



Justice Administrative Commission Policies and Procedures For Pro Se Defendants (Pro Se Information Packet)

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Contents

Role of the Justice Administrative Commission (JAC)	3
Authority	3
Requirements	4
Establishing Indigency	4
Allowable Costs	4
Motion and Order for Due Process Services	5
Court Reporter Services	6
Investigator Services	7
Private Service of Process	7
Mitigation Specialist Services in Capital Death Cases	8
Expert Services	8
Exhaustion of Amount Authorized	8
Travel Expenses	9
Submission of Bills	9
JAC’s Due Process Vendor Lists	10

Role of the Justice Administrative Commission (JAC)

The Justice Administrative Commission (JAC) provides administrative services on behalf of 49 judicial related offices (JROs). Currently, JAC administratively serves 20 Offices of State Attorney, 20 Offices of Public Defender, 5 Offices of Criminal Conflict and Civil Regional Counsel, 3 Offices of Capital Collateral Regional Counsel, and the Statewide Guardian ad Litem Office. JAC also provides compliance and financial review of billings for state-funded services provided by private court-appointed attorneys representing indigent persons; attorneys for criminal defendants who have been found indigent for costs; and self-represented (pro se) criminal defendants who have been found indigent for costs; as well as their associated due process services vendors, such as court reporters, investigators, interpreters, and expert witnesses.

JAC does not supervise, direct, or control the JROs it administratively serves or other state entities including the judiciary, sheriff, jail personnel, or state prison officials. JAC does not investigate claims of misconduct involving the offices of the state attorney, public defender, regional counsel, guardian ad litem, the judiciary, or any other public entities. Such claims must be raised directly with those offices or with the Florida court system. JAC does not investigate claims of unlawful detention, failure to provide access to the courts or legal resources, or any claims related to the deprivation of civil rights. Investigation of such claims is outside the purview of JAC's authority.

It is JAC's policy to provide access to public records as quickly as reasonably possible in accordance with Florida Law. However, JAC only maintains those records that are necessary to provide administrative services to JROs it serves or review bills from attorneys, self-represented criminal defendants, and associated due process vendors. For this reason, JAC cannot produce records that are not in JAC's custody including: state attorney or public defender files; arrest reports; court case files; property records; and recordings, surveillance videos, 911 calls, and body camera footage.

Except for the limited records in JAC's possession related to providing administrative services to the JROs, JAC cannot provide records from the offices of the state attorney, public defender, or regional counsel. Requests for these records need to be made directly to the appropriate office.

Authority

JAC is authorized to process and approve state payment of due process services (meaning services that are required to defend a case, such as court reporters, investigators, and expert witnesses) for indigent persons, or persons who have a statutory or constitutional right to court-appointed counsel. JAC processes bills for due process services on behalf of indigent criminal defendants including those that are pro se (self-represented). The types of services for which JAC processes payments are listed in s. 29.007, F.S. Pursuant to s. 27.52(5), F.S., before JAC can process bills for due process services, a court must find that the self-represented defendant is "indigent for costs" (meaning that the defendant is eligible for state-funded due process services). If a defendant is represented by the public defender, regional counsel, privately retained counsel, or private court-appointed counsel, then payment of due process services is handled by those attorneys unless the attorney is acting as standby counsel. Standby counsel is an attorney who is appointed by a court to be available if a self-represented defendant requests the assistance of appointed counsel.

Requirements

A pro se individual must be determined by a court as indigent for costs under section 27.52(5), F.S. In order to process a due process invoice(s) for a pro se individual, JAC must be provided with:

- A copy of the completed application to the clerk of the court for determination of indigent status;
- A copy of the court order determining the individual to be indigent for costs under section 27.52(5), F.S., and eligible for the provision of due process services;
- A copy of the motion seeking payment of due process costs;
- A copy of the order approving state payment of due process costs which specifies the name of the provider and the dollar amount approved by the court;
- A completed and signed JAC Invoice; **and**
- The original service provider invoice which the service provider provided to the defendant along with the JAC Invoice.

Establishing Indigency

To be entitled to state-funded due process costs and have JAC process these bills for payments, the trial court must find the defendant “indigent for costs” under s. 27.52(5), F.S. This finding must occur **before** a defendant seeks the court’s appointment and/or authorization of any due process service or service provider. A clerk of court’s determination of indigence for appointment of counsel under s. 27.52(1), F.S., is not sufficient. The defendant **must** obtain a separate order from the trial court declaring the defendant “indigent for costs” under s. 27.52(5), F.S. A copy of this order must be provided to JAC along with a copy of the charging document (the information or indictment).

Allowable Costs

Due process services are those that are necessary to defend a case. JAC is authorized to process bills for state payment of due process services authorized by ss. 27.425, 27.5305, and 29.007, F.S. Allowable due process costs include:

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

Established Rates. Each year, the Legislature sets the rates the State pays due process service providers in the General Appropriations Act. The Legislature has adopted uniform statewide rates

for court reporting, and investigative services in all cases; in addition to mitigation specialist services in capital death cases. Rates for other due process services may be different in each circuit. Rate charts for each circuit can be found under “Rates” at:

https://www.justiceadmin.org/court_app_counsel/formsandrates.aspx

What JAC Cannot Process. JAC has no authority to process bills for legal materials, office supplies, access to legal research materials, postage, or telephone charges. A defendant is not entitled to additional costs because the defendant is in jail. Such supplies are provided at the institution where the defendant is incarcerated. If being in jail makes self-representation difficult, a defendant may wish to request that the court appoint an attorney. Please know that *pro se* (self-represented) defendants cannot be paid for representing themselves.

JAC generally does not process bills for costs in civil cases such as family law cases, probate cases, and civil law suits. Those cases are not within the scope of s. 27.52(5), F.S. In post-conviction cases, JAC is not authorized to process any bills for costs until a motion for post-conviction relief has been filed with the trial court, **and** the trial court has issued an order stating that there are issues needing further review or consideration (evidentiary hearing) by a court.

Motion and Order for Due Process Services

Motion for Court Authorization of Due Process Services. State payment of due process services must be authorized by a court order, except where JAC has indicated that prior court authorization is not required. A motion requesting authorization for due process services should state the due process services requested (such as expert and/or investigator); the dollar amount (cost) for those services (the maximum amount to be spent); **and** the hourly rate(s) sought for those services where applicable (such as expert services). The motion should also explain why those services are needed by the defense. The defendant must show that the due process services are reasonable and necessary for the defense of the case.

A defendant seeking state payment of due process costs has the burden to establish (1) the particularized need for the due process service(s) and (2) the prejudice that would be caused if the court denied the due process service(s). An indigent defendant must show the trial court that there exists a reasonable probability that (1) an expert would be of assistance to the defense; **and** (2) that denial of expert assistance would result in a fundamentally unfair trial.

Unless JAC has expressly waived its right to a hearing, JAC must be provided with a copy of the written motion **and** notice of hearing prior to a court entering an order regarding any motion for state payment of due process costs or related expenses.

The written motion requesting the services and state payment should be filed and decided by the trial court **before** ordering any due process services. A copy of the motion must be sent (served) to JAC before the trial court considers the motion. JAC is entitled to reasonable notice, which is at least ten business days’ notice of any hearing set on a motion for due process services. The defendant is responsible for sending the notice of hearing to JAC. When providing JAC notice, the defendant must consider mailing time.

JAC Response. JAC will respond to any motion for due process services typically within five business days after receiving the motion. JAC may oppose the request for any due process services and/or the amount requested for the due process services. JAC’s response will state

whether JAC requires a hearing on the motion or not. When a defendant requests due process services at a rate higher than the established rates, the motion must state the need for services at the higher rate. The defendant must show that the requested due process services are necessary for the defense of the case and that the defendant made diligent efforts to obtain the services within the established rates. To facilitate your search for a due process service provider, please know that JAC posts the Due Process Vendors with JAC Contracts on its website at:

<https://www.justiceadmin.org/Contracted%20Due%20Process%20Vendors/Default.aspx>.

Please note that JAC does not verify the professional qualifications of the persons listed. It is the sole responsibility of the party using the services of a person listed to verify their professional qualifications. Generally, requests seeking rates higher than the established rates apply to experts. Requests for investigators, court reporters, interpreters, and private process servers must be within the established rates.

Court Order. A court order authorizing due process services must contain necessary information for JAC to process the bill for payment. The court order should be obtained by the defendant before the services are performed. For payment purposes, the order should list each service authorized, the rate, and the maximum amount authorized for each service. If the defendant is seeking a rate that is higher than the established rates or there is no rate established for the type of service, then the order must state the rate authorized by the court. JAC cannot process a bill for any rate higher than the established rates without an order authorizing the higher rate.

As long as the order sets forth the due process services authorized, the maximum amount authorized, and the applicable rate when required, JAC can process a bill for those services without need for another court order. The bill must be consistent with the amounts authorized by the court order. If JAC has objections to a bill, JAC will issue a letter of objection explaining JAC concerns.

Court Reporter Services

Court Reporter Appearance Fees. JAC may process bills for payment for court reporter appearance fees to attend witness depositions without a court order. As long as the deposition may be taken without the need for prior court approval under the Florida Rules of Criminal Procedure, JAC does not need an order authorizing payment of court reporter appearance fees. In most instances, those witnesses listed by the state in discovery as Category A witnesses under Fla. R. Crim. P. 3.220(b) may be deposed without prior court approval. However, payment for transcription of this type of deposition does require a court order.

Transcripts. All transcripts, except appellate transcripts, require a court order. Unlike other due process services, orders authorizing transcripts do not need to indicate the amount authorized. When deposition transcripts are authorized by the court, JAC will pay for one original and one copy. The court order should state the name of the witness and the date of the deposition. An order may authorize transcripts for more than one witness. For hearing transcripts (other than appellate), the order should state the type of hearing and the date. For transcription of audiotapes, the order should state the name of the witness or type of recording (i.e., 911 call) and date of recording. For appellate transcripts, the designation of the record (hearings to be transcribed for the appeal) required by Fla. R. App. P. 9.200 may be used instead of a court order.

Transcript Copies. JAC can only pay for the cost of one original transcript of any deposition, hearing, or other proceeding. Once an original has been paid by JAC, any future copies are paid for at the copy rate, even if the transcript copy is designated as an original by the court reporter.

Expedited Rates for Transcripts. For JAC to pay expedited (“rush job”) rates for any transcript, a motion stating the reason for expedited rates and an order approving the rates must be provided. Both the motion and the order need to state the reason for the expedited rates. JAC generally does not pay expedited rates when the need for expedited rates is the result of inaction. It is a defendant’s responsibility to request transcript in a timely manner.

Videotaped Depositions. A court order is required for videotaping a deposition, except where a deposition is legally required to be videotaped. For example, a court order is not required when the deposition is of a child under the age of 18. Absent extraordinary circumstances, JAC will not process payment for the attendance of both a court reporter and the person taping the deposition (videographer). The videotape is an electronic record from which a court reporter can prepare a transcript at a later date, if required.

Investigator Services

Court Order. A court order authorizing private investigator services is required for JAC to process an investigator bill for payment. The order authorizing investigator services should be obtained before the investigator provides any services. The motion and the order should set forth the specific need for private investigator services, the rate, and the maximum amount of costs authorized for those services.

Private Investigator’s 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 issue relevant to the case, such as the credibility and character of witnesses. An investigator is not a substitute for a paralegal or secretary and cannot be used to perform administrative tasks.

With prior court approval, JAC may pay process bills for costs to obtain documents such as charges for discovery-related costs or for medical records of the defendant. These costs are usually paid for by the investigator and then reimbursed by JAC.

Private Service of Process

As a general rule, JAC does not process bills for private service of process. Under s. 57.081, F.S., the sheriff will provide service of process without requiring prepayment in cases involving indigent persons. In order to use a private process server to serve witnesses, a motion must be filed stating the need for a private process server. If the circuit has an authorized rate for private service of process, then the court order does not need to indicate the rate for private service of process. If the circuit has no authorized rate, the motion and order must indicate the rate sought for private service of process. When authorized, a private investigator for the defendant can provide service of process. However, the investigator may only bill JAC for the rate allowed for private service of process.

Mitigation Specialist Services in Capital Death Cases

JAC can only process bills for mitigation specialists in capital cases in which the state is seeking the death penalty. A mitigation specialist must have a valid Class “C”- Private Investigator License, issued by the Florida Department of Agriculture and Consumer Services, and be affiliated with an investigative firm with a valid Class “A”- Private Investigative Agency license. The only exception to this requirement is if the mitigation specialist has another professional license that substitutes for the investigator license, such as a license in social work, mental health, or law.

Expert Services

Motion for Expert Services. Prior to hiring an expert, the defendant must file a written motion seeking the court’s authorization for state payment of expert services. Experts include psychologists, medical doctors, crime scene experts, accident reconstructionists, DNA experts, ballistic/firearms experts, and other persons with specialized knowledge and training that permits them to testify as an expert before a court.

The defendant has the burden to show the specific need for the expert’s services. The information in the motion should be sufficiently detailed for the trial court and the JAC to understand the need for the requested expert. Generally, experts are paid on an hourly basis. In limited circumstances, a court may authorize compensation in a different manner such as a flat fee for a competency evaluation; a set rate for a type of DNA test; or a fee for medical procedures like MRIs, CAT scans, or PET scans. In those situations, the motion and order must state the set rate or fee for those services. JAC does not prepay retainers for expert services or any other due process services.

Out of State Experts. The use of out-of-state experts is not authorized when competent experts are available in Florida. A defendant should not request out-of-state experts without showing that there are no other experts with appropriate skills or expertise available, first, in the county in which the case was filed, and second, in any other county in Florida. To facilitate a search for a due process service provider in Florida, please know that JAC posts the Due Process Vendors with JAC Contracts on its website at

<https://www.justiceadmin.org/Contracted%20Due%20Process%20Vendors/Default.aspx>

Please note that JAC does not verify the professional qualifications of the persons listed. It is the sole responsibility of the party using the services of a person listed to verify their professional qualifications.

Number of Experts. Generally, the defendant is only entitled to one expert in an area (such as mental health). If the defendant desires more than one expert in similar categories, the defendant must establish the reason for the appointment of multiple experts in the same general area.

Exhaustion of Amount Authorized

When using a due process vendor, the defendant should inform the due process vendor of the total amount authorized by the trial court. This can be done by providing the due process vendor with a copy of the court order. If the vendor is going to exceed the amount authorized by the court, the vendor must immediately notify the defendant that additional services are required so that the defendant can file a motion with the court for approval of state payment of additional due

process services. In order to ensure payment, the defendant should file a motion requesting additional services before the due process vendor performs any additional services in the matter.

Travel Expenses

When authorized by law, JAC can process bills for travel expenses pursuant to s. 112.061, F.S. Generally, travel expenses must be approved by a specific court order. All travel must be pursuant to Florida law, particularly s. 112.061, F.S. Travel reimbursement is only for witnesses and due process vendors. Reimbursement for travel expenses must be submitted on the Department of Financial Services' State of Florida Voucher for Reimbursement of Travel. This voucher can be found at:

https://www.justiceadmin.org/court_app_counsel/attorney_fees/travel/D.%20Travel/DFS-AA-15VoucherforReimbursement.pdf.

Submission of Bills

JAC Invoice. JAC Invoices for due process services are required to process due process bills for state payment. The defendant and/or due process vendor must complete, sign, and submit the correct JAC Invoice and required supporting documents. JAC only accepts bills submitted with JAC Invoices. Bills sent without the correct JAC Invoice are not reviewed. Generally, the due process vendor will prepare the JAC Invoice. However, copies of these invoices are contained in the Pro Se Packet.

The JAC Invoice must be fully completed and include all the information requested. After reviewing the bill packet, the defendant must sign the JAC Invoice to allow JAC to process payment to a due process vendor. By signing the "Certification," the defendant certifies (confirms) that the work was necessary and completed satisfactorily. JAC cannot process any JAC Invoice for payment that is not signed by the defendant or standby counsel. (Court-appointed standby counsel can act as an authorized representative of the defendant for this purpose.) The only instance when JAC can process a JAC Invoice that is not signed by the defendant is when appellate transcripts are certified by the clerk of the court.

Audit Deficiency Notice. When JAC receives a bill for due process services without the required information or supporting documents, JAC may send the due process vendor and the defendant an Audit Deficiency Notice. The Notice will state the reason JAC is unable to process the bill and will request that the due process vendor and/or the defendant provide the lacking information or documentation. When JAC issues an Audit Deficiency Notice, the due process vendor and/or defendant need to provide the additional documentation to resolve the issue quickly. Failure to resolve the issues listed in the Audit Deficiency Notice may result in JAC returning the bill or paying the billing at a lower rate.

Letter of Objection. If JAC has an objection to a due process vendor's bill, JAC may send a letter of objection. The letter will list JAC's objection(s) and whether JAC requires a court hearing on the matter. Until JAC issues a letter of objection, a defendant is not permitted to file a motion for payment. An Audit Deficiency Notice is not a letter of objection. Once a defendant receives a letter of objection, the defendant is responsible for filing a motion for payment of the invoice with the court. A copy of JAC's letter of objection must be attached to the motion. JAC must be served with a copy of the motion.

JAC's Due Process Vendor Lists

JAC maintains lists of due process vendors with current JAC contracts. The information on the list is from the vendors and has not been approved or checked by JAC. It is the responsibility of the defendant using the services of a listed vendor to check their professional qualifications and ensure that their qualifications are current. The listing of a vendor on JAC's list does not mean that JAC recommends or approves the hiring of the vendor. In addition, even if a vendor is listed, JAC may still object to the trial court's authorization/payment of the vendor especially if the vendor is seeking rates higher than the rates established by law. It is the defendant's responsibility to make diligent efforts to obtain services within the rates established by law.