



STATE OF FLORIDA
JUSTICE ADMINISTRATIVE COMMISSION
Post Office Box 1654 (32302)
227 North Bronough Street, Suite 2100
Tallahassee, Florida 32301

COMMISSIONERS

Dennis Roberts, Chair
Public Defender

Diamond R. Litty
Public Defender

Jerry Hill
State Attorney

Brad King
State Attorney

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

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

Victoria A. Montanaro
Executive Director

[Link to 2010-2011 Attorney Agreement](#)

To: Registry Attorneys
From: Stephen Presnell, General Counsel
Date: June 1, 2010
RE: 2010/2011 Attorney Agreements

On May 18, 2010, the new registry agreement for attorney services for fiscal year 2010/2011 was approved by the JAC Commissioners. This agreement as well as instructions for how to complete it is available on JAC's website. The new agreement will supersede any prior agreements and will also cover any cases appointed on or after July 1, 2010, through June 30, 2011. Pursuant to section 27.40(3), F.S., a registry attorney must enter into this agreement to receive compensation for any case appointed after July 1, 2010.

Pursuant to section 27.40(3), F.S., the chief judge for each circuit is responsible for selecting those attorneys for inclusion in the circuit's registries for court-appointed counsel. If an attorney is authorized for continued inclusion on a registry or is selected for a registry after July 1, 2010, the attorney will need to execute the agreement for fiscal year 2010/2011 in order to receive compensation through JAC.

JAC cannot execute an agreement unless the attorney has been approved by the chief judge of the circuit for inclusion in a court-appointed registry.

The new agreement has changed significantly since last year. In the recent legislative session, the legislature passed several provisions relating to private court-appointed cases. See HB 5001 & CS/HB 5401 (2010 legislative session). These provisions included amendments to sections 27.40, 27.425, and 27.5304, F.S., as well as the creation of section 27.5305, F.S. These enactments will go into effect on July 1, 2010.

Because of the recent statutory changes, as well as other policy concerns, the JAC Agreement for Attorney Services and the other JAC Agreements have been amended. The amendments to the agreements addressing due process costs have been addressed in other memoranda prepared contemporaneously.

This memorandum primarily addresses issues relating to attorney services and attorney compensation for fees and costs. A brief overview of the amendments is as follows:

- Pursuant to section 28.345, F.S., a private court-appointed attorney is exempt from charges by the clerk of court for case-related services. Similarly, pursuant to section 57.081, F.S., an indigent defendant is entitled to receive the services of the clerk of court, the court, and the sheriff without any prepayment. The attorney is responsible for

providing sufficient documentation or filing appropriate motions with the trial court to obtain such services pursuant to the exemption or without prepayment. JAC will not reimburse the attorney or a due process provider acting on behalf of the attorney for clerk of court charges that should have been provided pursuant to the exemption or waiver of prepayment.

- Administrative activities remain non-billable. The Agreement has been amended to delineate the types of activities that are considered administrative in nature.
- An attorney must apportion time among cases billed on a flat fee basis and on an hourly basis. For example, if an attorney is attending hearings on several cases and bills one of them hourly, the attorney cannot bill all of the time spent in court that day in the hourly billing. The time must be apportioned among all of the cases.
- An attorney cannot bill one case appointed to a defendant on an hourly basis and then seek flat fee compensation as to the defendant's other cases. Either the attorney must bill all of the cases on a flat fee basis or the attorney must submit a single hourly billing covering all of the cases.
- The Agreement sets a minimum threshold for extraordinary billing in civil cases. An attorney would not be authorized to seek compensation in excess of the flat fee unless the work done on the case at a rate of \$75.00 per hour would justify at least double the flat fee. If the matter reaches the minimum threshold, then the trial court will determine whether the case involved unusual and extraordinary effort.
- An attorney must maintain appropriate documentation, including contemporaneous and detailed hourly accounting of time spent representing a client. If the attorney fails to maintain such contemporaneous and detailed hourly records, the attorney waives the right to seek compensation in excess of the flat fee. These records and documents are subject to review by the 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. He or she 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, an attorney shall deliver to JAC the contemporaneous billing records related to that case within a reasonable period of time not to exceed 30 days. Also, upon reasonable notice, JAC may inspect and audit records relating to services under the Agreement at the attorney's place of business. Under the Agreement, 14 days' notice constitutes reasonable notice of such global inspection.
- If an attorney refuses or declines to allow JAC to inspect records, the attorney waives the right to seek compensation in excess of the flat fee.
- A finding by JAC that an attorney has waived the right to seek compensation in excess of the flat fee is presumed valid unless the court finds that JAC's finding is not supported by competent and substantial evidence.
- An attorney agrees to accept pleadings by e-mail or facsimile and waives any requirement for mailing of such pleadings.
- By January 1, 2011, an attorney must participate in a direct deposit program which allows for transfer of funds electronically to an account at a federal-chartered or state-chartered financial institution. If the attorney seeks an exemption from this provision, the attorney must submit in writing a request for exemption specifically delineating why he or she cannot comply with this provision.

- Where the client wishes to appeal, an attorney must comply with the requirements of the Florida Rules of Appellate Procedure including, but not limited to, filing a notice of appeal, a statement of judicial acts to be reviewed, directions to the clerk, and designations for transcription of those portions of the proceedings necessary to support the statement of judicial acts to be reviewed. The attorney must also take those steps necessary to ensure and verify that the record is properly transmitted to the appellate court regardless of the date of the attorney's discharge.
- An attorney and the attorney's immediate family must not have a material interest in any due process provider used as a provider of services in the attorney's court-appointed or indigent for costs cases. An attorney cannot solicit or receive anything of value to the attorney including a gift, loan, reward, promise of future employment, favor, or service, from a due process provider. A due process provider is prohibited from offering or providing anything of value to the attorney except for the services rendered on behalf of the indigent client. Any compensation for services is waived if services are provided in violation of these provisions.
- For cases that reach disposition on or after July 1, 2010, two additional contractual penalties for untimely billing apply if the billing is submitted more than one year after final disposition and then if the billing is submitted more than two years after final disposition. The Agreement also addresses when the right to compensation accrues for purposes of the applicable statute of limitations.

This memorandum is provided for informational purposes only to alert attorneys to significant statutory changes that were enacted during this legislative session as well as contract changes. Attorneys should refer to the statutory language, the revised contracts, and JAC policies and procedures for the precise language involved as well as any other applicable requirements.

If you have any questions or concerns, feel free to contact the JAC Help Desk at (866) 355-7902.

[Click here for the 2010-2011 Attorney Agreement](#)