



**Common Questions & Answers
Regarding Payment of Attorney's Fees, Due Process Costs, and
Related Expenses for Court-Appointed Counsel and Indigent for
Costs Cases**

June 2011

TABLE OF CONTENTS

RESPONSIBILITIES OF COURT-APPOINTED ATTORNEYS	3
FLAT RATES	7
EXTRAORDINARY BILLING	13
INDIGENT FOR COSTS	14
ATTORNEY EXPENSES	18
BILLING	19
DUE PROCESS COSTS	23
DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS	30
CAPITAL CASES	36
CASES APPOINTED BEFORE SB 1088 BECAME LAW – PRE JULY 1, 2007	37
MISCELLANEOUS.....	38
<u>INDEX.....</u>	<u>39</u>

Responsibilities of Court-Appointed Attorneys

1. How do I apply for inclusion on a registry?

Under s. 27.40(3), F.S., the chief judge for each circuit is responsible for selecting attorneys for inclusion in the registry for court appointments. JAC does not select or otherwise recommend attorneys for inclusion in a court-appointed registry. Those attorneys seeking to be added to a court registry will need to contact the chief judge or other appropriate court official for information regarding the process to become a registry attorney in a particular circuit. Information regarding the process to become a registry attorney may also be posted on a judicial circuit's website.

2. When do I need to sign a contract with JAC?

JAC's contracts for registry attorneys and due process vendors have a term corresponding with the state's fiscal year commencing on July 1st and ending on June 30th. Commencing fiscal year 2011/2012, JAC's contract for indigent for costs cases will also have a term corresponding with the state's fiscal year.

The contracts for the next fiscal year will be posted on JAC's website in early June. Commencing fiscal year 2011/2012, the registry agreements will only be available through JAC's secure website. Information on how to set up an account and login into the website is available in the QUICK REFERENCE GUIDE FOR ATTORNEY LOGIN TO JAC DATABASE VIA JAC WEBSITE contained herein.

Prior to executing a contract, a properly completed Substitute Form W-9 must be submitted to the Department of Financial Services. Information and the Substitute Form W-9 are available on DFS's website at:

<https://flvendor.myfloridacfo.com/>

As part of completing the agreement, attorneys are required to certify that they have submitted a Substitute Form W-9 to DFS. The form may be submitted electronically through DFS's vendor website.

The failure to execute a registry contract in a timely fashion may result in an attorney being removed from the registry. JAC provides regular reports to each circuit regarding the attorneys who have executed the JAC Agreement for each fiscal year.

JAC will be accepting attorney registry contracts electronically starting in fiscal year 2011/2012. Once an attorney has accessed the secure website, in order to view the contracts the attorney will click on the link for contracts under My Access. The website will list the registries for which the attorney has been approved. The attorney will be directed to the webpage where the attorney can

Responsibilities of Court-Appointed Attorneys

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 in pdf format. Once the review is complete, the attorney may electronically sign the contract and submit it to JAC through the secure website. Alternatively, the attorney may print and execute the contract by signing it in blue ink and then mail a single copy to JAC.

3. When do I notify JAC that I received a case?

An attorney must notify the JAC within 30 days of appointment to a case by providing the order of appointment and (a) charging document in criminal cases or (b) the initial pleading in civil cases (except Chapter 39 cases). The initial pleading is typically an information, indictment, petition, or other legal pleading. In appellate cases, a copy of the notice of appeal should also be supplied.

Pursuant to the JAC Agreement, if the order of appointment is not submitted within 90 days of entry of the order of appointment, a contractual penalty of \$25 may be assessed against any payment of attorney's fees.

4. When must I submit a billing in a case?

An attorney or due process provider must submit bills for fees, costs, and related expenses within 90 days after the disposition of the case at the lower court level, notwithstanding any appeals. If the billing is untimely, then pursuant to contract, JAC may impose a penalty of a 15 percent reduction for any bill for attorney's fees, due process costs, and/or related expenses. Additionally, for cases that reach final disposition on or after July 1, 2010, a penalty of 50 percent may be imposed if the billing is received more than one year after final disposition and a penalty of 75 percent may be imposed if the billing is received more than two years after final disposition.

5. If a disposition order is signed by a court, nunc pro tunc to an earlier date, which date does JAC use to determine applicability of the 15% penalty?

The date the order is rendered by the court is the date that used to determine whether the penalty applies. This date of rendition is the date the clerk of court stamps on the order when the order is filed in the court file. Generally, the date an order is executed by the court is the date the order is filed with the clerk. In some instances, the order may not be filed until the next business day. Nonetheless, the nunc pro tunc date is never the date used to determine whether the penalty is applied. The date of rendition can never precede that date the court physically signed the order.

6. When does JAC rely on the nunc pro tunc date in an order?

When a court makes an order nunc pro tunc, the court is memorializing a prior act of the court that was not rendered in an order. For example, if the court appointed an attorney to represent a defendant, but did not enter an order of appointment, then the court could enter a later order nunc pro tunc back to the date of the original appointment. Thus, JAC will accept the nunc pro tunc date in orders of appointment of attorneys, experts, and other due process providers as long as the order is memorializing a prior ruling of court. In some instances, an attorney may obtain a nunc pro tunc order that does not reflect a prior ruling of the court. In such instances, JAC will object to any payment based on the terms of that order.

7. In a case involving a pretrial diversion program, failure to appear, or defendant found incompetent, what is the date of disposition for purposes of applying a penalty for untimely billing?

As a general rule, a penalty for untimely billing does not apply to these types of cases. JAC is paying based on the circumstances rather than on disposition. However, if the court enters a dispositional order such as an order of dismissal, then the penalty will run from that date.

8. How do I know that JAC has all of my cases in the database?

The Justice Administrative Commission allows court-appointed attorneys to login to our database and view their case information. See below for instructions.

QUICK REFERENCE GUIDE FOR ATTORNEY LOGIN TO JAC DATABASE VIA JAC WEBSITE

Before you try to register, contact the JAC Help Desk if you feel that your e-mail address needs to be updated.

TO START THE PROCESS

- a) Sign onto the JAC Website at www.justiceadmin.org
- b) On Website home page, Click on “My Access” which is the last box to the left of the building photograph
- c) Skip past boxes labeled “User ID” and “Password”-click where it says “Click here to register”
- d) This brings you to a screen labeled **Step 1**-enter attorney’s Bar ID into box and click on “E Mail Registration Code”-you will then receive your registration code in an e-mail from JAC.

WHEN YOU HAVE RECEIVED YOUR REGISTRATION CODE

Repeat actions a) and b) above

- Go to **Step 1**
- Click where it says “Click here if you already have a registration code.” This takes you to **Step 2**
- -enter the attorney’s Bar ID into the first box
- -enter the registration code you received by e-mail into the second box
- -create your “User ID” and “Password” and enter into the third and fourth boxes-each must be at least four characters in length-each is case sensitive and, therefore, must be entered in exactly the same way in subsequent logins

Re-enter your password in the “Confirm Password” box
Click on “Register”

If you do not receive a registration code within 24 hours, contact the Help Desk for assistance.

LOGIN AFTER YOU HAVE REGISTERED

Repeat actions a) and b) above

Now, when you reach the Login screen, you will be able to enter the “User Id” and “Password” you created before (Remember that each is case sensitive.)
Click on “Login”

Flat Rates

Flat Rates

9. When did the flat rates become effective?

New rates are effective for dates of appointment on or after July 1, 2007. The signing of the new Agreement for Attorney Services does not impact the compensation rates for cases appointed prior to July 1, 2007.

10. What are the new statutory limitations for attorney fees?

The statutory limitations for attorney fees by case type apply to court appointments on or after May 24, 2007.

Case Type	Limitation
Misdemeanors and juveniles represented at the trial level	\$1,000
Noncapital, nonlife felonies represented at the trial level	\$2,500
Life felonies represented at the trial level	\$3,000
Capital cases represented at the trial level	\$15,000
Appeal	\$2,000
Dependency proceedings (for first year following the date of appointment)	\$1,000
Dependency (for second year, and each year thereafter, while under protective supervision)	\$200
Motion to reactivate protective supervision (for first year following date of appointment)	\$200
Motion to reactivate protective supervision (for second year, and each year thereafter, while under protective supervision)	\$200
Termination of parental rights (for the first year following the date of appointment)	\$1,000
Termination of parental rights (for second year, and each year thereafter)	\$200
Appeals from an adjudication of dependency	\$1,000
Appeal from an adjudication of termination of parental rights	\$2,000
Maximum hourly rate for non-capital cases and capital non-death cases that exceed statutory limitations or the flat fee under the GAA pursuant to s. 27.5304(12)	\$75 Hour
Maximum hourly rate for capital death cases that exceed statutory limitations or the flat fee under the GAA pursuant to s. 27.5304(12)	\$100 Hour

The limitations for other civil cases are set forth in the General Appropriations Act pursuant to s. 27.5304(7).

Flat Rates

11. What are the flat rates for attorney’s fees for appointments on or after July 1, 2007?

The flat rates for appointments on or after July 1, 2007, are set forth in the General Appropriations Act for each fiscal year. These rates apply to any case with date of appointment on or after July 1, 2007.

Case Type	Flat Rate Fee F.Y.	
	F.Y. 2007/2008	F.Y. 2008/2009 through 2011/2012
CIVIL CASES		
ADMISSION OF INMATE TO MENTAL HEALTH FACILITY	\$300	\$300
ADULT PROTECTIVE SERVICES ACT - Ch. 415, F.S.	\$500	\$500
BAKER ACT/MENTAL HEALTH - Ch. 394, F.S.	\$400*	\$400*
CINS/FINS - Ch. 984, F.S.	\$750	\$750
CIVIL APPEALS	\$400	\$400
DEPENDENCY - Up to 1 Year	\$1,000	\$800
DEPENDENCY - Each Year after 1st Year	\$200	\$200
DEPENDENCY – Reactivation of Protection Supervision –Up to 1 Year	\$200	\$200
DEPENDENCY – No Petition Filed or Dismissed at Shelter	\$200	\$200
DEPENDENCY APPEALS	\$1,000**	\$1,000**
DEVELOPMENTALLY DISABLED ADULT - Ch. 393, F.S.	\$400	\$400
EMANCIPATION - Section 743.015, F.S.	\$400	\$400
GUARDIANSHIP - EMERGENCY - Ch. 744, F.S.	\$400	\$400
GUARDIANSHIP - Ch. 744, F.S.	\$400	\$400
MARCHMAN ACT/SUBSTANCE ABUSE - Ch. 397, F.S.	\$300	\$300
MEDICAL PROCEDURES - Section 394.459(3), F.S.	\$400	\$400
PARENTAL NOTIFICATION OF ABORTION ACT	\$400	\$400
TERMINATION OF PARENTAL RIGHTS - Ch. 39, F.S. - Up to 1 Year	\$1,000	\$1,000
TERMINATION OF PARENTAL RIGHTS - Ch. 39, F.S. - Each Year after 1st Year	\$200	\$200
TERMINATION OF PARENTAL RIGHTS - Ch. 63, F.S. - Up to 1 Year	\$1,000	\$1,000
TERMINATION OF PARENTAL RIGHTS - Ch. 63, F.S. - Each Year after 1st Year	\$200	\$200
TERMINATION OF PARENTAL RIGHTS APPEALS	\$2,000****	\$2,000****
TUBERCULOSIS - Ch. 392, F.S.	\$300	\$300

Flat Rates

CRIMINAL CASES	F.Y. 2007/2008 through 2011/2012
POSTCONVICTION - Sections 3.850 and 3.800, F.S.	\$1,000*****
CAPITAL - 1ST DEGREE MURDER (LEAD COUNSEL)	\$15,000***
CAPITAL - 1ST DEGREE MURDER (CO-COUNSEL)	\$15,000***
CAPITAL SEXUAL BATTERY	\$2,000
CAPTIAL (NON-DEATH) (other than capital sexual battery)	\$2,500
CAPITAL APPEALS	\$2,000
CONTEMPT PROCEEDINGS	\$400
CRIMINAL TRAFFIC	\$400
EXTRADITION	\$500
FELONY - LIFE	\$2,500
FELONY - PUNISHABLE BY LIFE	\$2,000
FELONY 1ST DEGREE	\$1,500
FELONY 2ND DEGREE	\$1,000
FELONY 3RD DEGREE	\$750
FELONY OR MISDEMEANOR (No Information filed)	\$400
FELONY APPEALS	\$1,500
JUVENILE DELINQUENCY - 1ST DEGREE FELONY	\$600
JUVENILE DELINQUENCY - 2ND DEGREE	\$400
JUVENILE DELINQUENCY - 3RD DEGREE	\$300
JUVENILE DELINQUENCY - FELONY LIFE	\$700
JUVENILE DELINQUENCY - MISDEMEANOR	\$300
JUVENILE DELINQUENCY (Direct File or No Information Filed)	\$300
JUVENILE DELINQUENCY APPEALS	\$1,000
MISDEMEANOR	\$400
MISDEMEANOR APPEALS	\$750
VIOLATION OF PROBATION - FELONY (INCLUDES VOCC)	\$500
VIOLATION OF PROBATION - MISDEMEANOR (INCLUDES VOCC)	\$300
VIOLATION OF PROBATION [VOCC] JUVENILE DELINQUENCY	\$300

*This rate also covers Jimmy Ryce cases.

**Although the rate in the GAA is \$2,000, section 27.5304(6)(c), Fla. Stat., limits the rate for dependency appeals to \$1,000. Counsel may bill a flat fee not exceeding \$750 upon filing the initial brief or the granting of a motion to withdraw. If a brief is filed, counsel may bill an additional flat fee not exceeding \$250 upon rendition of the mandate.

Flat Rates

***This rate only applies to capital cases for which, at the time of appointment or thereafter, the potential sentence is death and the state has not waived seeking the death penalty.

****Counsel may bill a flat fee not exceeding \$1,000 upon filing the initial brief or the granting of a motion to withdraw. If a brief is filed, counsel may bill an additional flat fee not exceeding \$1,000 upon rendition of the mandate.

*****This rate also covers appointments to various other postconviction proceedings including appointments to petitions seeking belated appeal in criminal cases.

12. An attorney is appointed to a case in which the information or indictment contains multiple counts. How should the attorney bill the case?

Pursuant to section 27.5304(1), F.S., the attorney shall be compensated with the flat fee for the most serious offense for which the attorney represented the defendant regardless of the number of counts in the information or indictment.

13. If I am appointed on or after July 1, 2007, to a case in which another attorney had been appointed on or before June 30, 2007, and who had subsequently withdrawn, what payment will I receive?

You will receive the full flat rate as specified in the General Appropriations Act.

14. If I withdraw from a case to which I was appointed on or after July 1, 2007, and the case is reassigned to another attorney, may I bill immediately upon withdrawal from the case?

JAC will not review and process the case until it is disposed of and all attorneys who worked on the case have submitted billings. 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 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 JAC's website.

15. If I withdraw from a case to which I was appointed on or after July 1, 2007, and the case is reassigned to another attorney, will I be able to bill the full flat rate?

When JAC receives the bills of all attorneys on a completed case each attorney will receive a portion of the flat fee to be determined by the court. The total compensation for all of the attorneys will not exceed the full flat fee for the case

Flat Rates

under the GAA absent proceedings seeking extraordinary compensation under s. 27.5304(12), F.S.

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/Voucher 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 voucher cover 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.

16. I have been appointed to a portion of an existing case (i.e., sentencing, resentencing, restitution hearing, or shelter hearing, etc.); at what rate will I be paid?

You will be paid a portion of the flat fee as determined by the court.

17. The General Appropriations Act shows fee caps for Jimmy Ryce cases to be only \$400. I anticipate that my case will require time in excess of this amount, and that I should be compensated in excess of this limit. What should I do?

You should follow the procedures outlined in s. 27.5304(12), F.S.

18. The rate for my court-appointed case type is not in the General Appropriations Act. At what rate will I be paid?

The Legislature included all case types for which they appropriated funds for payment of fees for court-appointed counsel in the General Appropriations Act. The JAC has not been funded for any other case types, nor do we have the authority to process billings for those cases.

19. The court/clerk made a mistake and appointed me to a case in which the Office of the Public Defender and/or Office of Criminal Conflict and Civil Regional Counsel should have been appointed. Will I be paid for my work on the case?

No. JAC has no authority to pay for cases that have not been properly appointed. The court must first appoint the Public Defender for criminal cases and other cases where the Public Defender is authorized to provide representation. If the Public Defender withdraws due to conflict, the court must appoint the Office of Criminal Conflict and Civil Regional Counsel (Regional Counsel). Alternatively, if the case is a civil case for which Regional Counsel is authorized to provide representation, the court must first appoint Regional

Flat Rates

Counsel. If the Regional Counsel withdraws due to conflict, only then may the court appoint private counsel from the registry.

The attorney is responsible for verifying that, as applicable, the Public Defender and Regional Counsel have properly withdrawn from the case. The withdrawal of the Public Defender or Regional Counsel from an earlier proceeding shall not create any presumption that those offices continue to have a conflict 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 court-appointed counsel is authorized under Florida law.

As a general rule, Regional Counsel has primary responsibility for providing representation to indigents in civil cases. Two limited exceptions to this requirement are for guardianship proceedings under Ch. 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. In these instances, a finding of conflict is not necessary.

20. Do I have to keep hourly records if I am billing under a flat rate?

If an attorney has reason to believe that the flat rate is confiscatory, and he or she may seek relief under s. 27.2753(12), F.S., then the attorney must maintain contemporaneous billing records. JAC has no authority to pay an hourly billed invoice if contemporaneous billing records were not kept.

The failure to maintain accurate detailed contemporaneous records can constitute a waiver of the right to seek compensation in excess of the flat fee. A finding by JAC that an 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, for failing to maintain detailed and contemporaneous records or for failing to allow JAC to inspect those records shall be presumed to be valid, unless a court concludes that JAC's finding is not supported by competent and substantial evidence.

21. If I am appointed to multiple cases for the same defendant, may I bill one case on an hourly basis and the other cases on a flat fee basis?

No. Under the terms of the JAC Agreement an attorney must either bill all of the cases on a flat fee basis or the attorney must submit a single extraordinary billing covering all of the cases. When an attorney is appointed to multiple cases involving the same defendant within 30 days or when multiple cases involving the same defendant resolve within 30 days, the attorney is contractually barred from seeking extraordinary compensation on one or more of the cases while seeking flat fee compensation on the other cases.

Indigent for Costs

Extraordinary Billing

22. Can an attorney seek compensation in excess of the flat fee under the General Appropriations Act?

Yes. For case appointed on or after July 1, 2007, s. 27.5304(12), F.S., contains provisions allowing an attorney to seeking compensation in excess of the flat fee. The attorney has the burden to establish through competent substantial evidence that the case involved unusual and extraordinary efforts warranting departure from the statutory fee schedule.

23. Are there any requirements that must be met prior filing a motion for extraordinary compensation?

Yes. Under s. 27.40(7)(b), F.S., an attorney must maintain accurate and contemporaneous hourly records of the time spent representing the client. The failure to maintain such records constitutes a waiver of the right to seek compensation in excess of the flat fee.

Also, prior to filing the motion, an attorney must submit an intended billing seeking compensation in excess of the flat fee along with all supporting documentation to JAC. JAC shall review the billing and supporting documentation for completeness and compliance with contractual and statutory requirements. If JAC objects to any portion of the proposed billing, the objection and reasons therefor shall be communicated in writing to the attorney. The counsel may thereafter file his or her motion, which must specify whether JAC objects to any portion of the billing or the sufficiency of documentation, and shall JAC's letter stating its objection.

24. Who hears a motion for extraordinary compensation for cases appointed on or after July 1, 2007?

Section 27.5304(12)(b), F.S., requires an evidentiary hearing be heard whenever an attorney seeks compensation in excess of the flat fee or statutory limitations. The Chief Judge for the circuit or designee shall conduct the evidentiary hearing. In many circuits, the Chief Judge has designated the trial judge to hear this motion. It is the attorney's responsibility to ensure that the motion is set before the correct judge.

25. What evidence should be presented at hearing?

The finding of the trial court must be supported by competent substantial evidence. An attorney seeking compensation should present evidence regarding the number of witnesses, the complexity of the factual and legal issues, the

Indigent for Costs

length of trial, and any other evidence that show that the case involved unusual and extraordinary efforts.

In order for a court to authorize hourly billing in a criminal case in excess of double the flat fee, the number of work hours must exceed 75 hours OR the number of state witnesses deposed must exceed 20 witnesses. If a criminal case does not meet these minimum criteria, then the court may not award more than double the flat fee under the General Appropriations Act.

Per the JAC Agreement, an attorney providing representation in dependency, termination of parental rights, and other civil cases appointed on or after July 1, 2007, may not seek compensation in excess of the flat fee set forth in the General Appropriations Act unless the number of hours worked on the case or cases appointed to the same client would allow for payment of at least double the total flat fee at the hourly rate of \$75 per hour.

26. If the court allows for hourly billing, what are the rates authorized?

Pursuant to s. 27.5304(12)(d), F.S., the hourly rates cannot exceed \$75 per hour for non-capital cases and \$100 per hour for capital cases. For billing purposes, a capital cases is a case “for which the potential sentence is death and the state has not waived seeking the death penalty.” § 27.5304(5)(a)4, F.S. This determination is made based at the time the attorney is appointed to the case.

If an attorney is appointed after the state has waived death or death is not a potential sentence, then the non-capital rate of \$75 per hour applies.

27. May I seek a court order to have a case declared “unusual and extraordinary” prior to final disposition of a case?

Under s. 27.5304(12), F.S., an attorney should wait until final disposition before seeking to have a case declared unusual and extraordinary. This section requires an evidentiary hearing at which the court must make specific findings in order to award a fee in excess of the flat fee or statutory limitations.

Indigent for Costs

28. When is JAC authorized to provide costs for an indigent defendant?

Not all indigents qualify for provision of due process services through JAC. JAC only provides due process costs for those case types in which there is a statutory or constitutional right to appointed counsel. For example, JAC would pay for appropriate due process costs in criminal cases, delinquency cases, and dependency cases. JAC would not pay for due process costs in a foreclosure action, divorce case, or probate case.

Indigent for Costs

29. How does an attorney have a defendant declared indigent for costs?

An attorney must file a written motion seeking to have a defendant declared indigent for costs. Attached to the motion should be two affidavits, a completed clerk's application for indigency and an affidavit attesting to the estimated amount of attorney's fees. A copy of the motion with the affidavits should be served on JAC a minimum of five business days before any hearing on the motion. A motion to have a defendant declared indigent for costs should not be made *ore tenus* in that JAC is an essential party to the motion and is entitled to notice and an opportunity to be heard.

30. After the court declares a defendant indigent for costs, what should the attorney do?

An attorney must execute the JAC contract for indigent for costs cases as required by ss. 27.52(5)(d) and 297, F.S. Until the attorney executes this contract, JAC cannot pay any due process costs. The attorney must also provide JAC with the following documentation:

1. The written Motion to Declare the Defendant Indigent for Costs
2. The Clerk's Application for Indigency
3. The Affidavit Attesting to Attorney's Fees
4. The Order Declaring the Defendant Indigent for Costs
5. The Charging Document(s)

These documents are used to officially open a case in JAC's database once a defendant is declared indigent for costs. An attorney must submit the required case opening documents within 30 days of the date the client is declared indigent for costs. Until JAC receives these documents and the signed contract, JAC will not process for payment any billings from due process providers.

31. Where can an attorney find the current JAC contract?

The contract for Indigent for Costs cases is available on JAC's website at

http://www.justiceadmin.com/ind_for_cost/Notices/notice.aspx

Prior to fiscal year 2011/2012, an attorney executed a separate contract for each privately retained client who was declared indigent for costs. Starting fiscal year 2011/2012, JAC is replacing the single client indigent for costs contract with a 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. Once an attorney executes the annual indigent for costs agreement, the attorney will not need to execute any further agreements during the term of the contract. The single agreement will cover any of the attorney's clients declared indigent for costs under s. 27.52(5), F.S., or other applicable

Indigent for Costs

provisions of Florida law authorizing due process costs for indigents through JAC. The agreement will remain in place for existing and new cases found indigent for costs through the term of the agreement (even after the term of the agreement expires) unless the attorney executes a superseding agreement. Once an attorney executes the new annual indigent for costs agreement, it will supersede any prior indigent for costs agreements executed by the attorney. This will allow the attorney to function under a single agreement covering all of his or her indigent for costs clients including those clients found indigent for costs prior to the execution of the new agreement.

If privately retained counsel intends to seek reimbursement for due process costs paid by counsel or counsel's firm, a properly completed Substitute Form W-9 must be submitted to the Department of Financial Services. Information and the Substitute Form W-9 are available on DFS's website at:

<https://flvendor.myfloridacfo.com/>

If an attorney intends to seek reimbursement of costs in any case, the Substitute Form W-9 must be submitted prior to execution of any contract with JAC for fiscal year 2011/12. As part of completing the agreement, attorneys and due process providers are required to certify that they have submitted a Substitute Form W-9 to DFS. The form may be submitted electronically through DFS's vendor website:

32. Is there a way for an attorney to determine what documents JAC has on file for a case?

Yes. If the attorney establishes an account with JAC, an attorney has the ability to see if the required documentation has been received by JAC. A printout of this information may be helpful to give to court reporters or other vendors who request verification prior to providing services on a case. The information provided on the website is limited to what was received beginning August 1, 2008. Information prior to that may also be available. Information on how to setup an account and login into the website is available in the QUICK REFERENCE GUIDE FOR ATTORNEY LOGIN TO JAC DATABASE VIA JAC WEBSITE contained herein.

33. What information should the order declaring a defendant indigent for costs contain?

In addition to finding a defendant indigent for costs, the order should also delineate what services are authorized and the amount authorized for each service. In addition, if the rates requested exceed the rates authorized by law, then the order should also include the rate authorized for the service.

If the order does not authorize costs with specificity, then a supplemental order may be necessary for JAC to pay due process costs. This can result in delay in

Indigent for Costs

payment for due process providers. If a supplemental order is necessary, JAC is entitled to notice and an opportunity to be heard before the court authorizes any additional due process costs. A copy of the motion should be provided to JAC at least five business days prior to any hearing on the motion.

34. What due process rates apply?

Pursuant to s. 27.425, F.S., the legislature sets the rates for due process costs annually in the General Appropriations Act. The legislature has adopted uniform statewide rates for court reporting and private investigator services effective July 1, 2010. The same rates that apply to court-appointed cases apply to indigent for costs cases.

Rate charts by circuit are available on JAC's website. If a rate is not set, then JAC relies on the rates recommended by the Indigent Services Advisory Board or other source. This information is available in JAC's Policies and Procedures Manual.

In order to exceed the rate established by law, an attorney has the burden to show diligent efforts to obtain due process services within the rates established by law. The order allowing the defense to exceed the rates should contain findings regarding those diligent efforts.

The sections below relating to attorney expenses, billing and due process costs also apply to indigent for costs cases.

35. Who should sign the voucher covers submitted to JAC?

All billings must be submitted using the applicable JAC Invoice Voucher covered executed by the vendor and the attorney who signed the JAC contract for indigent for costs cases. JAC indexes all cases under the Florida Bar Number of the attorney executing the contract. If another attorney in the firm signs the billing, it should be on behalf of the attorney who executed the contract. The voucher cover **MUST** reference the name of the attorney that executed the contract. Otherwise, payment to the vendor could be substantially delayed.

36. Does JAC pay for travel expenses for privately retained counsel?

Unless the attorney is providing services on a *pro bono* basis, JAC does not pay for travel expenses for privately retained counsel. Such travel expenses are an overhead expense that should have been considered when the attorney set his or her fee for the case. For example, if an attorney based in North Florida makes a business decision to provide representation in a case from South Florida, JAC is not responsible for paying travel expenses for the attorney associated with traveling to South Florida.

Attorney Expenses

Attorney Expenses

37. May I bill for mileage incurred while providing representation for my court appointed case or indigent for costs case?

In court appointed cases, mileage for cases appointed prior to July 1, 2007, will be paid as they have been historically. After July 1, 2007, JAC will pay mileage only when the destination is in excess of 50 miles (one-way) of the attorney's office.

In indigent for costs cases, an attorney may not bill for mileage unless providing services on a *pro bono* basis. Mileage is considered part of overhead and is part of the attorney's fees.

Any request for mileage (or other travel expenses) 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's 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.

38. May I bill for costs for postage, telephone calls, copies, and/or online research required to complete my case?

No. For cases appointed on or after July 1, 2007, the Legislature intended that payment of the flat rate includes these office overhead type expenses. Similarly, for cases billed hourly under s. 27.5304(12), F.S., these types of expenses are included in the hourly rate. Similarly, in indigent for costs cases, these expenses are considered office overhead and are not reimbursable due process costs.

39. May I bill for costs associated with obtaining documents, medical records, or other discovery?

An attorney may be reimbursed for costs associated with obtaining documents with limited exceptions. In order to obtain reimbursement, the expense must be supported by a court order. The court order should indicate the amount authorized to obtain such documents.

JAC does not pay for documents obtained from the clerk of court. Under ss. 57.081 and 28.345, F.S., the clerk should not require prepayment to provide copies of court documents to an indigent or his or her attorney.

Dependency and TPR

Billing

40. Can I continue to bill in interim?

JAC will continue to review and process all interim billings for cases appointed prior to May 24, 2007. However, SB 1088 removed JAC's authority to review and process interim billings for cases appointed on or after May 24, 2007. Therefore, cases appointed subsequent to this date should be paid only upon disposition.

If an attorney seeks to interim bill for a case appointed on or after May 24, 2007, the attorney must still comply with the requirements of s. 27.5304, F.S., the JAC Agreement and these Policies and Procedures prior to filing a motion for attorney's fees. In particular, the attorney must submit an intended billing and await JAC's response thereto prior to filing a motion for attorney's fees with the court. When JAC receives an interim billing, JAC may issue an objection letter objecting to interim billing. Appointed counsel 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. If a court authorizes interim billing, the methodology should be comparable to the billing methodology used in cases appointed prior to July 1, 2007.

41. The defendant in a case to which I am assigned has failed to appear for proceedings. Will I be paid for work I have completed on the case?

You may bill for your case 180 days after the failure to appear occurred if the defendant has not been rearrested. When and if your client reappears, you will be required to complete the case for no additional compensation.

42. The defendant in a case to which I am assigned has been declared incompetent to stand trial. Will I be paid for work I have completed on the case?

You may bill for your case 180 days after the finding of incompetency if the defendant remains incompetent. When and if your client is declared competent, you will be required to complete the case for no additional compensation.

43. My client was placed in a pretrial diversion program. May I bill after this event?

You may bill 180 days after placement if the defendant remains in the program or has completed pretrial diversion, and the state attorney has not filed a voluntary dismissal or nolle pros. However, if your client fails to complete the program and goes back before the court, you must complete the case for no additional

Dependency and TPR

compensation. You may also bill upon the state attorney filing a notice of voluntary dismissal or nolle pros.

44. For criminal and delinquency cases, when is a case considered to be on pretrial diversion for billing purposes?

JAC typically pays attorney's fees when a case reaches final disposition. A case reaches final disposition for billing purposes when the trial court either adjudicates the defendant guilty or withholds adjudication. Thus, in addition to the situation that arises when the state attorney offers a defendant a pretrial diversion program, where a defendant enters a plea, but the trial court defers on adjudication until a later date, the case is considered to be on pretrial diversion for billing purposes. In both of these situations, JAC will not process a billing for payment until either a dismissal is entered or 180 days passes from the date the defendant entered the pretrial diversion program.

45. Must I bill simultaneously for all cases appointed on the same defendant within a 30 day period?

Yes. Moreover, under the terms of the JAC Agreement an attorney must either bill all of the cases on a flat fee basis or the attorney must submit a single extraordinary billing covering all of the cases.

46. If an attorney is appointed to multiple cases for the same defendant within 30 days, what will JAC use as the date of final disposition for purposes of the penalty for untimely billing?

JAC will use the date the last case reaches final disposition as the date of final disposition for situations in which an attorney is appointed to multiple cases for the same defendant within 30 days.

47. Can JAC require an appellate attorney to submit briefs along with hourly bills?

Yes. Under the Agreement for Attorney Services, an attorney shall supply a paper or electronic copy of the briefs filed by the attorney in the case.

48. For a criminal case, what documentation does JAC require as a charging document?

For a felony case, the attorney must supply an information or indictment as the charging document. If no charges were filed by the state attorney, then the attorney will need to provide other documentation such as a probable cause affidavit or police report that establishes the offense for which the defendant was arrested. If the state attorney does not file formal charges, then the flat fee for no information cases applies.

Dependency and TPR

49. A registry attorney who has executed a standard contract for the circuit is appointed to a case for which the attorney has not been approved for the registry based the case type or the county. Does the attorney need to execute a separate non-standard agreement covering this case?

No. As long as an attorney has executed a contract with JAC covering appointments for the circuit, the attorney does not need to execute a separate contract for a case for that circuit even if the trial court makes an off registry appointment based on case type or the county. The standard agreement for attorney services covers all court appointments arising from the circuit. However, if an off registry appointment is made; the order still needs to comply with the requirements of s. 27.40, F.S.

50. How do I change my address on file with JAC?

If the only change is a change of address, then you will need to submit a change of address through JAC's secure website. For payments through state warrants, JAC can only remit payments to the address on the applicable Substitute Form W-9. You can alleviate problems associated with changing addresses by electing to receive payment through electronic funds transfers rather than mailed warrants.

51. How do I change my tax ID (or social security number)?

Any change involving a new tax ID (or social security number) requires the execution of a new contract. Until a new contract is executed, JAC cannot remit payment based upon a new tax ID. If you change firms, in most cases, you will need to execute a new contract because of the change in tax ID.

Prior to executing the new agreement, a properly completed Substitute Form W-9 must be submitted to the Department of Financial Services. Information and the Substitute Form W-9 are available on DFS's website at:

<https://flvendor.myfloridacfo.com/>

As part of completing the agreement, attorneys are required to certify that they have submitted a Substitute Form W-9 to DFS. The form may be submitted electronically through DFS's vendor website:

Any pending invoices listing the prior tax ID will be paid to that tax ID at the address on file for that tax ID. If you wish to change pending invoices to a different tax ID, you will need to submit an amended JAC Invoice Voucher cover signed in blue ink. Write "AMENDED" at the top of the voucher. JAC cannot accept faxed copies of an amended voucher cover. If you are concerned about JAC paying invoices to the prior tax ID, you may request to withdraw those

Dependency and TPR

invoices pending submission of amended voucher covers. To submit a request to withdraw please complete the Request to Withdraw JAC Voucher Cover/Invoices form located on the JAC website, and fax it to the Help Desk. You may also scan the signed form and email it to helpdesk@justiceadmin.org. If you are unable to determine from your records whether a particular voucher is attached to the previous tax ID, the JAC Help Desk can assist.

As to future invoices, they will be paid based upon the tax ID on the JAC Invoice Voucher cover. If the voucher cover references the former tax ID, then JAC will pay the invoice to the address on file for that tax ID. Similarly, if the voucher cover references the present tax ID, then JAC will pay to the address on file for the present tax ID.

52. An attorney is appointed to represent a defendant in a delinquency case. This case is direct filed as an adult. How does the attorney bill?

If there is no delinquency petition filed, the amount of compensation an attorney receives depends on whether the attorney continues to represent the defendant in the criminal case.

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 to 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.

53. If an attorney is appointed to a violation of probation/community control (VOP/VOCC) and is then appointed to a second instance of VOP/VOCC under the same case number, how does the attorney bill?

This depends on whether the initial VOP/VOCC reached disposition prior to the second instance of VOP/VOCC. If an attorney is appointed to a VOP/VOCC and that matter reaches final disposition prior to the filing of a second affidavit of VOP/VOCC then the attorney could bill a flat fee for each VOP/VOCC. For example, if an attorney was appointed to a VOP on January 1st and the defendant was sentenced on March 1st and then a new VOP was filed on June 1st, then the attorney could bill a flat fee for the January 1st case and a flat fee for the June 1st case.

Dependency and TPR

However, if the second VOP/VOCC is initiated before resolution of the first VOP/VOCC, then the matter is considered one case for billing purposes. The second VOP/VOCC is viewed as an amendment to the first VOP/VOCC rather than a new case. For example, if the attorney was appointed to a VOP on January 1st and then appointed to a second VOP on February 1st, and sentencing occurs on March 1st, the attorney could only bill JAC for one flat fee for the VOP appointment.

54. What is the rate for an appointment to a proceeding on a belated appeal in a criminal case?

For billing purposes, an appointment to provide representation for purposes of a motion or petition for belated appeal is considered an appointment to a motion for postconviction relief and is compensated at the applicable flat fee for such appointments.

Due Process Costs

55. What due process rates apply?

Pursuant to ss. 27.425 & 27.5305, F.S., the legislature sets the rates for due process costs annually in the General Appropriations Act. The legislature has adopted uniform statewide rates for court reporting and private investigator services effective July 1, 2010. The legislature adopted a maximum rate for mitigation specialists on July 1, 2011. Rate charts by circuit are available on JAC's website. If a rate is not set, then JAC relies on the rates recommended by the Indigent Services Advisory Board or other source. This information is available in JAC's Policies and Procedures Manual.

In order to exceed the rate established by law, an attorney has the burden to show diligent efforts to obtain due process services within the rates established by law. The order allowing the defense to exceed the rates should contain findings regarding those diligent efforts.

56. Does an attorney need to file a motion for due process services and serve JAC with this motion prior to the court approving any due process services?

Yes. JAC has standing to participate in any proceeding regarding the approval of due process costs such as transcripts, court reporter fees, services of process, investigators, and experts. Except when prior court approval is not required, an attorney must serve JAC with a copy of the motion for due process costs prior to a court entering an order approving the due process costs. Also, a court order is always required for any due process services in excess of rates established by law. A written motion for due process service costs must specify the type of due process service requested, the rate requested, and an estimated maximum

Dependency and TPR

amount of costs required. The motion shall be properly served on JAC a minimum of five business days prior to the date of any hearing on the motion

57. As a court-appointed counsel can I hire an out-of-state expert witness?

Attorneys shall not seek authorization from the court for out-of-state experts-or mitigation specialists, absent a showing that there are no such providers with appropriate skills or expertise available, first, in the county in which the case was filed and, second, in any other county in the State of Florida. If Attorney obtains an out-of-state due process provider without making such a showing, Attorney agrees not to request reimbursement for any travel expenses including compensation for travel time on behalf of the due process provider. An order authorizing the employment 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.

58. Must I obtain a court order before ordering a transcript for my court-appointed case?

Yes. In order for JAC to pay for a deposition transcript, the court must enter a specific order finding that the transcript is necessary. 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 private court-appointed counsel to order "necessary" transcripts will no longer suffice for payment purposes effective July 1, 2010.

In order to expedite the payment process, the order authorizing transcription should reflect the date of the deposition and the name of the deponent for each deposition to be transcribed.

Transcripts should not be ordered as a matter of course. It is anticipated that private court-appointed attorneys and indigent for costs attorneys will be taking notes during any 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.

59. For appellate transcripts, is an order authorizing the transcript necessary?

As a general rule, JAC requires an order in order to pay for a transcript. For appellate transcripts only, JAC will accept the designation of the record filed with the clerk of court in lieu of an order authorizing the transcript.

Dependency and TPR

60. An attorney is deposing a witness out-of-circuit. What rates apply?

For depositions in the State of Florida, the rates applicable for the circuit in which the deposition occurs will apply for services rendered prior to July 1, 2010 and the uniform statewide rates will apply for services rendered on or after July 1, 2010. For out-of-state depositions, an attorney is responsible for making reasonable efforts to obtain deposition services at an appropriate rate for the locale of the deposition.

61. Does JAC pay expedited rates for transcripts?

As a general rule, JAC only pays the regular rate for transcripts. An order authorizing transcripts only authorizes payment at the rate for regular delivery. In order to pay at expedited rates, JAC will need a court order specifically authorizing expedited rates for the transcript. Before a court enters such an order, the attorney will need to file a motion seeking expedited rates. This motion should delineate the specific reason for the need for an expedited transcript and must be served upon JAC prior to the court considering the motion. JAC will not pay expedited rates for a transcript absent a court order authorizing expedited rates.

62. When JAC receives an order authorizing deposition transcripts, what will JAC pay for?

With an order authorizing transcripts, JAC will pay for an original plus one copy. Pursuant to section 27.5305, JAC is not authorized to pay for more than one copy of a deposition transcript. JAC will also only pay regular rates unless the court order specifically allows for expedited rates.

63. Does JAC pay a listening or take down fee when the court reporter transcribes a digital or audio recording?

For deposition or hearing transcripts, compensation is limited to the page rate. The time necessary to transcribe the original transcript is already compensated through the higher per page rate typically authorized for an original transcript.

For other audio recordings, the vendor may seek either the applicable per page rate or the applicable hourly rate. A vendor cannot bill both the per page rate and the listening fee rate.

64. Does JAC pay for private process servers to serve law enforcement officers?

As a general rule, JAC does not pay for service of process on in-county law enforcement officers. Under section 57.081, the sheriff is available to provide service of process without prepayment in cases involving indigent persons.

Dependency and TPR

Absent exceptional circumstances, the sheriff is capable of rendering service on law enforcement officers within the county. In order to use a private process server to serve in-county law enforcement officers, a specific court order must be provided setting forth the need for use of a private process server.

Moreover, under Florida Rule of Criminal Procedure 3.220(h)(5), service of process is not necessary to serve law enforcement for depositions:

Subject to the general provisions of subdivision (h)(1), law enforcement officers shall appear for deposition, without subpoena, upon written notice of taking deposition delivered at the address of the law enforcement agency or department, or an address designated by the law enforcement agency or department, five days prior to the date of the deposition. Law enforcement officers who fail to appear for deposition after being served notice are subject to contempt proceedings.

Under this provision, service of a witness subpoena is unnecessary. Provision of written notice to the appropriate law enforcement official at least five days prior to the date of the deposition is sufficient under the Florida Rules of Criminal Procedure.

65. Can investigators bill for mileage?

As a general rule, investigators are paid hourly and that hourly fee includes ordinary travel. Investigators are only paid for extraordinary mileage. Extraordinary mileage requires a trip exceeding 50 miles one way. In instances involving multiple destinations within a county, the total mileage for the trip must exceed 100 miles. An out-of-county investigator may not bill for mileage between the investigator's office and the county of the case unless there is an order authorizing the retention of the out-of-county investigator.

66. What are the rates for investigators?

The rates for investigators as with other due process providers are set annually in the General Appropriations Act. For services rendered on or after July 1, 2010, the hourly rate cannot exceed \$40 per hour. For services rendered prior to July 1, 2010, the rates in effect are the rates implemented by the local indigent services committee in effect on June 30, 2006 or for circuits that did not set a rate, the hourly rate cannot exceed \$50 per hour

Dependency and TPR

67. Can an investigator bill separately for serving subpoenas?

As a general rule, no. An investigator cannot bill for investigative time and then bill for serving a person during that time. Such billing constitutes double payment. If an investigator serves a witness, the rate applicable is the rate for private services of process if the court has authorized such service. The payment for service of process includes the time to locate and serve the witness regardless of the amount of time it takes to complete the service. As a general rule, the sheriff should be used to serve all process and must be used to serve in-county law enforcement. If an investigator is performing investigative tasks in addition to serving the witness, such as witness interviews, then the investigator may bill for time involved. However, the investigator may not bill for service of process because the investigator is being compensated for his or her time through the billing for investigative tasks.

68. How does an investigator get appointed to a court-appointed or indigent for costs cases?

Generally, the private attorney representing the defendants selects the investigator. JAC's role is limited to providing payment for due process services either through reimbursement to the attorney or through direct payment to the due process vendor. In order for a vendor to receive direct payment from JAC, the vendor must enter into a contract with JAC and the attorney retaining the vendor's services must also have a current contract with JAC.

69. What does a private investigator need to enter into a contract with JAC to provide services in court-appointed and indigent for costs cases?

In order for a private investigator to enter into an agreement for due process services with JAC, the investigator must be properly licensed under Chapter 493. The investigator must have a Class C license and work for Class A agency. Copies of these licenses should be attached to the contract.

In the case of Class A agencies desiring to enter into contracts with JAC, the Agency must have a Class A, Class AA, or Class AB license as applicable. The Agency must also supply the Class C or Class MA license for the agency lead investigator. Copies of these licenses should be attached to the contract. At the time of renewal, an investigator should provide JAC a copy of renewed license.

70. An investigator firm uses more than one investigator on a case. How does the firm bill the services of each investigator?

The lead investigator will need to certify the JAC Invoice Voucher Cover indicating all the hours worked on the case by each Class C and each Class CC investigator. Attached to the voucher cover must be an invoice or invoices clearly delineating the work done and which investigator completed the work.

Dependency and TPR

The JAC Investigator Invoice Voucher Cover and a model hourly statement are available on JAC's website at

http://www.justiceadmin.com/court_app_counsel/due-process/investigator/

The failure to delineate which investigator performed the work on a case may result in significant delay in payment.

71. May a Class CC investigator work on court-appointed or indigent for costs cases?

Yes. However, absent a court order authorizing a different rate, a Class CC investigator intern will be compensated at 60 percent of the rate authorized for investigators with a Class C license. At the statewide rate of \$40 per hour, this equates to \$24 per hour.

72. How much detail should be provided in an hourly invoice submitted by an investigator?

Each entry must be sufficiently detailed so that JAC staff can assess the reasonableness of the work performed. When listing investigative services, list the date and amount of time (in tenths of an hour), type of activity, and brief description for each activity separately. Avoid aggregating investigative activities into block entries covering multiple services, dates, and times. For review of documents, the billing should indicate the type of document and approximate number of pages reviewed. For review of audio tapes, video tapes, or other media, the billing should indicate the approximate length of the media. All billings must be in increments of hours and tenths of an hour. Billing in minutes, quarter hours, or other increments is not permitted. The amount of time billed cannot exceed the amount of time actually worked during a particular work session. In other words, an investigator cannot bill 0.1 hours separately to review ten documents when the total time spent reviewing the documents was 0.5 hours.

Before certifying the billing, the attorney is responsible for reviewing the billing to ensure that there is no breach of attorney-client or work product privilege. The attorney should redact the billing only to the extent necessary to protect those privileges.

73. What types of services by an investigative/mitigation specialist does JAC pay for?

The roles of an investigator is to provide investigative services for an attorney 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

Dependency and TPR

character of witnesses. In those circuits that authorized use of a private process server, 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 cannot bill for both the time spent serving the subpoena and the flat rates for service of process.**

An investigator is not a substitute for a paralegal or secretary and cannot be used to perform administrative tasks. Examples of tasks an investigator cannot bill for include the following: picking up discovery from the state attorney; copying documents from the court file; delivering materials to the defendant; or any other tasks of a paralegal or secretarial nature.

JAC also does not provide reimbursement for clerk of court charges for documents provided to an indigent defendant. Pursuant to section 28.435 and section 57.081, the clerk should not require any prepayment to provide certified judgments and sentences and other court pleadings. It is the attorney's responsibility to provide any documentation that the clerk of court may require such as an order of appointment, an order finding the defendant indigent for costs, or an order authorizing the defense to obtain the necessary documents.

74. Does a mitigation specialist need to be licensed as a private investigator?

Unless the mitigation specialist has another professional license in Florida that exempts the mitigation specialist from having a private investigator license, then a mitigation specialist must be licensed as a private investigator to do work on court-appointed and indigent for costs cases. Appropriate professional licenses include licenses in mental health fields, social work, and law. The professional licenses must be a Florida license.

75. What is the rate for a mitigation specialist in a capital death case?

Mitigation specialists are only authorized in capital death cases. In other cases, an investigator should be employed to handle the development of mitigating evidence. The mitigation specialist is a specialty unique to capital cases in which the state is seeking a potential sentence of death.

For services rendered prior to July 1, 2010, unless the Indigent Services Committee approved a separate rate for mitigation specialists, the rate is the same rate applicable to investigators for the circuit. For services rendered on or after July 1, 2010 through June 30, 2011, the rate is \$40 per hour unless the court approves a higher rate.

For services rendered on or after July 1, 2011, in capital death cases, the legislature has authorized a rate of up to \$75 per hour for mitigation specialists to

Dependency and TPR

allow for specialized expertise, skills and education beyond that normally required for an investigator. 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 will need to 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.

Dependency and Termination of Parental Rights

76. While s. 27.5304(6)(c), F.S., provides that appeals from an adjudication of dependency will be paid \$1000, the GAA provides a flat fee of \$2000 for dependency appeals. Which rate is correct?

Legislative staff has informed JAC that the \$1000 rate will take precedence.

77. For dependency and termination of parental rights appeals, how does an attorney bill the flat fee?

For dependency cases, an attorney may bill a flat fee of \$750 upon filing of a brief or the granting of a motion to withdraw based upon inability to file a brief in good faith due to a lack of meritorious issues. Therefore, if a brief was filed, the attorney may bill an additional \$250 once the case is final, typically upon issuance of the mandate. See § 27.5304(6)(c), Fla. Stat. (2007). Alternatively, if a brief was filed, the attorney may file bill a single flat fee of \$1,000 once the case is final. However, if an attorney was allowed to withdraw due to the inability to file a brief in good faith, then the flat fee is limited to \$750.

For termination of parental rights cases, an attorney may bill a flat fee of \$1,000 upon filing of a brief or the granting of a motion to withdraw based upon inability to file a brief in good faith due to a lack of meritorious issues. Therefore, if a brief was filed, the attorney may bill an additional \$1,000 once the case is final, typically upon issuance of the mandate. See § 27.5304(6)(d), Fla. Stat. (2007). Alternatively, if a brief was filed, the attorney may file bill a single flat fee of \$2,000 once the case is final. However, if an attorney was allowed to withdraw due to the inability to file a brief in good faith, then the flat fee is limited to \$1,000.

If the attorney is billing the flat fee, JAC does not require the attorney to provide JAC with a full copy of the appellate brief. The attorney only needs to provide enough of the brief to show that it was actually filed. Typically, the cover page, the table of contents, and the signature page are sufficient evidence to establish

Dependency and TPR

that the attorney filed a brief. For hourly bills, the attorney must provide JAC with complete copies of any briefs filed with the appellate court.

78. I am a dependency attorney working under an alternate model contract. Will I receive additional compensation for cases appointed before July 1, 2007? What rate will I receive?

If the case has not reached final disposition by July 1, 2007, you will receive the full first year rate for dependency cases: \$1,000 upon disposition of the case. Otherwise, compensation will be pursuant to the GAA; \$200 for each year after the first year.

79. I am a dependency attorney who had an Alternate Model Contract (Circuit 5, 12, or 18). When may I bill the \$200 annual flat fee in dependency cases that were appointed under my Alternate Model Contract?

For an appointment to a dependency case under your Alternate Model Contract, billing for the \$200 annual flat fee for the second and subsequent years following appointment is subject to the provisions of s. 27.5304(6)(a)2. F.S. (2007). Your date of appointment to the case controls when you can bill the \$200 annual flat fee for the second and subsequent years following appointment. Subject to the requirements of s. 27.5304(6), you may submit billings for the \$200 annual flat fee after the first Judicial Review (JR) following the anniversary date of your appointment to the case and for subsequent years thereafter. For example: (1) if you were appointed to the case on March 1, 2007, you could bill the \$200 annual flat fee following the first JR that occurs after March 1, 2008; (2) if you were appointed to the case more than a year as of July 1, 2007, such as an appointment on January 1, 2006, you could bill the \$200 annual flat fee after the first JR following July 1, 2007, and could bill a second \$200 annual flat fee after the first JR following January 1, 2008.

If you were appointed to a Dependency case before the effective date of your Alternate Model Contract, you may bill in accordance with s. 27.5304(7), F.S. (2006) – rates established by the ISC billable upon order of disposition, conclusion of a 12-month permanency review, or following a JR, but not more than once per quarter.

80. I am a dependency attorney whose case has reached disposition, but has remained under court jurisdiction. The case has been reactivated due to another event. Will I be paid as if this were a new case (\$1000/first year for appointments made from 7/1/07 to 6/30/08; \$800/ first year for appointments made from 7/1/08 to the present) or as if it were same case (\$200/year after the first year)?

Dependency and TPR

If you have withdrawn from the case and have not received payment on it for at least 12 consecutive months, JAC will treat the reactivation as a new case for payment purposes.

81. I am the second appointment on a dependency case (the first attorney withdrew). Will the date of appointment for billing purposes be my date of appointment or the original attorney's date of appointment?

It will be your date of appointment.

82. When can I bill for dependency cases?

For appointments prior to May 24, 2007, you may bill in accordance with s. 27.5304(7), F.S., (2006). For appointments on or after May 24, 2007, you may submit the initial bill at disposition, at dismissal, or upon termination of protective supervision. For later bills, you may bill at the first judicial review in the second year from the date of appointment and each year thereafter.

83. For a termination of parental rights case, when can an attorney bill the 200 for representation after the first year?

An attorney can bill the \$200 at the first judicial review in the second year following their date of appointment to the termination of parental rights. Generally, the trial court should enter an order specifically appointing the attorney to the TPR even if the attorney was initially appointed to the dependency case. If the trial court does not enter a separate order of appointment for the TPR, then JAC will rely on the date of the advisory hearing as the date of appointment for the TPR.

84. An attorney is appointed to an upfront TPR. If the court denies the petition for TPR but finds the child dependent, when can the attorney bill for the dependency.

Assuming the attorney remains on the case, the attorney (or a successor attorney) can bill the flat rate (\$1,000 for appointments made from 7/1/07 to 6/30/08 or \$800 for appointments made from 7/1/08 to present) for the dependency at the first judicial review following the denial of the TPR petition. Absent an order of appointment to the dependency, the date of the denial of the TPR petition shall be deemed the date of appointment for purposes of future billings.

85. A dependency attorney's client waives disposition. When can the attorney bill the flat fee (\$1,000 for appointments made from 7/1/07 to 6/30/08 or \$800 for appointments made from 7/1/08 to present)?

Dependency and TPR

If a parent waives the disposition hearing, then JAC cannot pay the flat fee until the court actually enters an order on disposition that

- (1) adjudicates the child dependent (or withholds adjudication);
- (2) approves a case plan; and
- (3) approves a placement for the child.

When the court holds a disposition hearing, JAC may be able to rely on the clerk's notes, the court's progress docket, or other materials to establish the case has reached a billable point. JAC can rely on those documents to establish that there was an oral ruling on disposition. However, when the court does not hold a disposition hearing, the court cannot have made an oral ruling.

86. In a dependency case, an attorney is appointed at shelter. DCF thereafter files a petition to terminate parental rights in lieu of a petition for dependency. Can the attorney bill for representation on the dependency?

No. If DCF files a TPR petition in lieu of a dependency petition, then the case is a TPR case rather than a dependency case. The type of petition filed by DCF determines whether the case is a dependency case or a TPR case. When DCF immediately files a TPR petition following the shelter, the attorney can only bill for the TPR once the TPR case reaches disposition. If DCF files a dependency petition but subsequently amends it to a TPR petition, then the attorney could bill for the dependency and for the TPR. The attorney would be allowed to bill both fees at the disposition for the TPR case.

87. An attorney was appointed to a dependency case prior to July 1, 2007. After July 1, 2007, DCF files a TPR petition. The trial court does not enter an order of appointment to the TPR. What is the date JAC will use for purposes of billing?

When there is no order of appointment to the TPR, JAC will use the date of the advisory (arraignment) hearing as the date of appointment to the TPR. If the advisory hearing is on or after July 1, 2007, then compensation for the TPR will be pursuant to the fee structure under the General Appropriations Act even if the appointment to the dependency was prior to July 1, 2007. Also, the earliest date an attorney can be appointed to a TPR is the date the TPR petition is filed. If an order of appointment is made *nunc pro tunc* to a date prior to the date the TPR petition was first filed, the date of filing will control for billing purposes.

88. An attorney is appointed to represent a parent in a dependency case. The case has multiple case numbers. Can the attorney bill more than one flat fee?

No. In dependency and TPR cases, JAC pays compensation based on the representation of a parent irrespective of the number of case numbers or children

Dependency and TPR

involved. Pursuant to section 27.5304(6)(a) and (6)(b), an attorney appointed to represent a parent is only entitled to one flat fee regardless of the number of children involved or the number of case numbers assigned to the case.

89. An attorney is appointed to represent a parent in an ongoing dependency case. After the case reaches disposition, a new child is born into the case. DCF initiates a dependency proceeding as to the new child. The same attorney is appointed to represent the same parent as to the new child. Can the attorney bill a second flat fee under these circumstances?

No. Section 27.5304(6)(a), F.S., specifically states that “[c]ompensation shall be paid based upon representation of a parent irrespective of . . . the number of children involved, including any children born during the pendency of the proceeding.” The birth of a child into an ongoing dependency case is not a billable event.

90. If an attorney is appointed to represent more than one parent in a dependency case, can the attorney bill more than one flat fee?

No. Pursuant to Paragraph XVIII(6) of the JAC Agreement for Attorney Services, “[i]n a Dependency case, if more than one parent is represented by the same attorney, the appointment shall be considered one case appointment for billing purposes.” An attorney appointed to represent more than one parent can only be compensated once under the flat fee payment structure.

91. In a termination of parental rights case (TPR), how does an attorney certify that he or she either discussed the option of appeal with his or her client, or filed a motion for appeal and appointment of appellate counsel according to s. 27.5304(6)(b), F.S.

An attorney who is appointed to a TPR case should complete and submit the *Certification of Court Appointed Attorney in Termination of Parental Rights Case* at the time he or she bills for the case.

The Justice Administrative Commission emailed *The Certification of Court Appointed Attorney in Termination of Parental Rights Cases* to all registry attorneys. This form is also found on our website at www.justiceadmin.com.

92. The parent an attorney is representing in a dependency proceeding signs surrenders prior to the filing of a petition to terminate parental rights. The Department of Children and Families then files a petition to terminate the parent’s rights based on those surrenders. Can the attorney bill JAC \$1,000 for representing the parent on the termination of parental rights.

Dependency and TPR

No. When a parent executes surrenders, they are not entitled to court-appointed counsel in a termination of parental rights proceedings absent a claim that the surrenders were involuntary. Section 39.807(1)(d), F.S., specifically provides that the right to appointed counsel does not apply “to any parent who has voluntarily executed a written surrender of the child and consent to the entry of a court order therefor.” Therefore, even the court appoints an attorney to represent a parent in a termination of parental rights proceeding after the execution of surrenders, JAC does not have statutory authority to pay attorney’s fees absent evidence that the parent is contesting the voluntariness of the surrenders.

93. After the Department of Children and Families filed a petition to terminate parental rights, the parent an attorney represents signs surrenders. After the Court terminates parental rights, does the attorney need to include with the billing packet the certification regarding whether the attorney discussed right to appeal with the parent.

Yes. However, as long as the attorney discussed with the parent at the time the parent executed the surrenders that he or she had a right to appeal and by executing the surrenders, he or she would be waiving the right to appeal the court terminating his or her rights to the child, the attorney would check the boxes stating that the attorney discussed the possibility of appeal with the parent and that no appeal will be filed. The certification remains necessary because, in some instances, prior to the court terminating parental rights, a parent may seek to have the surrenders set aside on the basis that the surrenders were coerced or involuntary. In those situations, the court-appointed attorney would be obligated to explain to the parent his or her appellate rights if the court denies the parent’s request to set aside the surrenders.

94. An attorney is appointed to a dependency case after another attorney is discharged. The prior attorney was appointed after July 1, 2007. How much can the second attorney bill for representation of a parent?

It will depend on the status of the case at the time of the second appointment. If the case is pre-disposition, then the first attorney and the second attorney would share the flat fee billable at disposition for the dependency case once the case reached disposition. The court would be responsible for apportioning the fee between the attorneys. Under these circumstances, the second attorney would use the first attorney’s date of appointment for purposes of future billings. If the case is post-disposition but the first attorney has not yet been paid, then again the court would be responsible for apportioning the fee.

If the first attorney has already been paid, then JAC will treat the case as a reactivation of protective supervision case. The second attorney will be allowed to bill a flat fee of \$200 at the first judicial review following the attorney’s appointment to the case. Under these circumstances, the second attorney would use his or her date of appointment for purposes of future billings.

Capital Cases

Capital Cases

95. I am a privately retained attorney in a capital case. May I move to have a second chair appointed by the court?

JAC lacks statutory authority to pay for court-appointed counsel where a defendant is represented by privately retained counsel. Section 27.52(5)(h), F.S., specifically indicates that a finding of indigency for costs is not a basis to appoint counsel where a defendant is represented by privately retained and paid counsel.

96. I am a second chair attorney in a case in which the death penalty was initially sought. The State Attorney has since withdrawn the death sentence. Should I withdraw from the case?

Yes. Once the death sentence is withdrawn, second chair or co-counsel should withdraw from the case. You must await disposition of the case before billing for the work performed on this case. Additionally, JAC must receive billings from all other court-appointed counsel who worked on the case and review the bills simultaneously.

97. Does JAC pay for attorney's fees, costs, or related expenses for private court-appointed attorney in post conviction capital collateral cases?

No. Pursuant to ss. 27.710 and 27.711, F.S., attorney's fees, due process costs, and other case-related expense for private court-appointed post conviction capital collateral cases are to be submitted directly to the Department of Financial Services. Requests for reimbursement in these post conviction capital collateral cases involving private court-appointed counsel should be submitted to the contract manager assigned to the case by the Chief Financial Officer.

98. Does JAC pay for attorney's fees, costs, or related expenses for private court-appointed counsel involving an application for executive clemency in a case involving a death sentence?

No. Pursuant to s. 27.5304, F.S., JAC does not pay for attorney's fees and costs associated with an application for executive clemency in a case involving a death sentence. Under this section, fees and costs in this type of case are paid out of general revenue funds budgeted to the Department of Corrections. Requests for reimbursement in this type of case will need to be submitted to the Department of Corrections.

Cases Appointed Before SB 1088 Became Law – Pre July 1, 2007

Cases Appointed Before SB 1088 Became Law – Pre July 1, 2007

99. Should I withdraw from my cases?

No. We see no reason within SB 1088 for an attorney to withdraw from his/her case(s).

100. Will attorneys appointed to cases prior to July 1, 2007, who continue to work on the case after July 1, 2007, be paid the new flat fees if the case reaches disposition after SB 1088 took effect?

No. The bill envisions that court-appointed attorneys will be compensated at the rate in effect at the time of their appointment. This applies to both hourly and flat rate billing structures.

101. At what rate will I be compensated for cases I am appointed to before July 1, 2007?

For appointments before May 24, 2007, ISC rates in effect at the time of appointment will apply to the end of the case. For appointments from May 24, 2007 through June 30, 2007, the ISC rates apply if compensation sought is less than the statutory cap. For appointments from May 24, 2007 through June 30, 2007, where compensation is in excess of the statutory cap, rates in s. 27.5304(12), F.S. will apply, if the ISC rates are greater than those rates.

102. If I am appointed to a case which remains active beyond the date the Regional Counsel becomes fully operational, will the Regional Counsel replace me as counsel for the particular case?

No. You may continue representation for court-appointed cases throughout their dispositions. The Regional Counsel will not replace existing appointments. However, if court-appointed counsel withdraws from a case after the Office of Regional Counsel is operational in the circuit in question then the new appointment would to the Public Defender or Regional Counsel as appropriate.

103. Is an attorney required to sign the new contract with JAC in order to receive payment for cases to which they were appointed prior to July 1, 2007?

Signing a new contract is not required for payment of pre-existing cases. Compensation will be based on the law in effect at the time of appointment.

Cases Appointed Before SB 1088 Became Law – Pre July 1, 2007

104. Can I continue to interim bill?

JAC will continue to review and process all interim billings for cases appointed prior to May 24, 2007.

105. May I bill for mileage incurred while I provided representation for my court-appointed case?

Mileage for cases appointed prior to July 1, 2007, will be paid as they have been historically.

106. Must I attach a progress docket sheet or a copy of the clerk's record of the case to my invoice of hourly fees?

Yes.

Miscellaneous

107. Can another attorney work on a case to which I have been appointed?

No. The attorney appointed to a case is expected to perform all of the attorney services on a case. An attorney appointed to a case may not bill or be paid for any attorney services performed by another attorney on a case. Section 27.5304(8), F.S., provides that an attorney may not reassign or subcontract the case to another attorney or allow another attorney to appear at a critical stage of a case who is not on the registry developed under s. 27.40.

Index

Index

I

15 percent reduction · 4
15% penalty · 4, 5, 20

2

27.5304(12) · 7, 11, 14
27.5304(12) · 11, 13, 14, 18, 37

A

Affidavit Attesting to Attorney's Fees · 15
Agreement for Attorney Services · 7, 20, 34
alternate model contract · 31
appellate attorney · 20
Appropriations · 7, 8, 10, 11, 12, 13, 14, 17, 23, 26,
33

B

belated appeal · 23
billable stages · 32

C

capital cases · 7
Capital cases · 7
change of address · 21
Chapter 493 · 27
Chapter 493. · 27
Class A agency · 27
Class C license · 27, 28
clerk's application for indigency · 15
Clerk's Application for Indigency · 15
contemporaneous billing records · 12
contemporaneous hourly records · 13
contract · 3, 4, 15, 17, 21, 36, 37, See Agreement
for Attorney Services, See Agreement for
Attorney Services, See Agreement for
Attorney Services, See Agreement for
Attorney Services, See Agreement for
Attorney Services

D

death · 10, 14, 36
defendant found incompetent · 5

dependency appeals · 30
DEPENDENCY APPEALS · 8
discovery · 18, 29
disposition · 4, 5, 10, 14, 19, 20, 22, 31, 32, 33, 34,
35, 36, 37

E

evidentiary hearing · 13, 14
executive clemency · 36
expedited · 25
expert · 24
experts · 5, 23, 24

F

failure to appear · 5, 19
fee caps · 11
fee in excess · 14
flat rate · 10, 12, 18, 32, 37

G

GAA · 9, 11, See General Appropriations Act, See
General Appropriations Act, See General
Appropriations Act, See General
Appropriations Act, See General
Appropriations Act
General Appropriations Act · 10, 11

H

hourly records · 12

I

incompetency · 19
interim billings · 19, 38

J

Jimmy Ryce · 9, 11
July 1, 2007 · 2, 7, 8, 10, 13, 14, 18, 31, 33, 35, 37,
38

M

May 24, 2007 · 7, 19, 32, 37, 38
medical records · 18

Index

mileage · 18, 26, 38
mitigation specialist · 24, 28, 29
multiple counts · 10

N

new tax ID · 21
non-standard · 21
non-standard agreement · 21
nunc pro tunc · 4, 5, 33

O

order authorizing deposition transcripts · 25
order of appointment · 4, 5, 24, 29, 32, 33

P

post conviction capital collateral · 36
post conviction capital collateral cases · 36
pretrial · 5, 19, 20
pretrial diversion · 5, 19, 20
pro bono · 17, 18
Public Defender · 11, 12, 37

R

Rate charts · 17, 23
rates for investigators · 26
reactivation · 32, 35
Regional Counsel · 11, 12, 37
registry · 3, 12, 21, 34, 38
reimbursement · 18, 24, 27, 29, 36
resentencing · 11
restitution hearing · 11

S

SB 1088 · 19, 37
sentencing · 11
serving subpoenas · 27
shelter · 11, 33
shelter hearing · 11
simultaneous billings · 20
State Attorney · 36
statutory limitations · 7, 14
surrenders · 34, 35

T

take down fee · 25
termination of protective supervision · 32
transcript · 24
travel expenses · 17, 24

U

unusual and extraordinary · 14

V

view court-appointed case information · 5
violation of probation/community control (VOP/VOCC) · 22
voucher covers · 17, 22

W

website · 3, 15, 16, 17, 22, 23, 34
withdrawal · 10, 12