannot exceed the hourly rate set forth in the General Appropriations Act (currently \$75 per hour).** If the motion is granted, the order must reflect the hourly rate and the maximum amount authorized for the mitigation specialist. Absent an order authorizing a higher hourly rate, a mitigation specialist will be compensated at the rate authorized for a private investigator.

For more information, see the [Quick Checklist for Mitigation Specialists](#).

### **Forensic Sentencing Expert for a Defendant subject to a Life Sentence who was a Juvenile at the Time of Offense**

Although the trial court may not appoint a mitigation specialist in these cases, the court may appoint a forensic sentencing expert for purposes of conducting a forensic social evaluation pursuant to s. 921.1401, F.S. The rate for the service cannot exceed \$75 per hour. Under these circumstances, an investigator must be appointed (at the rate of \$40 per hour) for purposes of conducting the investigatory portion of the evaluation such as gathering records and obtaining pertinent information. The scope of the forensic sentencing expert's services will be limited to performing the forensic social work up of the defendant. Furthermore, in order to avoid confusion, motions should specifically refer to this type of expert as a forensic sentencing expert and avoid referring to the expert as a mitigation expert or specialist.

### **Detailed Invoices/Hourly Statements**

For due process vendors billing on an hourly basis, such as investigators, mitigation specialists, and experts, the hourly statement must contain sufficient detail for JAC to review the reasonableness of the invoice. Generally, the same requirements for hourly billings apply to both due process vendors and attorneys.

### **Diligent Efforts**

If an attorney intends to procure due process services at a rate higher than established rates, the attorney must make a showing that the particular due process service or vendor is necessary to the defense of the case and that the attorney has made a diligent effort to find the service within the established rates. Diligent effort includes, but is not limited to, evidence that the attorney sought the services of at least three due process vendors willing to work on the case, but unwilling to work at the established rates. Furthermore, a prior authorization for a higher rate for the same expert or similar services in an unrelated proceeding shall not relieve an attorney from diligent efforts in the case at issue. If a court

authorizes due process services in excess of the established rates, the order should contain findings as to the diligent efforts made by the attorney to obtain services within the rates established by law.

### **Out-of-State Due Process Vendors**

**Order:** An attorney shall not seek authorization from the court for out-of-state experts or mitigation specialists, without:

- (1) a showing that there are no such due process vendors with appropriate skills or expertise available in the county in which the case was filed; and
- (2) in any other county in the State of Florida.

If an attorney obtains an out-of-state due process vendor without making such a showing, the attorney shall not request reimbursement for any travel expenses, including compensation for travel time, on behalf of the due process vendor. An order authorizing the out-of-state expert must be in writing and contain specific findings regarding the unavailability of a qualified in-state expert or mitigation specialist. The attorney shall submit a copy of the order to JAC. In the event testimony is necessary, the defense must consider whether testimony through communications equipment as authorized under the court rules of procedures, such as through a videoconferencing service, would satisfy due process concerns.

**Travel:** If a due process vendor has a Florida address and enters into a Type 1 or Type 2 Due Process contract with JAC, the vendor will not be reimbursed for travel expenses for travel to Florida in most instances. In particular, an expert who lists a Florida address, but who resides out-of-state, cannot seek travel expenses to travel to Florida in the event the expert is called to testify at trial.

### **Transcripts**

**Order:** JAC may process payment for the cost of preparing a transcript of a deposition only if the attorney secures an order from the court finding that preparation of the transcript is necessary, in which case JAC may process payment for one original and one copy only. The order must reflect the name of the witness and the date of the deposition to be transcribed. The attorney shall not obtain judicial preapproval of transcripts absent exigent circumstances.

A generic order authorizing transcripts prior to the taking of depositions will not suffice for payment purposes as a general rule. For example, language in the order of appointment authorizing the attorney to order “necessary” transcripts does not suffice for payment purposes.

**Original Transcript:** JAC may process payment for the cost of one original transcript of any deposition, hearing, or other proceeding. Any other payment for a transcript of that same deposition, hearing, or other proceeding, regardless of whether the transcript is an

additional original transcript or a copy, shall be at the rate paid for a copy of a transcript. JAC does not pay original rates for transcripts when an original transcript has been previously created, regardless of the source of payment for the original.

Transcripts should not be ordered as a matter of course. It is anticipated that an attorney will be taking notes during depositions. Except in complicated cases involving numerous witnesses, deposition transcripts should not be ordered merely to prepare for trial except where the attorney was not physically present at the deposition. Instead, deposition transcripts should only be ordered where the transcript is necessary for use at trial such as to impeach state witnesses or for use in support of a motion such as a verified motion to dismiss.

The court order authorizing transcripts must be attached to the intended billing for the transcripts. The attorney must provide the court reporter with a copy of the order of appointment and the order authorizing the transcript. For any intended billing in which JAC will directly pay the court reporter, upon receipt of a completed invoice from a court reporter, the attorney shall promptly review and certify the invoice.

**Page Limit:** In determining the number of pages to be billed, JAC will process payment for the following: a title page; index, appearance and/or contents page(s); the transcription of the testimony of the proceeding or deposition; one errata sheet for a deponent or witness; and necessary court reporter certification page(s) at the conclusion of the transcript. JAC does not process payment for pages containing word indexes, summaries, or similar information unless specifically required by court rule. All transcripts must meet the formatting requirements set forth in Fla. R. Gen. Prac. & Jud. Admin. 2.535(f).

**Expedited Rates:** To obtain expedited rates for transcripts, the attorney is required to serve JAC with a motion justifying expedited rates and, after JAC responds to the motion, an order authorizing expedited rates. The attorneys cannot obtain an order authorizing expedited rates without specifically requesting expedited rates. JAC is entitled to an opportunity to object to requests for expedited rates.

**Appellate Transcripts:** For appellate transcripts, the designation of the record may be utilized in lieu of a court order authorizing transcripts.

For more information, see the [Quick Checklist for Court Reporters Billing Appellate Transcripts](#) and the [Quick Checklist for Court Reporters Billing Transcripts](#).

### **Appearance Fees**

Generally, JAC may pay bills for appearance fees in court-appointed and indigent for costs cases without prior court authorization. As long as the deposition may be taken without the need for prior court approval, JAC does not need an order authorizing payment of appearance fees. In those instances where prior court approval is required, the attorney or court reporter may need to supply JAC with the court order authorizing the taking of depositions.

Once JAC pays an appearance fee for a deposition, the attorney is entitled to a copy of any recordings, stenographic notes, computer files, or other documents related to transcribing the deposition in the event a court reporter or court reporting firm is unable or unwilling to prepare a transcript of the deposition. The costs of providing a copy of any recordings, stenographic notes, computer files, or other documents related to transcribing the deposition is incorporated into the appearance fees paid to the court reporter or court reporting firm. No additional fees will be paid to provide these records.

If a court reporter or court reporting firm is unable or unwilling to prepare a transcript for a deposition for which JAC has paid an appearance fee, then the court reporter shall turn over a copy of any and all recordings, stenographic notes, computer files, or other documents related to transcribing the deposition to the attorney representing the indigent client or to another court reporter or court reporting firm able and willing to perform the work as designated by the attorney. In particular, if a court reporter or court reporting firm is unwilling to transcribe or prepare a transcript within the established rates under Florida law and any applicable due process contract and there is another approved or qualified court reporter or court reporting firm within the State of Florida willing to transcribe the deposition within the established rates, then the transcript must be prepared by a firm willing to work within the established rates.

For purposes of calculating the amount of an appearance fee for depositions involving multiple witnesses conducted by a court reporter, the amount is calculated per session, not per witness. The first hour is compensated at a rate of \$75 per hour and each hour thereafter is compensated at a rate of \$25 per hour. Unless there is a break exceeding an hour, the \$25 per hour rate continues to apply to any depositions taken in a case.

For example, the defense has depositions for a case from 8:00 a.m. to 12:00 p.m. The court reporter would bill a total of \$150 for this session (\$75 for the first hour and \$75 for the second, third, and fourth hours).

If there is a break of one hour or more, and the same court reporter returns following the break, the court reporter may bill the \$75 per hour for the first hour following the break. For example, if the defense has depositions from 8:00 a.m. to 11:00 a.m. and then from 1:30 p.m. to 4:30 p.m., then the court reporter could bill \$125 for the first session and \$125 for the second session.

When a break is less than an hour, then the session is considered ongoing. It is important to note that break time must be unbilled to be considered break time. Any wait time billed to JAC is not considered break time. For example, if one-hour depositions are scheduled for 8:00 a.m., 9:00 a.m., 10:00 a.m., and 11:00 a.m., and the witnesses for 9:00 a.m. and 11:00 a.m. do not show but the court reporter remains onsite during the deposition session, then the court reporter would bill \$150 for the session (\$75 for the first hour and \$75 for the second, third, and fourth hours.) Because the court reporter is being paid for the wait time, the court reporter cannot bill \$75 for the fourth hour even though there was a break of 2 hours.

For more information, see the [Quick Checklist for Court Reporters Billing Appearance Fees](#).

### **Certificates of Non-Appearance**

The appearance fee paid by JAC includes payment for any certificates of non-appearance issued for witnesses that failed to appear during the deposition session. No additional fees beyond the appearance fee for a deposition session will be paid for a court reporter to prepare any certificate of non-appearance in relation to a witness's failure to appear.

### **Interpreters**

JAC's role is to provide costs for foreign and sign language interpreting services **outside** of the courtroom (or other judicial proceedings) such as deposition or witness interviews. Insofar as the Type 1 Due Process contract, JAC has included language authorizing an attorney to seek rates of up to **\$50 per hour for Spanish and Creole interpreting services** and **\$65 per hour for other languages** for certified and language-skilled interpreters. Normally, a vendor who signs a Type 1 Due Process contract is limited to payment at the established rates. This provision addresses changes adopted by the Florida Supreme Court in relation to foreign language interpreting services.

For more information, see the [Quick Checklist for Interpreter and Translator Billing](#).

### **Prepayment/Retainers**

JAC does not prepay or provide retainers for due process services. An attorney shall not seek to have JAC prepay or provide retainers for due process services. If a due process vendor requires prepayment or a retainer, the attorney shall pay the amount and seek reimbursement only after the due process vendor has completed the services for which the prepayment or retainer was paid. The attorney shall only be reimbursed the amount necessary to compensate the due process vendor at the appropriate hourly rate, irrespective of the amount of the retainer.

### **Budget for Capital Cases**

For capital cases in which the State has not waived the death penalty, as soon as practicable after appointment, the attorney shall set a hearing for the trial court to determine a reasonable budget for due process services. Timely and proper notice of the hearing shall be provided to JAC. This budget shall be based on the circumstances of the case, the amount needed to provide the defendant with the basic tools of defense as mandated by due process provisions under the state and federal constitutions, the amount appropriated for due process services in the General Appropriations Act, and the amount the Public Defender for the applicable circuit expends for similar capital cases. The attorney shall make diligent efforts to remain within this budget. Prior to authorizing expenditures in excess of this budget, the attorney will set the matter for hearing, with timely notice to JAC.

### **Deposition of State Attorney's Expert**

If the attorney seeks to depose the State Attorney's expert witness, the attorney must obtain a court order authorizing any compensation for the expert. The expert will bill the attorney just like any other expert. The attorney will then appropriately complete and execute the applicable forms for due process services, as well as submit all necessary supporting documents, for JAC to process payment for the expert. The expert cannot be paid rates beyond those established by law without a court order which details the reason for deviating from established rates. If there is no rate set, then a court order must contain a detailed justification for the rate. JAC will not process payment for any more compensation than the rate paid by the State Attorney for the expert.

### **Travel Time for Due Process Vendors**

Other than investigators, due process vendors that bill at hourly rates may not bill for time spent traveling on a case unless a rate has been established by law or court order for travel time.

### **Statutory Exemption/Waiver of Prepayment**

Pursuant to s. 28.345, F.S., private court-appointed attorneys are exempt from all court-related fees and charges assessed by the clerks of the circuit courts. As delineated in s. 57.081, F.S., an indigent defendant shall receive the services of the courts, sheriffs, and clerks, with respect to pending proceedings, despite his or her present inability to pay for these services including filing fees; service of process; certified copies of orders or final judgments; a single photocopy of any court pleading, record, or instrument filed with the clerk; examining fees; mediation services and fees; subpoena fees and services; service charges for collecting and disbursing funds; and any other cost or service arising out of pending litigation.

The attorney is responsible for ensuring compliance with the terms of ss. 28.345 and 57.081, F.S. including but not limited to (1) providing necessary documentation to the clerk of court or sheriff and (2) filing appropriate motions with the trial court to obtain such services pursuant to the exemption or without prepayment. JAC shall not reimburse an attorney, either directly or indirectly through a due process vendor, for charges paid to the court, the sheriff or the clerk or court, in relation to services for which the attorney was statutorily exempt pursuant to s. 28.345, F.S., or the indigent client was entitled to receive without prepayment pursuant to s. 57.081, F.S.

### **Non-reimbursable Expenses**

The attorney shall not bill for any purchase of office equipment, electronic equipment, office supplies, legal materials, books, clothing except as provided herein, personal items, haircuts, manicures, dry cleaning, or other such personal services for the attorney, the client, or a due process vendor. The attorney shall not bill for the purchase of any

computer equipment including portable flash and hard drives and other portable devices such as MP3 players.

### **Clothing in Criminal Cases Involving Jury Trials**

Under limited circumstances in criminal cases involving jury trials, JAC may reimburse for clothing purchased for trial purposes. As a precondition to such purchases, the attorney will need to contact the defendant's family and the Public Defender (or other local entity) to inquire if clothing is available for the defendant. If not, the defense may seek clothing through a motion (with service on JAC). Any clothing purchased must be the most economical, while being appropriate for court. Also, once the case concludes, any clothing purchased with state funds must be turned over to the Public Defender (or other local entity) for potential use by other defendants.

## **D. Methods of Paying Due Process Services**

### **JAC Pays Due Process Vendor after Counsel Certifies**

Upon receiving a bill or invoice from the due process vendor, after completion of the service, the attorney must certify the bill or invoice. Both the attorney and the due process vendor must sign the applicable JAC Invoice. The billing process is completed through JAC's Online Billing Submission System. The attorney must have submitted the case opening documents before a due process vendor may be paid. JAC may then pay the due process vendor directly. Copies of court orders authorizing such costs must be provided with the intended billing except when no court order is required. The attorney may not certify the work is completed until the work has actually been completed. If all procedures are not followed, or appropriate documentation is not provided, the attorney remains personally liable to pay the due process vendor. **Any JAC Invoice received by JAC that certifies the work was done prior to completion of the work will be rejected.**

### **Counsel Pays and is Subsequently Reimbursed**

The attorney may pay the due process vendor directly and then seek reimbursement from JAC. After paying the bill or invoice, the attorney must submit the original bill or invoice with a completed applicable JAC Invoice. The vendor invoice must be sufficiently detailed to substantiate the request for reimbursement. The attorney must also provide proof of payment. Copies of court orders authorizing such costs must be provided with the billing except when no court order is required. The attorney is entitled to reimbursement only if all procedures have been followed and appropriate documentation has been provided to JAC. Absent express court approval, the attorney may not be reimbursed to the extent the costs exceed the rates or limitations established by law or court order.

### **Online Billing Submission System**

Due process billings must be submitted through the Online Billing Submission system on

[MyJAC](#). Due process vendors and attorneys may submit invoices to cases already open in the JAC system. (To open a new court-appointed case, an attorney shall use the Online Case Opening system in [MyJAC](#) to submit the order of appointment and required documentation. See also the [New Case Opening Instructions](#).) Prior to beginning an online invoice submission, the due process vendor must have the necessary documentation ready. During the billing process, the due process vendor will complete an electronic JAC Invoice. Supporting documentation including any vendor invoices must be scanned to electronic files. All files must be in PDF or TIFF format only. During the online billing process, the attorney or vendor will be prompted to upload these files. Please make sure the scans of all documents are legible.

Once the billing packet has been submitted, a confirmation message will appear and the attorney and due process vendor will receive a confirmation email. The attorney will log into [MyJAC](#) and review the billing and supporting documentation and then either approve or reject the billing. Attorneys are required to approve or reject due process vendor billings within 10 business days. To assist in submitting billings through this new system, additional instructions and tutorials are available on [MyJAC](#).

For more information, see the [JAC Due Process Vendor Billing Flowchart](#).

## E. Signing the JAC Invoice

When an attorney signs the JAC Invoice, the attorney is certifying the validity of the services listed on the JAC Invoice. Signing a JAC Invoice prepared by a due process vendor is much more than a ministerial task. The attorney signing the JAC Invoice is certifying that the services were satisfactorily performed and necessary for the representation. For transcripts, the attorney is further certifying the number of pages billed. If an attorney has any concerns regarding the accuracy of a billing, the attorney should resolve those concerns prior to signing the JAC Invoice. Pursuant to the Registry Contract, an attorney may be liable for overpayments made to a due process vendor when **the attorney knew, or should have known, that the JAC Invoice was inaccurate at the time the attorney executed it.**

## Section V – Counsel and Witness Travel

### A. General Practices and Procedures

#### Travel

All travel must be pursuant to Florida law, particularly the requirements of s. 112.061, F.S. Travel reimbursement is limited to witnesses or private court-appointed counsel for which reimbursement will be claimed on a uniform travel voucher as promulgated by the Department of Financial Services. Travel expenses are compensable to the extent authorized by law.

For more information, see the [JAC Guide to Reimbursement for Travel Expenses.](#)

### **Traveler's Requirements**

- Include a valid court order identifying the approved traveler with each travel request.
- Adhere to guidelines set forth in s. 112.061, F.S., Department of Financial Services Regulations, and the policies and procedures of the JAC.
- Review information regarding travel at <http://www.justiceadmin.org>.
- All travelers should maintain all original receipts (exception is where state standards for breakfast, lunch and dinner allowances apply).
- Bill only for authorized travel costs. Time spent making travel arrangements is considered clerical and is not reimbursable.

### **Court Order Required**

For private court-appointed counsel, indigent for costs and *pro se* defense cases, JAC requires a court order approving travel. This order must be obtained prior to the travel. No commitment of state funds for such travel pursuant to s. 112.061, F.S., will be made without a court order.

## **B. Travel Reimbursement**

### **Travel Voucher**

Any request for reimbursement of travel expenses, including mileage, must be submitted using the travel voucher form issued by the Florida Department of Financial Services. JAC will not accept or consider any request for travel expenses except through the DFS travel voucher. Failure to submit a properly completed travel voucher constitutes a waiver of any right to obtain travel expenses.

### **Mileage**

When authorized, mileage reimbursement will only be authorized for trips in excess of 50 miles one way. JAC does not accept 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 is posted on the JAC website.

Reimbursement for mileage is limited to actual mileage traveled using a personal vehicle. JAC reimburses for the actual mileage incurred during a trip. When a traveler travels on multiple cases, the total amount of mileage billed across those cases cannot exceed the actual distance traveled. A traveler cannot seek reimbursement for the same mileage traveled in more than one case. Mileage must be apportioned appropriately so that the traveler receives compensation for the actual mileage traveled using a personal vehicle.

Travel must be via a usually traveled route from point-of-origin to point-of destination. In state, city-to-city mileage calculations are available on the [FDOT Official Highway Mileage Viewer](#).

If an in-state travel destination is not included or available on this website, or if your travel is out-of- state, calculate your mileage using an internet map website that shows such mileage (i.e. [www.mapquest.com](http://www.mapquest.com)).

If an attorney is approved for a registry outside of the circuit in which the attorney's office is located, JAC reserves the right to object to mileage to travel to the circuit of the case. JAC may object to mileage in such circumstances absent a showing it was necessary for the attorney to be included on the registry because there were insufficient local attorneys available.

### **Reimbursement**

All original receipts are required. In most circumstances for court-appointed cases, when travel is necessary and court-ordered, the individual (i.e. the attorney, investigator, mitigation specialist, expert witness, etc.) should arrange the travel, pay for any related travel expenses, and upon completion of the travel, submit a billing and DFS travel voucher to JAC for processing of reimbursement payment.

All necessary and applicable JAC Invoices for travel reimbursement are available on the JAC website. Additionally, corresponding instructions for each form and a State of Florida Travel Tips guide are also available on the JAC website.

### **Hotels**

Hotel accommodations exceeding \$150 per night require written justification. JAC requires the attorney to include three (3) internet or travel agency quotes for prices of nearby hotels if billing for more than \$150 per night. The motion seeking authorization for travel expenses must indicate when a hotel rate will exceed \$150 per night. JAC is entitled to raise objections to the requested rate prior to an attorney or due process vendor paying a rate in excess of \$150 per night.

### **Competitive Carriers**

The attorney is responsible for researching flight, lodging, and/or rental car rates, to obtain the most economical method of travel for each trip. When competitive carriers do not exist, documentation indicating that the reserved carrier is the sole provider for the area must be provided.

## **C. Travel Prepayment**

### **Prepayment of Limited Travel Expenses**

In appropriate circumstances and at its discretion, JAC may prepay for travel expenses for ordinary witnesses. Prepayment is generally limited to purchase of airline tickets and hotel rooms. Travel expenses of attorneys and due process vendors is through reimbursement only. If JAC prepays for travel expenses for ordinary witnesses, any credit or refund as a result of changes to the reservation or for cancellation are due to the State of Florida and should be directed to JAC in the manner directed by JAC. The attorney is responsible for ensuring that any credit or refund is directed to JAC. For JAC to prepay travel, the attorney must supply JAC with all necessary documentation to arrange the travel and a DFS travel voucher signed by the traveler and the attorney as soon as feasible following the completion of any prepaid travel.

All necessary information required by JAC, such as the hotel and flight information, is required to be provided in writing and submitted by the attorney. Because airline policy requires third-party purchase of tickets at a minimum of five (5) days prior to the flight, JAC requires that all necessary information required to buy the ticket be provided in writing and submitted by the attorney at least ten (10) business days in advance of the flight.

**Any attorney who fails to complete timely the DFS travel voucher and supply all necessary documentation will be barred from having JAC prepay travel expenses including hotel or airline bills. All subsequent travel will need to be paid by the attorney and processed for reimbursement only after the travel has occurred.**

#### **Applicable Procedure for Any Travel Prepayment Request:**

- Obtain a valid court order authorizing travel and submit a copy to JAC. Research flight and lodging, as necessary (When competitive carriers do not exist, please provide documentation indicating that the reserved carrier is the sole provider for the area. Hotel accommodations exceeding \$150 per night require written justification. JAC requires the attorney to include three (3) internet or travel agency quotes for prices of nearby hotels if billing for more than \$150 per night.).
- When possible, request that each vendor hold the intended travel arrangements until JAC processes the travel request and formally reserves the arrangements by payment. (JAC requires at least 24 hours from receipt of all necessary information and documentation to provide payment).
- Promptly submit to JAC, by email, all intended reservations and at least two additional comparative rate quotes for each type of reservation (i.e., common air carriers, lodging facilities, car rental companies, etc.).
- Appropriately complete, execute, and submit the necessary and applicable JAC Invoice and forms for travel prepayment i.e. Travel Expense Request Form; Court-Appointed Attorney Program Travel Related Purchasing Request Form; Court-Appointed Counsel Authorization for Agent to Arrange Travel), as well as all necessary supporting documentation. All necessary and applicable JA Invoices and forms for travel prepayment are available on the JAC website.
- Upon satisfactory submission, JAC shall review for completeness and compliance with contractual and statutory requirement, whereby JAC will contact and process

payment to the designated vendor.

JAC realizes that some travel providers will not hold travel arrangements without prepayment or credit card. The attorney should not use a personal credit card to hold a reservation for which prepayment will be sought. Instead, the attorney needs to provide JAC with detailed information as expeditiously as possible. As time is an essential element, JAC cannot guarantee specific accommodations.

If, after a reservation has been acquired, an intended traveler does not travel, the attorney who requested the travel should provide JAC with an explanation for the cancellation including, but not limited to:

- The full name of the intended traveler and whether a subpoena was issued to this person.
- Facts related to the nonappearance (i.e. Did traveler fail to appear? Was traveler's testimony no longer required? Was there a sudden travel inability due to weather, illness, death, etc.?).

### **Notification of Changes to Travel Arrangements**

The attorney is required to notify JAC of any changes to prepaid travel arrangements as soon as feasible so that JAC can act expeditiously. For example, if a trial is continued, the attorney would need to notify JAC as soon as feasible. If the attorney fails to promptly notify JAC, the attorney is responsible for any resulting increases in travel expenses.

### **Upon Completion of Travel:**

- Once the travel is complete, the attorney must provide JAC with all receipts and supporting documentation as expeditiously as possible.
- JAC staff will assist the attorney in completing the travel voucher.

The travel voucher must be signed by the attorney and the traveler. The attorney is responsible for returning the signed/executed voucher back to the appropriate JAC staff.

## **Section VI – Miscellaneous Expenses**

### **A. General Practices and Procedures**

#### **Miscellaneous Expenses**

When authorized, miscellaneous expenses must be directly related to the representation of the client in the case for which the attorney is court-appointed. Expenses which are incidental to the attorney's business operations are not reimbursable. For example, "photocopies of JAC intended billings" are not permitted expenses.

Reimbursement for ordinary miscellaneous expenses is not authorized, except for mileage reimbursement as provided below. Thus, JAC will not pay for ordinary miscellaneous expenses including, but not limited to, postage, courier services, telephone calls, photocopying, and online research costs. Those costs are incorporated into attorney fees paid pursuant to Florida law and are not compensated separately from the applicable fee whether compensated on a flat fee or hourly basis. The attorney seeking any miscellaneous expense reimbursement must submit detailed logs for any such reimbursement (i.e. mileage, telephone calls, postage, courier service, photocopies, etc.).<sup>1</sup>

## **B. General Compensation**

### **Mileage**

Where authorized, mileage reimbursement will be at the established rate of \$0.445 per mile for travel after July 1, 2006. An attorney seeking reimbursement for mileage must submit a properly completed travel voucher issued by the Florida Department of Financial Services. JAC does not accept mileage logs instead of a DFS travel voucher. Any request for mileage must be supported by documentation. An attorney may only bill for mileage or other travel expenses when the destination is in excess of 50 miles (one-way) from the attorney's office. In-state, city-to-city mileage calculations can be found at the [FDOT Official Highway Mileage Viewer](#).

If an attorney is approved for a registry outside of the circuit in which the attorney's office is located, JAC reserves the right to object to mileage to travel to the circuit of the case. JAC may object to mileage in such circumstances absent a showing it was necessary for the attorney to be included on the registry because there were insufficient local attorneys available. Generally, the attorney will not be paid for mileage, travel time, or other travel expenses to travel to the circuit of a case because the attorney made a business decision to participate in that registry. Mileage may be appropriate where the attorney is traveling to a rural county where no or limited registry attorneys are available to accept court appointments.

If an in-state travel destination is not included or available on this website, or if the travel is out-of-state, mileage may be calculated using an internet map website (i.e. [www.mapquest.com](http://www.mapquest.com)). Alternative sources may only be used when there is no entry on the [FDOT Official Highway Mileage Viewer](#).

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<sup>1</sup> For cases with dates of appointment prior to July 1, 2007, in those circuits where the Indigent Services Committee has authorized reimbursement of various miscellaneous expenses without the need for prior court approval, JAC will pay up to the amount authorized. Otherwise, if the attorney is including any additional expenses, such as photocopies, postage, mileage and fax or telephone charges, the attorney must file a motion and obtain an order for those additional expenses before the expenses can be paid.

For more information, see the [JAC Guide to Reimbursement for Travel Expenses.](#)

### **Photocopies**

With prior court approval, bills or invoices for out-sourced photocopy services may be reimbursed for the reasonable amount of the bill or invoice as a due process services cost such as generating a single physical copy of discovery provided in electronic format. Copies made for administrative purposes are not reimbursable. Additionally, photocopies pertaining to the court-appointed case obtained from Clerks of the Courts' offices are free to private court-appointed counsel, and thus, are not reimbursable. , s. 28.345, F.S.

As set forth in the JAC Registry Contract, internal photocopying expenses are not reimbursable.

### **Legal Research**

On-line legal research constitutes an office expense and is not reimbursable. It is considered part of office overhead similar to subscriptions to legal periodicals.

### **Portable Flash and Hard Drives**

The Registry Contract requires that an attorney have access to portable drives or other storage media capable of receiving electronic discovery. In many circuits, the current practice is to provide documents and discovery in electronic formats particularly in complex cases involving substantial discovery. The types of hard drives an attorney should have access to will largely depend on the type of cases the attorney is accepting appointments. In particular, the attorney providing representation in complex cases such as RICO or capital death cases should possess one or more portable drives with substantial storage capacity.

### **Conference Rooms**

Generally, reimbursement for conference rooms is not permitted. In those circumstances where depositions or interviews are conducted outside the county, the attorney should check with the local court or public defender's office for that county, or other appropriate entity, for available free space. If no other free space is available, the attorney is required to obtain court approval prior to renting such space.

## **Section VII – Attorney Fees & Costs**

### **A. General Practices and Procedures**

## Attorney Fees & Costs Checklist

For attorney fees and costs to be paid, JAC must have received the following documents:

=> Order of Appointment. See § III-D

=> Charging Document. See § III-E

=> JAC Invoice. See § IV-A

=> Dispositional Document. See § VII-A

=> Itemized Hourly Statement (Hourly bills only). See § VII-D

=> Progress docket (Hourly bills only). See § II-D

\*For more information, see the [JAC Court-Appointed Attorney Billing Flowchart](#).

## Attorney Fees Online Billing Submission

JAC now only accepts attorney fee billings electronically. When a case has reached a billable point, the attorney shall submit the billing on [MyJAC](#). Prior to submitting the billing, the supporting documents will need to be scanned as electronic files. All files must be in PDF or TIFF format only. To submit a billing online, the case must have been previously opened. A case shall be opened through the Case Opening system in [MyJAC](#).

For more information, see the [Instructions for New Case Opening in MyJAC](#).

To submit a billing, search for the opened case and follow the steps on [MyJAC](#). During the billing process, the JAC Invoice will be generated and then electronically signed. All electronic document files submitted must be separate and unique (i.e. please do not scan the charging document with the dispositional document). Once the billing has been successfully submitted, a confirmation message will appear and a confirmation email will be sent which contains a unique tracking number that should be retained. Please **DO NOT** mail the billing packet to the JAC as a duplicate submission as this may delay payment.

You may have multiple invoice submissions for the same case, i.e. separate invoices for two or more years in a dependency case. However, multiple invoices for different case numbers should not be submitted together, except for submission of an hourly attorney fee bill where the defendant has multiple case numbers. Each invoice should be submitted separately.

For more information, see the [JAC Guide to Obtaining Attorney Fees](#).

## **Obligation**

An attorney billing for attorney fees and costs shall follow the requirements of Florida Law, the Registry Contract, and the JAC Policies and Procedures. Any forms and documents submitted to JAC should include the attorney's name and bar number.

An attorney shall be familiar with the statutory and contractual requirements for submission of billings to JAC. It is the attorney's responsibility to verify that all necessary documentation required for payment of a billing is submitted to JAC prior to or with the initial submission of a billing. The attorney is also responsible for verifying that the case has reached a billable stage and submitting the billing in an amount consistent with contractual and statutory requirements. Repeated failures to submit billings that comport with statutory and contractual requirements constitute good cause for JAC to terminate the Registry Contract.

## **JAC Invoice**

The JAC Invoice is essential for the satisfactory submission of any request for attorney fees and costs. The attorney must appropriately complete and submit the applicable JAC Invoice, as well as all necessary supporting documents. For attorney fee billings submitted through the Online Billing Submission system in [MyJAC](#), the JAC Invoice will be generated and electronically signed as part of the billing process. Additionally, corresponding instructions are also available [on the JAC website](#) and on [MyJAC](#).

## **Certification of Time**

If an attorney seeks to bill attorney fees on an hourly basis, the attorney shall itemize legal services (itemized in tenths of an hour increments) and certify the time. By completing the applicable JAC Invoice, the attorney is certifying under oath that the attorney has completed the work listed in the itemized statement. The JAC Invoice is the functional equivalent of a verified pleading and should be read and reviewed with the same degree of diligence as such a pleading.

For more information, see the [Hourly Billing Court-Appointed Attorney Checklist](#).

## **Certification of Costs**

If an attorney seeks reimbursement for costs (i.e. reimbursable expenses), such costs are required to be certified. By completing the applicable JAC Invoice, the attorney is certifying that the attorney actually expended the funds for which the attorney is seeking reimbursement. Reimbursable costs do not include office overhead expenses such as postage, courier services, internal or in-house copying, telephone charges including long distance and collect calls, and computerized research services such as Westlaw and Lexis/Nexis.

## **Disposition Documentation**

An attorney must submit appropriate court documents indicating the case has reached final disposition, a billable point for Chapter 39 cases, or the court has discharged the attorney from the case.

### **Appellate Disposition Documentation**

An attorney must supply a copy of the court's mandate except where billing is authorized prior to final disposition. The attorney shall also provide JAC with a copy of any appellate briefs filed by the attorney when seeking hourly compensation. For flat fee billings, the attorney shall provide the first, contents, and signature pages. The brief may be provided in either electronic or paper format.

### **Withdrawal / Limited Appointment Disposition Documentation**

If an attorney has not completed the case or the case has not reached final disposition prior to discharge, the attorney shall provide JAC a copy of the order discharging the attorney. However, if the order does not clearly reflect the reason for withdrawal, the motion must also be submitted to JAC. If the attorney is discharged due to the client's retention of privately retained counsel, then the order or the motion should reflect that this is the basis for discharge.

For those cases in which an attorney takes the case to final disposition, the attorney does not need to supply JAC with an order authorizing discharge. An order of discharge is only required where an attorney is discharged prior to the completion of the case.

### **Full Performance / Multiple Attorneys Appointed to Case**

The flat fee under the General Appropriations Act constitutes full compensation for all attorneys appointed to a case absent a finding the case is unusual and extraordinary. See, s. 27.5304(11)-(12), F.S. Except for capital cases with co-counsel, where multiple attorneys were appointed to a case, any bill received prior to final disposition will be held until the case reaches final disposition and all private court-appointed counsel have submitted their bills. If an attorney does not intend to seek compensation, the attorney may submit a fee waiver form in lieu of a billing. The fee waiver form is posted on the JAC website. JAC only pays the full flat fee administratively to a single attorney. If more than one attorney is seeking compensation on a case, then the court will need to apportion the flat fee between the attorneys.

JAC will not commence its review of any intended billing until all private court-appointed counsel have submitted their bills for that case regardless of whether one or more attorneys assert that the case is unusual and extraordinary. Once JAC issues its responses to the intended billings, the attorneys appointed to the case should schedule a single hearing for the court to determine how to apportion the flat fee among the attorneys.

When an attorney is permitted to withdraw from a case and another private attorney is appointed to represent a client, the attorney must indicate on the JAC Invoice that he or she was not the only appointed attorney on the case. Similarly, if an attorney is appointed to represent a client who was previously represented by another private court-appointed counsel, the attorney must indicate on the JAC Invoice that he or she was not the only appointed attorney on the case. If an attorney erroneously indicates he or she was the only appointed attorney on a case and JAC issues payment in error based upon that representation, then the attorney may be required to return the payment to JAC.

[A model Attorney Settlement Agreement for Splitting the Flat Fee](#) is available for use by court-appointed attorneys who wish to divide the flat fee among themselves. The settlement agreement permits JAC to administratively process payment without the need of a court hearing or court order. 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.

### **Motion to Withdraw Pleas (Criminal)**

The applicable flat fee for motions to withdraw plea will depend on when the motion is filed and who previously represented the indigent defendant. Motions to withdraw plea filed prior to sentencing or within 30 days of sentencing and thereby pursuant to Florida Rule of Criminal Procedure 3.170 are compensated as part of the underlying case. If the defendant was previously represented by the public defender or regional counsel or by privately retained counsel, then private court-appointed counsel would receive the full flat fee once the matter reached final disposition assuming the attorney takes the matter to final disposition. Under these circumstances, final disposition would be either the denial of the motion or the resolution of the case if the court grants the motion. In other words, if the court grants the motion, then the attorney would be responsible for providing representation until the defendant was convicted or acquitted or the case was otherwise resolved. If another appointed attorney takes over the case, then the applicable fee would need to be apportioned between all private court-appointed attorneys.

If the defendant was previously represented by private court-appointed counsel and the motion was filed before sentencing or within 30 days of sentencing, then the flat fee for the underlying case would be apportioned between all private court-appointed attorneys who provided representation in the matter.

If the motion is filed more than 30 days after sentencing and thereby under Florida Rule of Criminal Procedure 3.850 or 3.800 then the applicable flat fee is the fee for representation in criminal post-conviction matters.

For more information, see the [Guidelines: Bill Submitted for Motion to Withdraw Plea – Prior and Post Sentencing.](#)

## **Review and Response**

Upon submission of an intended billing for attorney fees and costs, JAC reviews the billing for completeness and compliance with contractual and statutory requirements. Upon review, depending on whether the intended billing was for payment of a flat fee, payment on an hourly basis, or payment in excess of the flat fee or statutory limitations, JAC will send the attorney an appropriate response including those set forth below.

### **Billing Audit Deficiency/Notice of Correction or Corrective Action**

When JAC receives an intended billing for attorney fees and costs which lacks the applicable forms, necessary documentation or requisite information, JAC may send an attorney a Billing Audit Deficiency. The Billing Audit Deficiency will indicate the reason JAC is unable to process the intended billing and will request that the attorney provide the necessary documentation or information for JAC to process the billing for payment.

JAC may, at its discretion, send a Billing Audit Deficiency in an effort to resolve a math error, a rate error, or any other error/issue pertaining to the intended billing. A Billing Audit Deficiency is not a Letter of Objection and cannot be relied upon as a basis to file a motion for fees, costs, or related expenses.

Alternatively, JAC may send a Notice of Correction or Corrective Action indicating the error in the billing and making the correction. In these instances, the billing will be processed for payment without the need for further action.

Responses to Billing Audit Deficiencies shall be submitted through JAC's Online Billing Submission system in [MyJAC](#).

If the attorney or a due process vendor fails to respond to a Billing Audit Deficiency or fails to provide necessary documentation within a reasonable period of time, then JAC may take appropriate action including, but not limited to, rejecting the bill for payment, issuing a Letter of Objection to payment, or paying the amount authorized under the established rates or applicable court order. If the Billing Audit Deficiency is not responded to within a year, then the billing is deemed abandoned without further notice.

### **Rejected Bills**

JAC will reject any intended billing for which it lacks statutory authority to pay for the type of representation that is being billed. JAC will also reject any intended billing that is duplicative of an intended billing previously received by JAC. JAC may also reject an intended billing for other reasons.

If an attorney files a motion for attorney fees and costs, JAC is entitled to notice and an opportunity to be heard. JAC's rejection of an intended billing does not constitute a waiver of JAC's right to a hearing on the matter. Until and unless JAC specifically indicates its

intent not to appear at a hearing or otherwise waives its right to a hearing, JAC is presumed to request a hearing on any matter relating to attorney fees, due process services, or related expenses when a bill is rejected.

### **Administrative Payment (Flat Fee Only)**

In accordance with s. 27.5304, F.S., JAC may administratively approve, without the need for a court order or hearing, payment of a flat fee billing for attorney fees and costs that meets statutory and contractual requirements. However, if upon review JAC determines that a flat fee billing for attorney fees and costs cannot be administratively approved for payment, JAC will send the attorney a Billing Audit Deficiency, a Letter of Objection, or a Letter of No Objection, or JAC will reject the bill.

Payment by JAC shall be made in accordance with ss. 215.422 and 287.0585, F.S., which govern time limits for payment. Time limits do not begin until an attorney has made a satisfactory submission, including the appropriately completed and executed applicable forms, as well as all necessary supporting documents, and when required, any motions and/or court orders associated with and/or directing payment.

### **Letter of Objection and No Objection**

When JAC objects to any portion of an intended billing for attorney fees and costs, JAC will send the attorney a Letter of Objection. The Letter of Objection will identify JAC's specific objection(s) and indicate JAC's corresponding reason(s) for the objection(s).

The receipt of JAC's Letter of Objection is a mandatory condition precedent to the filing of a motion for attorney fees and costs. Upon receipt of the Letter of Objection, the attorney may file a motion for attorney fees and costs with service upon JAC a minimum of twenty days prior to any hearing on the motion. Pursuant to s. 27.5304, F.S., and the Registry Contract, the attorney shall not file or set for hearing a motion for attorney fees and costs until JAC issues a Letter of Objection or a Letter of No Objection. Any motion for attorney fees and costs must specify whether JAC objects to any portion thereof or the sufficiency of documentation.

A motion for an order approving payment of attorney fees in excess of the limits prescribed in s. 27.5304, F.S., and the General Appropriations Act must include a copy of the intended billing; the supporting affidavits and all other necessary documentation that was supplied to JAC; and JAC's letter stating its objection(s). The motion must also specify the number of witnesses interviewed or deposed or both, describe the complexity of the factual and legal issues, and specify the length of trial. The attorney must serve a copy of the motion on JAC along with all attachments including JAC's Letter of Objection.

The filing of a motion for payment of attorney fees, due process services, or related expenses prior to receipt of JAC's Letter of Objection or No Objection constitutes a breach of the Registry Contract.

When an intended billing for attorney fees and costs is satisfactorily submitted, and JAC has no objection to any portion thereof, JAC will send the attorney a Letter of No Objection in those instances where JAC lacks authority to pay the billing administratively. Upon receipt of JAC's Letter of No Objection, the attorney may file a motion for attorney fees and costs. The attorney shall attach JAC's Letter of No Objection to the motion.

If the Letter of Objection or No Objection is not responded to within a year, then the billing is deemed abandoned without further notice.

For more information, see the [JAC Guide to Obtaining Attorney Fees](#).

### **Additional Information**

If an attorney, after having received an objection letter, wishes to provide additional information in an effort to remedy and/or satisfy the objections set forth in the JAC's Letter of Objection, the attorney may do so. In order to facilitate resolving objections prior to a hearing, JAC recommends that the attorney either:

- 1) Send JAC a written explanation regarding objected-to entries (noting acceptance or rejection of the objection or providing more detail, as applicable), through [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org);
- 2) Submit an amended hourly invoice addressing the noted objections through JAC's Online Billing Submission System in [MyJAC](#); or
- 3) Address JAC's objections in the Motion for Attorney's Fees served on JAC through [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).

Upon receipt of the information accepting, explaining, or rejecting the line item objection(s), JAC may issue an amended letter of objection reflecting any adjustments or address the matter in an email response to a motion. When responding to JAC's objections, the response should be clear. For example, if the attorney submits an amended hourly invoice, the attorney should bold the corrected entries. JAC's attorneys are only authorized to reply to written responses.

At its discretion, JAC may issue an amended letter based upon the additional information provided. If JAC issues an amended letter, the attorney is responsible for filing the letter with the court including where the attorney has previously filed the motion with the court.

Please know that any response to a letter of objection must be in writing. As a general rule, JAC Legal does not engage in oral discussions, negotiations or compromises that are not supported by a written explanation from the attorney.

### **Changes / Alterations**

If a due process vendor or attorney bills in excess of the rates established by law, JAC

reserves the right to correct the billing to the established rates and process the billing for payment at the corrected amount.

Similarly, JAC reserves the right to correct attorney flat fee billings to the correct flat fee if the attorney has billed in excess of the flat fee (unless the attorney is seeking extraordinary compensation pursuant to s. 27.5304(12), F.S.). Any billing submitted on a flat fee JAC Invoice is presumed to be a flat fee billing. When JAC corrects a billing, JAC will provide the attorney or due process vendor with a notice advising the attorney of the correction(s).

JAC can accept a request to reduce the amount of a billing through the Online Billing Submission system or by email. However, to increase the amount of a billing, the corrected JAC Invoice must be an original. When increasing the amount, a new corrected JAC Invoice must be submitted to JAC. This shall be done through the Online Billing Submission system in [MyJAC](#) by appending an amended JAC Invoice into the existing billing.

### **Child Demographic Information in Dependency/TPR Cases**

If the attorney is appointed to represent a parent or child in dependency or termination of parental rights proceedings potentially eligible for federal reimbursement to JAC pursuant to Title IV-E of the Social Security Act, the attorney shall provide any or all information necessary for JAC to seek Title IV-E reimbursement including, but not limited to, the name of the parent or child represented, the name and date of birth of each child who is a subject of the proceedings, and whether each child was in foster care during the pendency of the representation.

For more information, see [How to Submit a Dependency Bill with the Title IV-E Children Reporting Form in MyJAC](#) and [How to Approve a Due Process Bill and Complete a Title-IV E Children Reporting Form in MyJAC](#).

## **B. Legal Challenges**

### **Notice Requirement**

Unless JAC has expressly waived its right to a hearing, JAC must be served with a copy of a written motion and notice of hearing prior to a court entering an order regarding any motion for attorney fees, costs, or related expenses. An attorney shall not seek to obtain a court order prior to obtaining a response from JAC. A copy of the motion must be served prior to the date of the hearing on the motion. For hearings seeking attorney fees in excess of the flat fee, a minimum of **20 business days' notice** must be provided. For other hearings, a minimum of **10 business days' notice** must be provided.

To be considered served on JAC, an electronic copy of the pleading must be submitted by email to [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org). Pleadings sent to JAC staff's email, including JAC attorneys, will not be deemed served on JAC unless also submitted to

[pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).

JAC's failure to respond to any motion shall not constitute a waiver of JAC's right to be heard regarding the matter. Similarly, JAC's rejection of a bill does not constitute a waiver of its right to a hearing unless the notice of rejected voucher specifically indicates JAC does not wish to participate in a hearing on the matter. If an attorney obtains an order in violation of this notice requirement, the attorney agrees not to contest any motion to vacate filed by JAC.

### **Orders**

Any order directing JAC to pay attorney fees and costs must be served upon JAC no later than 72 hours after entry of the order. The attorney is responsible for ensuring JAC receives any such order in a timely and proper fashion. If the attorney does not provide an order to JAC in a timely and proper fashion, the attorney shall not contest any motion to vacate filed by JAC.

## **C. General Compensation**

### **Compensation Rates**

Private court-appointed counsel's compensation rates for attorney fees and costs are governed primarily by the General Appropriations Act, ss. 27.40 through 27.5305, 29.007, and 112.061, F.S. The applicable compensation rate will be determined by date of appointment. The rates set forth in the General Appropriations Act for the applicable year will apply.<sup>2</sup>

### **Exclusive List**

The categories in the General Appropriations Act are the only case types for which JAC has been appropriated funds for private court-appointed counsel. JAC has not been funded for any other case types and, therefore, lacks any statutory authority to process payment for such case types. In the event a court appoints private counsel to a matter for which JAC is not authorized to process payment for private court-appointed counsel, JAC cannot pay attorney fees and costs.

### **Flat Fee Presumed Full Compensation**

All cases are subject to the applicable flat fee under the General Appropriations Act. The flat fee is intended to be full compensation regardless of the number of attorneys assigned to case. In extraordinary and unusual cases, an attorney may seek compensation in excess of the flat fee pursuant to s. 27.5304(12), F.S.

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<sup>2</sup>For dates of appointment prior to July 1, 2007, the rates established by the local Indigent Services Committee remain in effect.

## **Flat Fee Rates under the General Appropriations Act**

The flat rates for appointments are set forth in the General Appropriations Act for each fiscal year. The state's fiscal year commences on July 1<sup>st</sup> and concludes on June 30<sup>th</sup>. The applicable flat fee is determined by the flat fee in effect on the date of appointment. [Attorney Flat Fee Charts by Appointment Date](#) are posted on JAC's website. Please note that the rate charts are divided by appointment date.

### **Applicable Flat Fee**

The applicable flat fee is determined by the highest offense charged in the information, indictment, or petition for delinquency during the pendency of an attorney's representation of the defendant. If a superseding information, indictment, or petition for delinquency increases the level of the charge, the applicable flat fee shall be at the rate for the higher charge. If a superseding information, indictment, or petition for delinquency reduces the charge, the applicable flat fee shall be at the rate for the original charge.

When the state attorney (or the Department of Children and Families in dependency cases) does not file an information, indictment, or petition, then the flat fee applicable to those situations applies.

## **D. Hourly Billing Practices**

### **Procedural Requirement**

An attorney seeking to bill hourly is required to file a motion for attorney fees and costs. The attorney is required to attach to the motion a copy of JAC's Letter of Objection or Letter of No Objection. Prior to filing a motion for fees and costs, the attorney must comply with the requirements of s. 27.5304, F.S., other provisions of Florida law, the Registry Contract, and these Policies and Procedures. A motion filed prior to JAC's response is legally premature as set forth above in Section II-A. Accordingly, JAC may seek to vacate any resulting order.

### **Contemporaneous and Supporting Billing Records**

As a necessary prerequisite to seeking compensation in excess of the flat fee, an attorney is statutorily and contractually obligated to: (1) maintain "appropriate documentation, including contemporaneous and detailed hourly accounting of time spent representing the client"; and (2) maintain "records and documents in a manner that enables the attorney to redact any information subject to a privilege in order to facilitate the commission's review of the records and documents and not to impede such review." See, Paragraphs X(18), and XII(1) and (4), JAC Registry Contract.

Please know that 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 must maintain supporting documentation that substantiates and verifies the time billed beyond simply maintaining contemporaneous timesheets. For more information, see the [Hourly Billing Court-Appointed Attorney Checklist](#).

### **Billing Must be in Tenths**

When billing hourly, the attorney shall submit an itemized billing in tenths of an hour increments as demonstrated in the chart below. JAC will round down for any submitted hourly billing that is not billed in tenths.

0.1	1-6 minutes
0.2	7-12 minutes
0.3	13-18 minutes
0.4	19-24 minutes
0.5	25-30 minutes
0.6	31-36 minutes
0.7	37-42 minutes
0.8	43-48 minutes
0.9	49-54 minutes
1.0	55-60 minutes

### **Total Time Billed**

The total time billed on a case cannot exceed the amount of actual time expended during that date for that case. For example, if the attorney reviewed three separate pleadings or emails in a day for a total of five minutes, then the attorney should bill .10 hours for the totality of that activity of reviewing all three pleadings or emails. The attorney should not individually bill .10 hours three separate times for review of each separate pleading or email.

Similarly, the time billed across court-appointed cases cannot exceed the actual amount of time worked. For example, if the attorney worked for an hour on three court-appointed cases, the total amount of time billed for those three cases could not exceed the one hour actually worked. As discussed below, the time must be apportioned even if the attorney bills some of the cases flat and some hourly.

### **Single Entries by Date**

When submitting a detailed hourly statement, attorneys are required to provide a single entry for in-court time and a single entry for out-of-court time by date. When attorneys provide multiple services on the same date, they would provide the amount of time worked on each service in the description of the services. For example:

DATE	TYPE	TIME	DESCRIPTION OF SERVICES
1/5/20	Out-of-Court	3.0	Reviewed discovery, 300 pages (1.6), Called ASA to discuss plea offer (.4), Met with Client (1.0)
1/8/20	In-Court	1.2	Conference with client before hearing (.4), Attend plea hearing (.8)
1/8/20	Out-of-Court	.8	Received text from client and responded (.2), Reviewed mental health assessment, 20 pages (.6)

Attorneys are required to bill the actual amount of time spent on each date rounded to the nearest tenth of an hour. Attorneys are limited to billing the actual time worked in a day, rather than numerous entries for each task performed over the course of a day. Sufficient detail is still be required to support in-court and out-of-court entries.

### **Block Billing and “On or About” Language Prohibited**

A billing may not contain entries in which an attorney bills for services across multiple dates in a single entry or multiple services billed as one block of time. When multiple tasks for one date are billed in a single entry, the time for each service must be listed individually in the description of the services. Each billing entry must indicate the precise date that the service was rendered and cannot contain any language suggesting ambiguity regarding the date the activity was performed. Pursuant to s. 27.40(7)(b), F.S., an attorney is required to maintain a contemporaneous and detailed hourly accounting of time spent on a court-appointed case supported by detailed records.

A billing containing block billing entries or “on or about” type language may result in JAC finding that the attorney has failed to maintain a contemporaneous and detailed hourly accounting of time spent on a court-appointed case as required by s. 27.5304, F.S., and the Registry Contract

### **Page Amounts**

Any time an attorney bills for the reviewing of documents, including case law, the attorney must indicate a reasonable estimate of the number of pages reviewed. The attorney shall bill the actual time spent reviewing the documents. As a general rule, JAC anticipates that an attorney will spend no more than 2 minutes per page (30 pages an hour) reviewing documents. This allotment includes time for outlining and taking appropriate notes. If at any time the attorney believes that more than 2 minutes per page was warranted, the attorney should provide a brief explanation (i.e., handwritten police report). Subsequent review of documents should take significantly less time.

The 2 minute per page threshold is a benchmark. An attorney is not entitled to bill more than actual time spent reviewing documents.

### **Requirements for Hourly Statements**

Florida law requires that the attorney maintain appropriate documentation, including a

contemporaneous and detailed hourly accounting of time spent providing representation. The attorney must maintain records with sufficient detail to enable JAC to determine the activities performed by the attorney and assess the reasonableness thereof. Generic descriptions are insufficient (i.e. “trial preparation – 8.0 hours”). Documented case activity must be descriptive and include identifying details. The attorney must specifically identify on the billing the following information:

- Names of persons deposed/interviewed;
- Names of pleadings;
- Types of motions;
- Discovery documents reviewed;
- Number of pages reviewed;
- Type of hearing and hearing’s purpose if appropriate; and
- Description of legal issue researched and caselaw reviewed.

For other activities, the attorney shall provide enough detail for a meaningful audit.

### Examples of Acceptable/Unacceptable Hourly Descriptions

<b>Civil/Dependency/TPR</b>	
<b>Acceptable</b>	<b>Unacceptable</b>
Attended shelter hearing	Attended hearing
Attended trial/adjudicatory	Attended court
Attended dependency disposition	Dependency hearing
Attended Case Plan Conference	Meeting
Attended Judicial Review	Conference with attorney
Telephone call from client	Telephone call
Reviewed letter from DCF [4 pgs.]	Reviewed letter
Examined client’s psychological evaluation [22 pgs.]	File Review
Drafted visitation motion	Drafted motion
Reviewed deposition of J. Smith [25 pgs.] for adjudicatory hearing	Reviewed deposition
Attended deposition of J. Doe	Attended deposition
Prepared letter to DCF	Prepared letter
Trial prep-prepare opening – 1.0 hr, review depositions [32 pgs.] - .5 hr. /, prepare questions for cross-exams of S. Jones and B. Hunter 1.5 hr.	Trial Prep
Reviewed case worker’s notes and police report [20 pgs.]	Reviewed discovery
Reviewed depositions for cross-examination [124 pgs.]	Prepared for hearing

Researched child hearsay issue [reviewed 6 cases totaling 75 pages]	Legal Research
Reviewed report for Jud. Rev. [20 pgs.]	Reviewed Judicial Review
Prepared witness/exhibit list	Prepared pleading
Reviewed fax from father's attorney [2 pgs.]	Reviewed fax
Drafted memo of law on paternity Issue [15 page memo citing 8 cases]	Drafted memo to file
<b>Criminal</b>	
<b>Acceptable</b>	<b>Unacceptable</b>
Attended hearing on motion to Suppress; to Continue; in limine	Attended hearing
Review depositions of Halm and Brown-.5 hr. / 50 pgs.; police reports 2.0 hr. /75 pgs.	Receive and Review discovery
Draft Motion to suppress/motion to continue	Draft Motion/pleading
Research issue on abandonment/ hearsay exception/prior testimony	Research
Interview witness - .4 hr. /review witness statements – 50 pgs. - 1.2 hr.	Investigation
Telephone call to/from client/conf. with State Attorney	Telephone call
Reviewed letter from State Attorney [2 pgs.]	Reviewed letter
Read depositions 100 pgs. - 3.2 hr. /witness statements 50 pgs. - 1.1 hr.	File Review
Drafted letter to Expert/Client	Drafted Letter
Reviewed deposition of J. Smith for suppression hearing 65 pgs.	Reviewed deposition
Attended deposition of J. Doe	Attended deposition
Prepared questions/reviewed witness statement	Prepared for deposition
Drafted memo of law on probable cause	Draft memo to file
Trial prep – prepare opening 1.0 hr.; prepare proposed voir dire questions .5 hrs.; prepare questions for John Doe 1.5 hrs.; review jury questions -.8 hr.; examine exhibits 25 docs - 2.1 hr.	Trial Prep

The above examples are illustrative and not intended to be a complete list. The examples are minimum descriptions. The attorney is encouraged to provide greater detail. When

multiple services are reported on one line, time for each service should be listed individually.

### **Billing for Multiple Services in a Single Day**

When multiple services in a single day are reported in one entry, time for each service must be listed individually in the description of the services. The time for each service should be listed individually in order for JAC to ascertain the reasonableness of the entries.

### **Billing In-Court Time**

When billing for in-court time, an attorney shall only bill for time providing services related to the merits of the case, such as time spent in hearing before the court, reviewing case-related documents, or client or witness interviews. The attorney shall not bill wait time in excess of 30 minutes (0.5 hours). If the attorney anticipates that the hearing will potentially involve a substantial amount of wait time exceeding 30 minutes (0.5 hours), the attorney is responsible for bringing work on the case or another case so that the time can be used in a productive manner. The billing entry shall state the amount of wait time and time spent providing services related to the merits of the case.

For services rendered on or after July 1, 2018, the attorney shall provide a detailed explanation for any request in excess of one hour for routine hearings including, but not limited to, calendar calls, status conferences, pretrial conferences, and judicial reviews in Ch. 39, F.S., cases. For services rendered on or after July 1, 2018, the attorney waives the right to seek any compensation in excess of one hour if the attorney fails to provide a detailed explanation for routine hearings in the billing submitted to JAC.

In-court time includes any services rendered while at court. This includes hearing time, wait time, and time spent in conferences with the client, the prosecutor, or others before and after the hearing while at the courthouse. Essentially, when an attorney is at the courthouse for a hearing, any time spent associated with that hearing is considered part of in-court time. Out-of-court time includes any time that does not qualify as in-court time.

For example, if an attorney meets with a client at the courthouse prior to a hearing, that time is considered part of the in-court time. On the other hand, if the attorney calls the client after returning to the attorney's office, this would be considered out-of-court time. The restriction on billing more than an hour for in-court time for routine hearings covers all in-court time including but not limited to pre or post hearing conferences with the client or others while at the courthouse, wait time, and actual hearing time.

### **Non-Billable Items**

Non-billable items include, but are not limited to, the following:

1. Services performed by:

- a. support staff;
  - b. paralegals;
  - c. law clerks; and
  - d. secretaries.
2. Time related to or in furtherance of billing, or time related to defending a disputed bill.
  3. Time spent reviewing invoices of due process vendors.
  4. Time spent preparing motions for attorney fees and costs, due process services, and/or related expenses and time spent in hearings on said motions.
  5. Time spent on activities not reasonably related to the merits of the underlying case including time spent preparing and reviewing routine pleadings and documents such as notices of hearings and depositions, notices of unavailability, subpoenas, and returns of service; calendaring hearings and setting depositions; and providing instructions to staff.
  6. Time spent on office or administrative functions including secretarial and administrative work performed by any person, including the appointed attorney.
  7. Time spent defending against a Bar complaint, 3.850 motion, or other grievance filed by the client.
  8. Time spent on any other activity not reasonably related to the defense of the case.
  9. Time spent on correspondence with JAC and conversations with JAC staff.

### **Apportionment of Time between Cases**

When an attorney performs activities attributable to more than one case, the time must be apportioned between all the cases even if some of the cases are billed on an hourly basis and other cases are billed flat. If the attorney provides services related to more than one case, the attorney shall apportion the time spent among all the cases to which the services related regardless of how the cases are billed. If the attorney is in court on multiple cases, the time spent shall be apportioned among all the cases regardless of the manner in which the cases are billed. The attorney shall not bill all the time to a single case on an hourly basis and then seek flat fee compensation on the other cases.

If there is a hearing or other proceeding that can be attributed to more than one case, then the attorney shall divide the time spent between those cases in such a manner that the total amount of time divided among the cases is the actual time spent in the hearing or other proceeding. The attorney seeking to bill hourly may not charge more than the actual time spent on a matter. For example, the attorney may not bill two hours for a one hour hearing simply because the defendant has two cases being heard at the same time (a/k/a stacked-billing or double-billing).

### **Requirement to Track Hours Billed Across Multiple Cases**

An attorney shall not bill for more than 10 hours on a single date or more than 50 hours in a calendar week for a single case or in the aggregate across multiple cases without providing an explanation justifying those hours. The attorney is solely responsible for

tracking the number of hours worked across all cases billed through JAC. When the attorney is billing for more than 10 hours in a day or more than 50 hours in a calendar week, the attorney needs to identify all of the cases implicated in each billing as well as provide a short explanation for the number of hours worked. The explanation must include the total number of hours billed or to be billed across all cases and an explanation of the particularized need to work these additional hours. If the attorney is billing the hours on a single case, then a brief explanation (such as “in trial”) will be sufficient. However, if the attorney is billing the hours across multiple cases, the explanation should also provide the case information for the other cases involved as well as a more detailed explanation.

Because the Registry Contract requires that attorneys only bill “actual time” worked on the case and administrative tasks are not billable, JAC does not anticipate that an attorney should accrue more than ten billable hours on a single date or more than fifty billable hours in a calendar week, absent extraordinary circumstances justifying those hours. JAC acknowledges that there may be instances where such extra work is necessary, such as immediately before or during a complex trial or evidentiary hearing. However, JAC does not anticipate that an attorney should regularly bill more than ten billable hours on a single date or more than fifty billable hours in a calendar week on a regular basis.

### **Hourly Billing for Same Defendant with Multiple Cases**

For criminal cases in which the defendant has multiple related cases, and the attorney is seeking to bill hourly, the attorney shall submit a single hourly billing covering the cases utilizing the JAC multi-case attachment to the JAC Invoice. The attorney shall not seek to bill one or more of the cases on a flat fee basis while seeking hourly compensation as to other cases appointed to the same defendant. The attorney must either bill all cases on a flat fee basis or submit a single intended billing for all cases seeking unusual and extraordinary compensation.

If the attorney previously received flat fee payment(s) as to one or more of the cases, the attorney must offset that amount against the amount later sought on an hourly basis. For example, if the defendant entered a plea to several of the cases early in the process and the attorney was paid the applicable flat fees for those cases, the attorney would need to deduct those payments from a later hourly billing submitted in relation to that defendant.

### **Interim Hourly Billing in Criminal Cases**

If an attorney seeks to interim bill on a criminal case, the attorney must comply with the requirements of s. 27.5304, F.S., the Registry Contract and these Policies and Procedures prior to filing a motion for attorney fees. In particular, the attorney must submit an intended billing and await JAC’s response thereto prior to filing a motion for attorney fees with the court. In criminal cases, an attorney should submit an interim billing if the attorney has accrued more than \$25,000 on a particular case, unless the attorney believes the case will reach final disposition within six months.

Interim billing applies only for criminal cases billed hourly. Interim billing does not apply to any case billed on a flat fee basis or civil cases. The attorney may submit an interim

bill for attorney fees after completing substantial work on a case where the attorney does not anticipate the case will reach final disposition within six months. The attorney may bill the full amount of reimbursable costs that the attorney has incurred. The decision whether to allow interim billing is at the discretion of the trial court.

When interim billing is authorized, 80% of the attorney fees will be paid with the balance of 20% being carried forward to the final disposition of the case. The order to pay should include the following language:

The total amount of attorney fees approved by the court is \$\_\_\_\_\_; this is an interim bill and counsel is entitled to 80% at this time for payment in the amount of \$\_\_\_\_\_ plus costs of \$\_\_\_\_\_; and the remaining 20% in the amount of \$\_\_\_\_\_ shall be carried forward until the final billing in the case.

When JAC receives an interim billing, JAC may issue an objection letter objecting to interim billing. The attorney will have the burden to establish to the court a basis to allow interim billing notwithstanding the statutory requirement that an attorney wait until final disposition before receiving compensation on a court-appointed case.

At the conclusion of the case, the attorney shall submit the online Attorney Residual Voucher Form in [MyJAC](#) to receive payment of the carried forward amount. The attorney shall provide the order showing the case has reached final disposition as part of the billing packet, as well as the carry forward amount as reflected in the attorney fee order(s) previously entered by the court.

### **In-Circuit/Out-of-Circuit Travel Hourly Billing**

For cases with dates of appointment prior to July 1, 2007, an attorney seeking to bill hourly may not bill for time spent traveling on a case unless the local Indigent Services Committee has expressly provided that the attorney may bill for travel time. An Indigent Services Committee's general authorization for travel expenses is not considered authorization for time spent traveling.

For cases with dates of appointment on or after July 1, 2007, JAC may object to travel time billed by an attorney.

### **Maintenance and Inspection of Billing-Related Records**

Pursuant to s. 27.40(7)(b), F.S., and the Registry Contract, the attorney is required to keep detailed supporting records to enable JAC to verify all costs, expenses, and time expended in representation of court-appointed clients. The records shall include supporting documentation necessary to adequately evaluate and substantiate payments made to the attorney. The attorney shall maintain appropriate documentation, including the original contemporaneous and detailed hourly accounting of time spent representing the client. If the attorney fails to maintain such contemporaneous and detailed hourly records supported by detailed supporting records, the attorney waives the right to seek

compensation in excess of the flat fee established in s.27.5304, F.S., and the General Appropriations Act.

Contemporaneous and detailed records include information, notes, and other documents which were created at the time the services were and support the amount of time billed for those services. The billing statements provided to JAC must be derived from underlying detailed supporting records such as timesheets, calendar entries, logs, notes, and other records that support the hours or amount billed for the services performed. When preparing the statements submitted to JAC, an attorney must rely upon records generated at the time the services were performed to determine the time and amount billed. Appropriate record keeping is an essential part of any professional practice.

Supporting records may include the following:

- Timesheets;
- Calendar entries;
- Notation logs;
- Jail logs related to client visitation or witness interviews;
- Research notes from legal materials reviewed;
- Factual notes from discovery or other materials reviewed;
- Printouts of case law, statutes, or other legal materials researched;
- Reports, bills, or history printout from legal research listing materials reviewed;
- Letters, emails, or other correspondences received or sent;
- Notes from conversations, telephone conferences, conference calls, or meetings;
- Notes from hearings, depositions, or other events;
- Notes from client or witness interviews;
- Motions, responses, memoranda, or other documents you created;
- Questions or other notes prepared for hearings, depositions, mediations, or other proceedings;
- Electronic documents you created;
- Recordings, voicemails, or other audio/video reviewed; and
- Any other records that support the time billed.

The records must be organized in such a fashion that supports the detailed hourly accounting of time spent working on a court-appointed case so that, upon request, JAC can inspect those records to verify the time spent. Please know that, standing alone, timesheets and calendar entries are not sufficient to substantiate an hourly statement.

Upon JAC's issuance of a notice of inspection of records and documents as to a particular case or cases, the attorney must deliver to JAC copies of any and all original contemporaneous billing records related to that case or cases within a reasonable period of time. This time period shall not exceed 30 days unless an extension is granted by JAC in writing. The attorney's failure to provide the contemporaneous billing records within a reasonable period of time shall be deemed a refusal to allow JAC to inspect the contemporaneous billing records. It is imperative that these records be provided to JAC

in an organized fashion so that JAC can easily ascertain which billing entry is supported by each record. **Providing JAC with the entire case file is not responsive to a Notice of Inspection of Contemporaneous Records.**

Upon inspection by JAC, an attorney may redact these materials to protect the client's interest. However, s. 27.40(7)(b)1., F.S., and the Registry Contract require that enough of the materials be left unredacted so as to allow JAC to substantiate the corresponding entries in the timesheets. For example, providing pictures of banker's boxes, unsupported generalized calendar entries, unorganized case pleadings and documents, and completely redacted documents do not facilitate JAC's ability to substantiate an hourly statement. To facilitate JACs review, the records must be indexed and annotated such that they clearly can be associated and reconciled with any time entries supported by those records.

The attorney must retain and make available for inspection and audit at the attorney's place of business, upon reasonable notice, all supporting records, books, statements, ledgers and other financial records relating to services in court-appointed cases for a period of five (5) years from the date of each payment, or until all Federal or State audits that may relate to each payment are complete for the applicable fiscal year, whichever is later, unless ordered sealed by the Court. For purposes of this inspection, 14 days' notice shall be deemed reasonable notice. The failure to allow JAC to inspect such records upon reasonable notice shall be deemed a refusal to allow JAC to inspect those records as to any unpaid case that was pending as of the date of the inspection.

If the attorney fails, refuses, or declines to permit JAC to review documentation for a case, the attorney waives the right to seek, and JAC shall not process for payment, compensation in excess of the flat fee established in s. 27.5304, F.S., and the General Appropriations Act for that case.

JAC retains the authority to inspect an attorney's contemporaneous detailed supporting records even after JAC has made payment. Upon conducting a post-payment review within five (5) years of payment, if JAC determines the attorney has failed to maintain contemporaneous detailed records supporting payments, the attorney shall be liable for repaying JAC any amounts that cannot be substantiated notwithstanding any court order approving payment of attorney fees. If the attorney fails to maintain contemporaneous detailed records supporting payments pursuant to s. 27.5304, F.S., the attorney shall repay JAC any amounts paid in excess of the flat fee notwithstanding any court order approving payment of attorney fees. Any payment for attorney fees, costs, or related expenses not supported by contemporaneous detailed records is subject to full recovery by JAC. The method of recovery is at the discretion of JAC and may include, but not be limited to, offsets against future payments, direct reimbursement of overpayment to JAC by the attorney, or any other remedies available to a creditor by law.

Upon receipt of notice of inspection, audit, or any other form of review from JAC or other state or federal entity including but not limited to, the Auditor General or the Office of Fiscal Integrity, the attorney has a legal duty to preserve all records and information

potentially relevant. Any questions the attorney may have as to the relevance of particular records should be resolved in favor of preservation and retention. The attorney must take every reasonable step to preserve all potentially relevant records until further notice. The attorney shall discontinue any and all data destruction or server backup recycling policies that may be employed on electronic data.

## **E. Compensation in Excess of Flat Fees or Statutory Limitations**

### **Unusual and Extraordinary Cases**

On rare occasions, an attorney may be appointed to a case that requires extraordinary and unusual effort. To obtain compensation in excess of the flat fee or statutory limitations, the attorney must comply with all requirements of s. 27.5304(12), F.S. The chief judge or designee must render a written order finding that the case is unusual and extraordinary under that section.

### **Contemporaneous Records**

To seek compensation in excess of the flat fee or statutory limitations, the attorney must maintain appropriate documentation, including a contemporaneous and detailed accounting for the time spent on the case and detailed supporting records that substantiate the accounting of time spent. The attorney must record with sufficient detail all the activity performed during the same general period of time as the performance of those activities. Failure to keep such an accounting and supporting records shall constitute the attorney's waiver of the opportunity to seek hourly compensation in excess of the flat fee or statutory limitation. See, s. 27.40(7)(b), F.S. These records and documentation are subject to review by JAC, subject to the attorney-client privilege and work product privilege.

### **Procedural Compliance**

Prior to filing a motion for compensation in excess of the flat fee or statutory limitations, the attorney must submit the appropriately completed and executed JAC Invoice for attorney fees and costs, as well as all other necessary supporting documents, including supporting affidavits by [MyJAC](#).

The attorney shall provide detailed descriptions for each activity listed, including but not limited to, the increment of time associated with the rendered activity, the identification of documents and materials, the number of pages, and the names of deponents and witnesses interviewed, as applicable. Failure to provide such records shall constitute the attorney's waiver of the opportunity to seek compensation in excess of the flat fee or statutory limitations.

If the attorney seeks compensation in excess of the flat fee or statutory limitations, the attorney shall identify the factual and legal issues, in a separate explanatory statement submitted with the JAC Invoice, which establish the extraordinary and unusual efforts

provided by the attorney and make the case eligible for compensation above the flat fee pursuant s. 27.5304(12), F.S. This statement shall include, but not be limited to, the number of witnesses, the number of days of trial, and the complexity of the factual and legal issues presented to the court. This statement is subject to the Attorney Certification included on the JAC Invoice and executed by the attorney.

A motion for an order approving payment of attorney fees in excess of the limits prescribed in s. 27.5304, F.S., and the General Appropriations Act must include a copy of the intended billing; the supporting affidavits and all other necessary documentation that was supplied to JAC; and JAC's letter stating its objection(s). The motion must also specify the number of witnesses interviewed or deposed or both, describe the complexity of the factual and legal issues, and specify the length of trial.

### **Supporting Documentation**

The attorney must provide JAC with any and all documentation that the attorney intends to provide to the court in support of a motion for compensation in excess of the flat fee or statutory limitations. The attorney shall also provide a written report from any expert that the attorney intends to use as a witness at the evidentiary hearing on the motion. All documentation must be included with the JAC Invoice. Failure to provide JAC with any such documentation or written report shall be deemed as a waiver of the right to present any such documentation or expert at the evidentiary hearing on the motion.

### **Evidentiary Hearing Required**

Section 27.5304(12), F.S., requires any motion for compensation in excess of the flat fee or statutory cap to be filed with the chief judge. Under s. 27.5304(12), F.S., the chief judge or designee must hold an evidentiary hearing and must make specific factual findings based upon the evidentiary hearing in order to find the case unusual and extraordinary. An attorney seeking additional compensation must prove by competent and substantial evidence that the case required extraordinary and unusual efforts. The chief judge or designee shall consider criteria such as the number of witnesses, the complexity of the factual and legal issues, and the length of trial. The fact that a trial was conducted in a case does not, by itself, constitute competent substantial evidence of an extraordinary and unusual effort. In a criminal case, relief under this section may not be granted if the number of work hours does not exceed 75 or the number of the state's witnesses deposed does not exceed 20.

### **JAC's Objections Presumed Correct**

Pursuant to ss. 27.40 and 27.5304, F.S., JAC's objections are presumed to be correct. To overrule JAC's objections, the court must find in writing that competent substantial evidence exists to overcome the presumption. The attorney is responsible for providing sufficient evidence to rebut the presumption of correctness. If the attorney fails to provide sufficient evidence to rebut the presumption, the court is required to sustain JAC's objections.

## Calculation of Compensation in Excess of Flat Fee or Statutory Limitations

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 unusual and extraordinary effort required. The percentage shall be only the rate necessary to ensure that the fees paid are not confiscatory. 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, the judge shall order the amount of compensation using an hourly rate not to exceed \$75 per hour for a non-capital case and \$100 per hour for a capital case. A capital case is any offense for which the potential sentence is death, the state has filed a notice listing the aggravating factors, and the state has not waived seeking the death penalty and the appointed attorney is on the capital death registry or is otherwise death-qualified. Compensation calculated by using the hourly rate shall be only that amount necessary to ensure that the total fees paid are not confiscatory.

## Section VIII – Timely Billing and Procedural Requirements

### Timely Submission

The attorney (or due process vendors billing JAC directly) shall submit an intended billing for all attorney fees, due process services, and other related expenses **within 90 days after final disposition of the case**. Failure to submit a properly completed intended billing within 90 days will result in a mandatory contractual penalty on any attorney fees, due process services, and other related expenses. See, s. 27.5304(4), F.S.

An intended billing will not be considered satisfactorily submitted with JAC until all applicable forms and necessary documentation required under the registry and due process contracts, and JAC's Policies and Procedures have been appropriately completed and submitted.

The statute of limitations to initiate an action seeking payment of attorney fees, due process services, or related expenses commences once the case reaches final disposition.

### Timely Submission with an Appeal Anticipated

Filing of an appeal does not stay the time for submitting an intended billing relating to representation at the trial court level, even if the attorney is appointed to represent the client on appeal.

For example, if a case reaches final disposition at the trial level, but is appealed, the

attorney must submit for attorney fees, due process services, and other related expenses pertaining to representation at the lower court level within 90 days after final disposition of the case at trial level.

### **Timely Submission for Appellate Cases**

An attorney for appellate cases may submit for attorney fees, due process services, and other related expenses pertaining to representation at the appellate level at the filing of an appellate brief (including, but not limited to, a reply brief), and/or when the opinion of the appellate court is finalized through issuance of the appellate mandate. For purposes of the penalty, the date of final disposition is the date of the issue of the appellate mandate.

### **Timely Submission for Dependency Cases**

A dependency case does not reach final disposition until the Court dismisses the petition as to a party or terminates protective supervision (with or without retaining jurisdiction) or the Court enters an order terminating the parent's rights.

### **Unique Invoice Number**

Attorneys and due process vendors are required to use a unique invoice number for each billing. This makes it easier to identify billings in the Florida Accounting Information Resource (FLAIR) system and reduce Department of Financial Services (DFS) inquiries regarding possible duplicate payments because billings from the same attorney or due process vendor share an invoice number.

### **Hourly Compensation Final for Billing Interval**

When an attorney seeks interim billing on a case for which interim billing is authorized, once payment has been made by JAC and accepted by the attorney, the attorney cannot seek to bill additional time for work done prior to the last date of service in the hourly billing. Acceptance of payment by JAC constitutes a final resolution of the amount payable under principles of accord and satisfaction.

Similarly, when a due process vendor submits an hourly billing to JAC, once payment has been made by JAC and accepted by the due process vendor, the due process vendor cannot seek to bill for additional time for work done prior to the last date of service in the hourly billing. Acceptance of payment by JAC constitutes a final resolution of the amount payable under principles of accord and satisfaction.

### **Exceptions to Requirement for Final Disposition (Criminal Only)**

Under limited circumstances, an attorney may submit a billing for attorney fees, due process services, and other related expenses prior to final disposition. The attorney may submit intended billings in criminal cases prior to final disposition where the defendant

has failed to appear, has been declared incompetent to stand trial, or has entered a pre-trial diversion program.

Where applicable, the attorney may submit a billing 180 days after the failure to appear occurred if the defendant has not been rearrested. By accepting payment, the attorney agrees to complete the case for no additional compensation should the client later reappear.

Where applicable, the attorney may submit a billing 180 days after the finding of incompetency if the defendant remains incompetent. By accepting payment, the attorney agrees to complete the case for no additional compensation should the client later become competent to proceed.

Where applicable, the attorney may submit a billing 180 days after the defendant's placement in a pre-trial diversion program if the defendant remains in the program or has completed pre-trial diversion, and the state attorney has not filed a voluntary dismissal or *nolle prosequere*. By accepting payment, the attorney agrees to complete the case for no additional compensation should the client later fail to complete the program and go back before the court.

Additionally, upon the state attorney's filing of a notice of voluntary dismissal or *nolle prosequere*, the attorney may submit a billing for attorney fees, due process services, and other related expenses.

If the attorney submits an intended billing prior to expiration of the 180 days, the intended billing will be placed on hold pending the passage of 180 days. If the situation continues to persist, then JAC will process the billing for payment. If the case reaches final disposition prior to that date, the attorney may amend the billing to include the final disposition.

### **Exceptions to Requirement for Final Disposition (Dependency Only)**

An attorney may only submit a billing for attorney fees, due process services, and other related expenses upon conclusion of the designated events set forth in s. 27.5304(6), F.S. The attorney may submit a billing upon entry of an order of disposition, or the date of first judicial review or other billable point in the second year and each calendar year thereafter, as long as the dependency proceedings are still ongoing.

### **Submission of Documents**

Unless an original is required or requested by JAC, documents such as motions or court orders should be submitted through email to: [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).

Responses to Audit Deficiencies shall be submitted through Online Billing Submission systems available on [MyJAC](#).

Forms or documents requiring an original signature such as JAC Invoices, invoices, and travel reimbursement forms, may not be faxed or emailed. Accordingly, such documents must be submitted through the Case Opening or Online Billing Submission systems available on [MyJAC](#).

### **Penalty for Untimely Billing**

In accordance with s. 27.5304, F.S., for any intended billing for attorney fees, due process services, and related expenses that does not occur within 90 days after final disposition, or that is not satisfactorily submitted within 90 days after final disposition, the allowable fees, costs and expenses shall be reduced by fifteen percent (15%). The fifteen percent (15%) reduction is a penalty for failing to submit in a timely fashion. As required by s. 27.5304(4), F.S., JAC will enforce the penalty by reducing the amount payable by fifteen percent (15%).

For cases that reach final disposition on or after July 1, 2010, for any intended billing for attorney fees, due process services, and related expenses that is not submitted or is not satisfactorily submitted on or within a year after final disposition, the allowable fees, costs and expenses shall be reduced by fifty percent (50%). The fifty percent (50%) reduction is a penalty for failing to submit in a timely fashion. As required by s. 27.5304(4), F.S., JAC will enforce the penalty by reducing the amount payable by fifty percent (50%).

For cases that reach final disposition on or after July 1, 2010, for any intended billing for attorney fees, due process services, and related expenses that is not submitted or is not satisfactorily submitted on or within two years after final disposition, the allowable fees, costs and expenses shall be reduced by seventy-five percent (75%). The seventy-five percent (75%) reduction is a penalty for failing to submit in a timely fashion. As required by s. 27.5304(4), F.S., JAC will enforce the penalty by reducing the amount payable by seventy-five percent (75%).

In the event a due process vendor's bill is subject to a penalty, the attorney may be legally responsible for reimbursing the due process vendor in the event the failure to timely submit the intended billing was the fault of the attorney.

### **Legibility & Intelligibility**

Any documentation submitted to JAC must be legible and intelligible. JAC cannot accept handwritten timesheets. Any documentation submitted to JAC which is illegible or unintelligible will be rejected and will not be considered satisfactorily submitted with JAC. When providing electronic documents, please provide black and white copies because color scans may not be legible when converted to black and white. Electronic documents should be scanned in black and white, with a resolution no greater than 300 DPI.

### **Sufficient Postage**

Proper postage for letters and other packages sent to the Justice Administrative

Commission (JAC) is the responsibility of the sender. JAC will not accept delivery of letters and other packages with insufficient postage or postage due.

Careful attention has to be paid to the size and dimensions of the package to insure proper postage is applied. Information regarding the US Postal Service's postage requirements and postage rate structure may be found on their website: <http://www.usps.gov>. Once again, it is each sender's responsibility to ensure proper postage is applied to letters and other packages being sent to JAC. Information describing the additional shape-based method for calculating proper postage is available on the website of the [US Postal Service](#).

### **Late Fees/Interest/Cancellation Fees**

The attorney shall reimburse JAC for any due process services, such as an interest charge, loss of prompt payment discount, or other cost or expense incurred by JAC due to delay in payment of a due process service bill or invoice attributable to the attorney's error, omission, or untimely submission. JAC has no responsibility for and will not pay for any cancellation fees or loss of business charges. The attorney shall attempt to resolve any dispute between the attorney and a due process vendor without JAC intervention.

### **Bar Disciplinary Action/Finding of Ineffective Assistance of Counsel**

An attorney shall be a member in good standing of The Florida Bar and meet at least the minimum experience and continuing education requirements as established pursuant to s. 27.40, F.S. The attorney shall notify JAC and the Chief Judge of each circuit in which the attorney participates in a court-appointed registry of any disciplinary action against the attorney where probable cause has been found within 30 days of the finding. The attorney shall notify JAC and the Chief Judge of all appointed cases in which there is a judicial finding that the attorney provided ineffective assistance of counsel within 30 days of the finding.

When notifying JAC, the attorney should provide proof that the attorney has already notified the appropriate Chief Judge(s). Failure to report a disciplinary action may result in adverse action by JAC. As part of JAC's contracting process, JAC Contract staff verifies the status of attorneys through the Florida Bar's website.

## **Section IX – Necessary and Applicable Forms**

### **Online Case Opening**

Attorney shall open new court appointments through the Case Opening system in [MyJAC](#). See the [Instructions for New Case Opening in MyJAC](#) for additional information.

### **Online Billing Submission**

Attorney and due process vendors shall submit billings through the Online Billing Submission systems available on [MyJAC](#).

### **Guidelines and Tips for Submitting Files on [MyJAC](#)**

- JavaScript should be enabled in your web browser.
- Disable pop-up blockers in your web browser for invoice billing submission.
- Prepare all invoice billing packet document files for invoice billing submission. Billing packet documents must be either PDF or TIFF file format. For Apple/Mac users, TIFF format is preferable.
- Total size for invoice billing submission packets must be less than 20 MB for all electronic files combined.
- When submitting documents online, please submit them as separate files, i.e., the travel voucher document should be submitted separately from the charging document. Do not create separate files for each page of the document. Please submit each document file in the appropriately named upload field textbox, or payment may be delayed.
- All documents submitted online should be legible and scanned right side up. Each page should consist of a full-sized single page of the original document. Documents should be scanned in black and white, with a resolution no greater than 300 DPI.
- For online billings, save your Invoice Billing Submission Tracking Number for future reference. This will allow you to amend or add to an electronic billing submission or submit a response to a Billing Audit Deficiency through the online billing system.
- Once documents are submitted online, please do not mail, fax, or email paper backups or courtesy copies to JAC. This will help avoid duplication, confusion, and delay in payment.
- Please retain original signed copies of all documentation for your records.

### **Attorney Fees & Costs**

All necessary and applicable JAC Invoices for attorney fees and costs are available on the JAC website. Corresponding instructions for each form are also available on the JAC website.

### **Direct Pay of Due Process Services**

All necessary and applicable JAC Invoices for direct pay of due process services are available on the JAC website. Corresponding instructions for each form are also available on the JAC website.

### **Counsel Reimbursement of Due Process Services**

All necessary and applicable JAC Invoices for reimbursement of due process services are available on the JAC website. Corresponding instructions for each form are also available on the JAC website.

## **Travel Prepayment / Reimbursement**

All necessary and applicable JAC Invoices and forms for travel prepayment or reimbursement are available on the JAC website. Corresponding instructions for each form and a State of Florida Travel Tips guide are also available on the JAC website.

## **Witness Reimbursement**

All necessary and applicable JAC Invoices for witness payment are available on the JAC website. Corresponding instructions for each form are also available on the JAC website.

## **Section X - Confidentiality and Public Records**

### **Public Records**

Forms, bills, invoices, documents, correspondence and contracts submitted to JAC are public records. In limited circumstances, the court can order records to be kept confidential and under seal at JAC.

In considering any issue of access to government records, it must be recognized that in Florida reports generated by a public agency are public records subject to disclosure, unless specifically made confidential or exempt by the Legislature.[1] Any exemptions to the Florida Public Records Law are to be narrowly construed.[2] Where a public record contains information that is exempt or confidential, that portion of the record which falls within the exemption may be redacted, while the remainder of the record must be produced for examination.

Fla. Att'y Gen. Op. 2001-54. The procedures for seeking sealing of court pleadings are available at Florida Rule of Judicial Administration 2.420. Absent an order in conformance with the rule, any documents provided to JAC will be subject to public records requests.

As a contractor with a state agency, some of the records possessed by attorneys and due process vendors may constitute public records pursuant to Ch. 119, F.S. The failure to comply with a public records request could result in legal action by the requesting party. Under Florida law, the failure to comply with a public records request may result in an award of attorney fees and costs. Attorneys and due process vendors should be aware of this possibility. Attorneys should be familiar with Kight v. Dugger, 574 So. 2d 1066 (Fla. 1990), which concluded that files held in furtherance of representation of an indigent client are not public records. Due process vendors should contact the attorney who retained the vendor's services if the vendor receives a public records request. JAC is not liable for any attorney fees or costs arising from a public records lawsuit involving an attorney or vendor.

### **Confidential Information Should be Redacted**

JAC does not require confidential information in order to process billings. To assist with auditing, JAC has been given the statutory authority to inspect court dockets under Ch. 39, F.S., and the authority to inspect and copy records under Ch. 985, F.S. Accordingly, the attorney does not have to reveal confidential information when submitting an invoice and supporting documentation to JAC. The case number and name of the person represented by the attorney are usually enough to allow JAC to set the case up in the JAC database and process payment of the submittal. With parental notice of abortion cases, the name of the person represented should be redacted. The attorney should redact any confidential information from documents submitted to JAC. However, documents must not be redacted to the point where the document is meaningless.

### **Attorney Personal Information**

Florida law protects certain personal information for some positions and individuals who fill those positions or who are related to individuals who fill those such positions. If you claim that a confidential or public records exemption applies to your personal information in JAC's custody, you must submit a completed [JAC Attorney/Vendor Public Records Exemption Form](#).

## Part II – Indigent for Costs Policies and Procedures

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### General Principles

Please also refer to the Justice Administrative Commission Policies and Procedures for Private Court-Appointed Counsel. Principles not stated in this chapter but referenced in the Policies and Procedures for Private Court-Appointed Counsel apply except as provided here.

### Indigent for Costs – Privately Retained Attorney Checklist

JAC cannot pay due process costs for cases in which the attorney is privately retained until the attorney executes the current fiscal year's IFC Contract using [MyJAC](#). The Fiscal Year runs from July 1<sup>st</sup> through June 30<sup>th</sup> of the following year.

IFC Contract

The Attorney must submit the required documents through [MyJAC](#) for the IFC motion to be considered served on JAC. These documents must be provided to JAC prior to any hearing on the Motion to Declare the Defendant Indigent for Costs. (See, s. 27.52(5), F.S.)

- A written Motion to Declare the Defendant Indigent for Costs – no oral motions.
- A complete and executed Clerk's Application for Indigency.
- Affidavit Attesting to Attorney's Fees – specifying the amount of attorney fees, how much has been paid, and the source(s) of the fees.
- A Charging Document.

After reviewing the motion, and supporting documents, JAC will respond to the attorney by email. JAC's response must be submitted to the court along with the other required documents. The Court must consider JAC's response when ruling on the Motion to Declare the Defendant Indigent for Costs. After the Court rules on the motion, the attorney must upload the following through [MyJAC](#) to the Case Details page.

Order Declaring the Defendant Indigent for Costs

Once JAC has received the signed Order Declaring the Defendant Indigent for Costs and the IFC Contract has been approved, the case will be available for the attorney to submit motions for due process services by [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).

Also, invoices for payment of due process services or attorney reimbursement must be submitted by [MyJAC](#).

- Submit a JAC Invoice through [MyJAC](#).
- Upload the Order authorizing the specific due process services using [MyJAC](#).
- Upload Proof of payment using [MyJAC](#) (when seeking attorney reimbursement for due process services paid on behalf of the defendant).

**Please note:**

- All indigent for costs pleadings and supporting documents must be submitted through [MyJAC](#), effective April 4, 2022.
- Requests for specific due process services should be made by separate motion for services. For example, Motion to Appoint Investigator. It is not necessary, nor appropriate, to submit an Amended Motion to Declare the Defendant Indigent for Costs when requesting court authorization for specific due process services.

## Section I – Case Opening Documents

### A. Having a Client Declared Indigent for Costs

#### Required Documents

As required by s. 27.52(5), Fla. Stat., the attorney must submit the following documents:

- A written Motion to Declare the Defendant Indigent for Costs;
- A completed Clerk's Application for Indigency;
- A completed Affidavit Attesting to the Attorney Fees; and
- The Charging Document

The attorney must execute the IFC Contract using [MyJAC](#).

The last required document is the signed IFC Order. Once JAC receives all required documents, the attorney may submit motions for due process services by [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org). Also, invoices for due process payments can be submitted through *My JAC*.

#### Service on JAC Required by s. 27.52(5), F.S.

Pursuant to s. 27.52(5)(b), the attorney must serve a copy of the required documents on JAC prior to the trial court considering the motion. The attorney must submit the IFC Motion and required supporting documents through [MyJAC](#) for the IFC motion to be considered served on JAC. After the Court rules on the motion, the attorney must upload through [MyJAC](#) the IFC Order.

Service of subsequent motion to incur costs after the defendant is found indigent for costs is through JAC's dedicated email address at [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org). JAC has standing to participate in any hearing on the motion and is authorized to appear telephonically at any hearing on the motion. JAC may seek to vacate any order declaring a client indigent for costs if JAC does not receive and review the required documents prior to the court granting the motion. If JAC requests a hearing on the motion, JAC must receive a minimum of 10 business days' notice of any hearing on a motion. An order declaring a defendant indigent for costs without notice to JAC is unenforceable upon JAC.

#### Factors the Court will consider in Determining Indigency for Costs

Under s. 27.52(5), F.S., the court is required to consider several factors in assessing whether a defendant is indigent for costs. Two common factors of concerns are as follows:

- Estimated Attorney Fees and the source of those fees.
  - Fees greater than \$5,000 in non-capital case or greater than \$25,000 in a capital death case creates presumption of non-indigency. To overcome this presumption, the defense has the burden to show through clear and convincing evidence that the attorney fees are reasonable

based on the nature and complexity of the case and the defendant's take home income is not relevant.

- Defendant's take home income
  - If greater than 200 percent of the federal poverty guidelines, this income level creates presumption of non-indigency.

### **Court Order Required**

In order for JAC to pay any due process services, the court must enter a written order finding the client indigent for costs. If the attorney is representing a defendant on more than one case, the order finding the defendant indigent for costs must reference all cases for which the defense is seeking due process services.

### **Due Process Costs must be specified in Subsequent Motions and Orders**

A signed Court order granting a motion to declare the defendant indigent for costs that does not have specific due process costs listed, only allows a court reporter to appear at depositions without further order from the court. Requests for specific due process services should be made by separate motion for services. For example, a motion to appoint investigator. It is not necessary, nor appropriate, to submit an amended motion to declare the defendant indigent for costs when requesting court authorization for specific due process services.

### **Consistent Case Number**

The case number that appears on the original motion to declare a person indigent for costs provided by the attorney must be used identically on all further submissions by the attorney for that case.

### **Not Retroactive**

An order finding a defendant indigent for costs only applies to future due process costs. JAC will not pay due process services incurred or attorney reimbursement for costs incurred prior to the effective date of the order. In extraordinary circumstances, the date of indigency for costs may relate back to the date the attorney filed the written motion to find the defendant indigent for costs. The indigent for costs order will need to indicate, by a nunc pro tunc date, the effective date of the finding (such as the date of the filing of the motion). However, JAC is not liable for any costs incurred prior to the date the attorney initially sought to have the defendant declared indigent for costs.

## **B. Case Opening Documents**

### **Required Documents**

Prior to having a defendant declared indigent for costs, counsel must serve a copy of the written motion along with the supporting documents upon JAC through [MyJAC](#) prior to the court declaring the client indigent for costs. The following documents must be uploaded to [MyJAC](#):

1. The Motion to Declare the Defendant Indigent for Costs;

2. The Clerk's Application for Indigency;
3. The Affidavit Attesting to Attorney Fees; and
4. A Charging Document

Once the court declares a defendant indigent for costs, privately retained counsel must upload the Order Declaring the Defendant Indigent for Costs through [MyJAC](#) in order for JAC to pay any due process services.

Once an IFC Order is entered, future motions and orders should be motions and orders authorizing specific costs for transcripts, investigators, or expert witnesses. Those motions and orders shall continue to be submitted through [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org) until further notice. For more detailed instructions, see [\*\*How to Open an IFC Case and Serve JAC with IFC Motions and Supporting Documents through MyJAC.\*\*](#)

### **Timely Submission**

The attorney must submit the required case opening documents ***within 30 days of the date the client is declared indigent for costs.*** Until these documents are submitted, JAC will not process any invoice for payment.

### [\*\*Submission of Documents\*\*](#)

### [\*\*Responsibility\*\*](#)

### [\*\*Case Numbering Consistency\*\*](#)

### **Case Closure and Accounting**

The attorney must provide JAC with notice after a case is completed, the attorney has withdrawn, or a client is no longer indigent to enable JAC to close the case in its database.

Pursuant to s. 27.52(5), F.S., a defendant found indigent for costs is required to repay the state for defense costs upon conviction (including adjudication withheld). If a criminal defendant is convicted or adjudication is withheld, the attorney is responsible for providing an accounting to the trial court of any defense costs expended through the state on behalf of the defendant. The accounting must detail any due process costs or related expenses paid **or to be paid through JAC** (or other state entities) so that those costs can be imposed as a lien against the defendant.

In criminal cases, the attorney is responsible for providing an accounting to the court of all costs paid or to be paid within 90 days after disposition of the case notwithstanding any appeals. The court is responsible for entering an order establishing the amount the defendant needs to repay. Repayment of such costs will be through the clerk of court. If the attorney fails to provide a complete accounting such that costs are omitted from the lien, then JAC is not authorized to pay or

reimburse any such costs that remain unpaid.

Upon application, JAC will certify the amount of invoices paid through JAC and the amount of invoices received by JAC that have not been processed for payment. [The Application for Certification of Costs](#) is posted on the JAC website.

The certificate will only address billings that JAC has received as of the date of application which have been paid or remain pending. It will not include any billings rejected for payment. It is the attorney's responsibility to ensure that all billings paid or to be paid through JAC are included in the accounting submitted to the Court.

A copy of the accounting filed with the trial court must be served on JAC. [Model accounting and lien motion and order](#) are available on the JAC website.

Once a criminal case reaches final disposition with a conviction, JAC may decline payment of any further due process services on that case until JAC receives a copy of an accounting including the cost for which payment or reimbursement is sought. If the accounting is filed more than 90 days after final disposition, a copy of the order imposing the costs as a lien against the defendant must also be provided.

### **Pro Bono Attorneys Representing Children with Special Needs in Dependency Cases**

Pro bono attorneys seeking due process costs for a dependent child with certain special needs pursuant to s. 39.01305, F.S., must file a written motion seeking to have the child declared partially indigent for due process costs pursuant to s. 39.01305, F.S. The motion needs to indicate that the attorney is providing services on a pro bono basis and the specific special need(s) under s. 39.01305(5), F.S. The motion must be served on JAC ten days prior to any hearing on the motion. The order declaring the child partially indigent for due process costs must find that the child meets one or more of the criteria specified in s. 39.01305, F.S., and that the attorney is willing to provide services on a pro bono basis. Pro bono representation of a dependent child with certain special needs continues in effect until the attorney is allowed to withdraw, is discharged by the court, the case is dismissed, or protective supervision is terminated. If the attorney arranges for supplemental or separate counsel to represent the client in appellate proceedings, this arrangement shall be implemented through the requirements of this subparagraph. Except when consent of a natural guardian or other appropriate person is obtained as authorized by s. 744.301, F.S., or other provision of Florida law, the attorney shall not initiate a civil, administrative, or appellate action on behalf of the child without Court authorization. A finding of indigency for costs will not continue to apply if a new attorney is court-appointed for compensation pursuant to s. 39.0105, F.S. However, if the new attorney undertakes representation on a pro bono basis, then the finding of indigency will continue to apply and no new finding is necessary.

### **C. Contract**

## **IFC Contract**

As directed by ss. 27.52 (5)(d) and 29.007, F.S., an attorney whose clients are declared indigent for costs is required to execute the Agreement for Due Process Services for Persons Who Are Indigent for Costs (IFC contract). No invoices will be paid on a case until an IFC contract executed by the attorney has been received by JAC.

JAC has replaced the 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. The term of the IFC Contract runs with the state fiscal year (July 1<sup>st</sup> through June 30<sup>th</sup>) and terminates on June 30<sup>th</sup> of each year. Once an attorney executes the IFC contract, the attorney will not need to execute any further agreements during the term of the IFC contract. The IFC contract 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 services for indigents through JAC. The IFC contract will remain in place for existing and new cases found indigent for costs through the term of the IFC contract (even after the term of the IFC contract expires) unless the attorney executes a superseding IFC contract. Once an attorney executes the new annual IFC contract, it will supersede any prior IFC contracts executed by the attorney. This will allow the attorney to function under a single contract covering all of his or her indigent for costs clients including those clients found indigent for costs prior to the execution of the new IFC contract.

## **Electronic Completion/Submission of Contracts**

JAC no longer posts an executable copy of the IFC contract on the JAC public website. Instead, executable IFC contracts will only be available through [MyJAC](#). Attorneys who have not already set up an account must do so before they can execute the IFC contract. Information on [how to set up an account](#) is available on the JAC website.

Once the attorney has logged onto [MyJAC](#), the attorney will click on the link for the IFC contract. The attorney will be directed to the webpage where the attorney can verify the information for the contract. If information needs to be updated, the attorney may do so at that time. Once the attorney has verified the information, the attorney will be able to generate a preview of the contract. Once the review is complete, the attorney may electronically sign the contract and submit it to JAC through [MyJAC](#). The attorney will receive an email confirmation that the contract has been submitted. Under Florida law, an electronic signature is deemed equivalent to a physical signature. The attorney rather than an assistant must be the person who electronically signs the contract.

Alternatively, the attorney may print and execute the contract by signing it in blue ink and then mailing a single copy to JAC. Once JAC has completed its review and executed the contract, a copy will be emailed to you for your records.

## **[Substitute Form W-9](#)**

[Electronic Communications](#)

D. Charging Documents

[Criminal Cases](#)

[Juvenile Delinquency Cases](#)

[Violation of Probation \(VOP\) or Violation of Community Control \(VOCC\)](#)

[Post-Conviction Proceedings](#)

[Dependency Cases / Termination of Parental Rights Cases \(TPR\)](#)

[General Civil Cases](#)

[Appeals](#)

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[Methods of Paying Due Process Services](#)

[Invoice/Voucher Cover](#)

[Certification of Due Process Services Costs](#)

[Original Invoice](#)

[Prompt Review of Invoices](#)

[Billing Audit Deficiency/Notice of Correction or Corrective Action](#)

[Rejected Bills](#)

[Letter of Objection](#)

[Changes / Alterations](#)

[Prohibited Practices](#)

## **Appointment of Co-Counsel**

Pursuant to s. 27.52(5), F.S., a finding that a defendant is indigent for costs is not a basis for a court to appoint co-counsel to assist the defense where the defendant is already represented by privately retained and paid counsel.

## **B. Service and Notice**

### **Standing of JAC**

### **Notice**

### **Contents of Motion Seeking Authorization for Due Process Services**

## **C. General Compensation**

### **Rates and Vendors for Due Process Services**

### **Minimum Billing Amount for Experts, Investigators, and Mitigation Specialists**

### **Investigators**

### **Service of Process**

### **Mitigation Specialists**

### **Forensic Sentencing Expert for a Defendant Subject to a Sentence of Life Who Was a Juvenile at the Time of Offense**

### **Detailed Invoices/Hourly Statements**

### **Diligent Efforts**

### **Out-of-State Due Process Vendors Transcripts**

### **Appearance Fees**

### **Certificates of Non-Appearance**

### **Interpreters**

### **Prepayment/Retainers**

### **Budget for Capital Cases**

### **Deposition of State Attorney's Expert**

[Travel Time for Due Process Vendors](#)

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[Non-reimbursable Expenses](#)

[D. Methods of Paying Due Process Service Costs](#)

[JAC Pays Due Process Vendor after Counsel Certifies](#)

[Counsel Pays and is Subsequently Reimbursed](#)

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[Timely Submission with an Appeal Anticipated](#)

[Timely Submission for Appellate Cases](#)

[Timely Submission for Dependency Cases](#)

[Unique Invoice Number](#)

[Hourly Compensation Final for Billing Interval](#)

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[Direct Pay of Due Process services](#)

[Counsel Reimbursement of Due Process services](#)

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**Section V – Confidentiality and Public Records**

[Public Records](#)

[Confidential Information Should Be Redacted](#)

**Section VI – Witness Travel**

**A. General Practices and Procedures**

[Travel](#)

[Traveler’s Requirements](#)

**Privately Retained Counsel**

In cases where the attorney is privately retained, JAC does not pay for the attorney’s travel expenses unless the attorney is representing the client *pro bono*.

[Court Order Required](#)

**B. Travel Reimbursement**

[Travel Voucher](#)

[Mileage](#)

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**C. Travel Prepayment**

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**Part 3 – Capital Collateral Policies and Procedures**

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**General Principles**

Please also refer to the Justice Administrative Commission Policies and Procedures for Private Court-Appointed Counsel. Principles not stated in this chapter but referenced in the Policies and Procedures for Private Court-Appointed Counsel apply except as provided here.

## Checklists

### [Attorney Fees & Costs Checklist](#)

#### Miscellaneous and Investigative Expenses

For miscellaneous and investigative expenses to be paid, JAC must have received the following documents:

- ⇒ Order of Appointment. See § I-D
- ⇒ Order Affirming Sentence of Death See § I-C
- ⇒ Invoice/Voucher Cover. See § III-A
- ⇒ Order authorizing specific costs is generally required. See § III-C

## Section I – Appointments/Opening a Case

### A. General Practices and Procedures

#### Appointment

JAC has no authority to pay for cases that the attorney has not been properly appointed to as Capital Collateral Registry private counsel.

#### Registry

The court shall appoint private counsel from the Capital Collateral Registry maintained by JAC pursuant to ss. 27.710 and 27.711, F.S. Information regarding fee and due process payments and a link to the [JAC Capital Collateral Registry Attorney Contract](#) (capital collateral contract) can be found on the JAC website.

#### Contractual Contract for Services

Pursuant to ss. 27.710 and 27.711, F.S., private counsel appointed by the court on behalf of a person entitled to court-appointed representation in a post-conviction capital collateral case shall enter into a contract for services (capital collateral contract)

with JAC.

JAC's Contract for Attorney Services for Private Capital Collateral Counsel (capital collateral contract) is case specific and will remain in effect until the case reaches final resolution or the attorney is discharged.

Upon appointment to a capital collateral case, the attorney must submit the Order of Appointment to JAC through email to [contracts@justiceadmin.org](mailto:contracts@justiceadmin.org). The email should clearly indicate that this is for a Capital Collateral appointment.

Information and a [review copy](#) of the capital collateral contract can be found on the JAC website.

Upon receipt of an Order of Appointment, JAC's Contract Section will email the attorney an executable copy of the capital collateral contract the attorney may print and execute the capital collateral contract by signing it in blue ink and then mailing a single copy to JAC. Once JAC has completed its review and executed the capital collateral contract, a copy will be emailed to the attorney for the attorney's records.

### **[Substitute Form W-9](#)**

### **[Electronic Communications](#)**

### **[Electronic Funds Transfer \(E.F.T.\)](#)**

### **[Death of Counsel](#)**

### **[Counsel Separates from Law Firm](#)**

### **[Counsel Becomes Magistrate or Judge](#)**

### **[Discharge for Malfeasance or Suspension](#)**

## **B. Definition of "Case"**

### **Generally**

In general, a "case" is each matter assigned a case number by the Clerk of the Court to an inmate under a sentence of death.

## **C. Case Opening Documents**

### **Mandatory Documentation**

Upon appointment, the attorney must open the case in JAC's system. The attorney shall use the Case Opening system on [MyJAC](#) (JAC's secure website) in order to provide JAC with the following required case opening documents:

- (1) order of appointment; and
- (2) Florida Supreme Court opinion affirming the sentence of death.

For more information, see the [New Case Opening Instructions](#).

## [Submission of Documents](#)

### [Responsibility](#)

### [Case Numbering Consistency](#)

#### D. Order of Appointment

### [General Requirements](#)

#### **Billable Stage Documents**

In order to demonstrate that a case has reached a billable stage or stages as set forth in s. 27.711(4), F.S., the attorney needs to submit documentation such as the motion for post-conviction relief, the final order granting or denying such motion, or the Supreme Court brief.

## Section II – Attorney Fees & Costs

### A. General Practices and Procedures

#### [Attorney Fees Online Billing Submission](#)

#### [Obligation](#)

#### [Invoice/Voucher Cover](#)

#### [Certification of Time](#)

#### [Certification of Costs](#)

#### [Disposition Documentation](#)

#### **Billable Point Documentation**

The attorney must supply a copy of the document(s) showing that the case has reached a billable point, except where billing is authorized prior to final disposition. The attorney shall also provide JAC with a copy of the Motion for Post-conviction Relief and any appellate briefs or petitions filed by the attorney. The briefs and petitions may be provided in either electronic or paper format; however electronic submission through email is preferred.

#### [Withdrawal / Limited Appointment Disposition Documentation](#)

#### **Designation of a Second Attorney**

Under s. 27.711, F.S., the attorney may designate a single attorney to assist the

attorney. If the attorney designates an attorney, the attorney must submit a written designation indicating the designated attorney and certifying that he or she meets the qualifications of s. 27.710, F.S. A designation form is available on the JAC website. The designated attorney will not enter into a contract with JAC. Instead, his or her services would fall under the attorney's capital collateral contract. The attorney must submit a single billing incorporating both of the attorneys' services. This billing must clearly indicate which attorney provided the services either through (1) separate hourly statements or (2) a single hourly statement with each entry indicating who provided that service through initials or other designation.

### [Review and Response](#)

### [Billing Audit Deficiency/Notice of Correction or Corrective Action](#)

### [Rejected Bills](#)

### [Letter of Objection](#)

### [Letter of No Objection](#)

### [Additional Information](#)

### [Changes / Alterations](#)

## B. Legal Challenges

### [Notice Requirement](#)

### [Orders](#)

## C. General Compensation

### **Compensation Rates**

The attorney's compensation rates for attorney fees and costs are governed by s. 27.711(4) through (7), F.S.

## D. Hourly Billing Practices

### [Procedural Requirement](#)

### **Hourly Billing Records**

If the attorney intends to seek hourly compensation on a case, the attorney must maintain contemporaneous records for the time spent on the case. **Failure to keep such records constitutes a waiver of the opportunity to seek extraordinary compensation on a case.** JAC has no authority to pay extraordinary compensation unless the attorney has kept and maintained contemporaneous records.

## Billing must be in Tenths

## Total Time Billed

## Single Entries by Date

## Block Billing and “On or About” Language Prohibited

## Page Amounts Requirements for Hourly Statements

## Billing for Multiple Services in a Single Day

## Non-Billable Items

## Apportionment of Time between Cases

## Requirement to Track Hours Billed Across Multiple Cases

### **Hourly Billing**

The JAC Capital Collateral Attorney Fee Invoice/Voucher Cover allows for billing for only one stage as set forth in s. 27.711. If the attorney intends to submit billing for multiple stages, attorney must submit separate Invoice/Voucher Covers and hourly invoices for each stage billed.

Generally, the attorney should only seek to bill after the case has reached a billable stage as set forth in s. 27.711, F.S. Those billable stages are:

1. \$2,500 from appointment to filing notice of appearance.
2. \$20,000 through filing motion for post-conviction relief.
3. \$20,000 through issuance of final order on motion for post-conviction relief.
4. \$20,000 through filing of briefs on appeal of order on motion for post-conviction relief.
5. \$10,000 through issuance of a final order on motion for post-conviction relief upon remand from appellate proceedings.
6. \$4,000 through denial of appeal.
7. \$2,500 for petition for writ of certiorari to the U.S. Supreme Court.
8. \$5,000 for proceedings following issuance of a death warrant.

When seeking fees, the attorney must submit separate billings for each stage of representation. If services cover more than one stage, then multiple billings must be submitted so that the services for each stage do not overlap.

### **Maintenance and Inspection of Billing-Related Records**

Pursuant to the capital collateral contract, the attorney is required to keep contemporaneous detailed records to enable JAC to verify all costs, expenses, and time

expended in representation of court-appointed clients. The records shall include supporting documentation necessary to adequately evaluate and substantiate payments made to the attorney. The attorney shall maintain appropriate documentation, including contemporaneous and detailed hourly accounting of time spent representing the client.

These records and documents are subject to review by JAC, subject to the attorney-client privilege and work-product privilege. The attorney may redact information from the records and documents only to the extent necessary to comply with the privilege. The attorney must maintain the records and documents in a manner that enables the attorney to redact information subject to a privilege in order to facilitate and not impede JAC's review of the records and documents.

Upon JAC's issuance of a notice of inspection of records and documents as to a particular case, the attorney must deliver to JAC copies of any and all contemporaneous billing records related to that case within a reasonable period of time. This time period shall not exceed 30 days unless an extension is granted by JAC in writing. The attorney's failure to provide the contemporaneous billing records within a reasonable period of time shall be deemed a refusal to allow JAC to inspect the contemporaneous billing records.

The attorney must retain and make available for inspection and audit at the attorney's place of business, upon reasonable notice, all books, statements, ledgers and other financial records relating to services in court-appointed cases for a period of five (5) years from the date of each payment, or until all Federal or State audits that may relate to each payment are complete for the applicable fiscal year, whichever is later, unless ordered sealed by the Court. For purposes of this inspection, 14 days' notice shall be deemed reasonable notice.

### **Tuition and Expenses**

Section 29.711(7), F.S. provides a maximum of \$500 per fiscal year for continuing legal education pertaining to the representation of capital defendants. The attorney should indicate on the voucher cover that a billing includes this expense and provide invoice(s) and proof of payment for these expenses.

### **Contemporaneous Records**

### **Procedural Compliance**

### **Evidentiary Hearing**

For those billing which are over the caps set forth in s. 27.711, or where there are billing issues that have not been resolved, JAC reserves the right to request appearance at the hearing and to appear telephonically.

## **Section III – Miscellaneous and Investigative Expenses**

### **A. General Practices and Procedures**

Obligation

Vendor Contracts

Methods of Paying Miscellaneous and Investigative Expenses

Invoice/Voucher Cover

Certification of Miscellaneous and Investigative Expenses

Original Invoice

Prompt Review of Invoices

Prohibited Practices

B. Service and Notice

Standing of JAC

Notice

Contents of Motion Seeking Authorization for Costs

C. General Compensation

Rates and Vendors for Services

Minimum Billing Amount for Experts, Investigators, and Mitigation Specialists

Investigators

Service of Process

Mitigation Specialists

Diligent Efforts

Out-of-State Due Process Vendors

Transcripts

Appearance Fees

Certificates of Non-Appearance

Interpreters

Prepayment/Retainers

Deposition of State Attorney's Expert

Travel Time for Vendors

Statutory Exemption/Waiver of Prepayment

Non-reimbursable Expenses

**D. Methods of Paying Miscellaneous and Investigative Expenses**

JAC Pays Vendor after Counsel Certifies

Counsel Pays and is Subsequently Reimbursed

**E. Signing the JAC Invoice/Voucher Cover**

**Section IV – Miscellaneous Expenses**

**A. General Practices and Procedures**

Miscellaneous Expenses

**B. General Compensation**

Mileage

Photocopies

Legal Research

Conference Rooms

**Section V –Procedural Requirements**

Unique Invoice Number

[Submission of Documents](#)

[Legibility & Intelligibility](#)

[Sufficient Postage](#)

[Late Fees/Interest/Cancellation Fees](#)

**Section VI – Necessary and Applicable Forms**

[Online Case Opening](#)

[Online Billing Submission](#)

[Guidelines and Tips for Submitting Files Through MyJAC](#)

[Attorney Fees & Costs](#)

[Direct Pay of Miscellaneous and Investigative Costs](#)

[Counsel Reimbursement of Miscellaneous and Investigative Costs](#)

[Travel Prepayment / Reimbursement](#)

[Witness Reimbursement](#)

**Section VII – Confidentiality and Public Records**

[Public Records](#)

[Confidential Information Should be Redacted](#)

**Section VIII – Counsel and Witness Travel**

**A. General Practices and Procedures**

[Travel](#)

[Traveler's Requirements](#)

**Privately Retained Counsel**

In cases where the attorney is privately retained, JAC does not pay for the attorney's travel expenses unless the attorney is representing the client *pro bono*.

**Court Order Required**

**B. Travel Reimbursement**

**Travel Voucher**

**Mileage**

**Reimbursement**

**Hotels**

**C. Travel Prepayment**

**Prepayment of Limited Travel Expenses**

**Applicable Procedure for Any Travel Prepayment Request**

**Notification of Changes to Travel Arrangements**