

Six Things a Retained Attorney Should Remember About Having a Client Declared Indigent for Costs:

1. Florida law requires a **written** motion to declare a defendant indigent for costs.

Pursuant to s. 27.40(5)(a), F.S., any motion seeking to have a defendant declared indigent for costs must be in writing. Florida law does not authorize an *ore tenus* or oral motion seeking to declare a defendant indigent for costs. Additionally, the attorney will need to attach to any such motion the following:

1. A completed clerk's application for indigency, and
2. An affidavit attesting to the estimated amount of attorney's fees and the source of those fees.

A trial court cannot consider a motion seeking to declare a defendant indigent for costs until a written motion and the accompanying affidavits are filed with the court and served on JAC.

2. The JAC has standing to participate in the proceedings on a motion to declare a defendant indigent for costs.

The attorney must serve a copy of the written motion along with the affidavits upon JAC prior to the court declaring the client indigent for costs. Under s. 27.52(5)(b), F.S., JAC is entitled to reasonable notice and an opportunity to be heard before a court declares a client indigent for costs. Typically, JAC should receive the motion at least five business days prior to any hearing on the motion. JAC has statutory standing to participate in any proceeding related to a motion to declare a defendant indigent for costs. If a court enters an order declaring a defendant indigent for costs without proper notice to JAC, then the order may be subject to a motion to vacate filed by JAC.

3. The retained attorney is required to execute a JAC Agreement in order for JAC to process for payment any due process costs.

Under ss. 29.007 and 27.52(5)(f), F.S., an attorney representing a client declared indigent for costs must execute the JAC Agreement for Indigent for Costs Cases. This Agreement is available on JAC's website at:

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

JAC cannot process any invoices for payment until the attorney executes this Agreement. This includes payments made directly to due process providers. If the attorney intends to seek reimbursement for due process costs paid by counsel or counsel's firm, a properly completed IRS Form W-9 must be attached to the contract. Along with the JAC Agreement, an attorney should submit the following documents to JAC as a single packet:

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)
6. A signed JAC Agreement for Due Process Services

Because the packet will contain an original contract, the packet must be mailed to JAC. All of these documents should be submitted as one packet even if they were previously submitted separately. These documents are used to officially open a case in JAC's database once a defendant is declared indigent for costs.

4. A retained attorney representing a client declared indigent for costs can obtain a printout from JAC's secure website showing that JAC has received necessary documentation.

A private attorney can access a secure website related to his or her cases. One of the items the attorney can access is a screen showing whether JAC has received the six documents listed above. The attorney can print this screen. Information on how to access JAC's secure website is available at:

<http://www.justiceadmin.com/login/Quick%20Reference%20Guide-Attorney%20Login.pdf>

Before commencing work on an indigent for costs case, a court reporter or other due process vendor may ask the attorney for a copy of this screen to verify that the attorney has provided JAC with necessary documentation.

5. The rates and procedures for obtaining due process costs are the same as private court-appointed cases.

The provision of due process services in an indigent for costs case must be authorized by a written court order. Pursuant to s. 27.52(5)(g), F.S., the established rates for any services in an indigent for costs case are the same rates applicable to court appointed cases. The current rates are posted on JAC's website. Similarly, a privately retained attorney whose client has been declared indigent for costs follows the same procedures as a private court-appointed attorney to obtain due process costs.

The attorney is required to file a motion seeking specific due process costs with service on JAC prior to the court considering the motion. Moreover, any request for services in excess of the established rates must be clearly delineated in the motion for due process costs. JAC is entitled to reasonable notice of any hearing on a motion for due process costs typically at least five business days. The trial court is responsible for determining whether the requested costs should be authorized. The attorney has the burden to establish that the due process service costs are reasonable and necessary to the defense of the case. For experts, the attorney must also establish the particularized need for expert services. Absent exceptional circumstances, prior court approval should be obtained prior to any services being performed by due process providers such as experts or investigators.

6. If the defendant in a criminal case is convicted, the attorney is responsible for providing an accounting to the trial court.

Upon conviction, a defendant is liable to pay the amount of any due process costs provided by the state and the clerk of court as directed by s. 27.52(5)(i), F.S. See also § 938.29, F.S. If the defendant is convicted, the attorney is responsible for providing an accounting to the trial court delineating the costs expended on behalf of the defendant within 90 days after disposition of the case, notwithstanding any appeals. If the attorney fails to provide a complete accounting such that costs are omitted from the lien, then JAC is not authorized to pay or reimburse any such costs that remain unpaid and the attorney could be personally liable to repay the state for any such costs that have already been paid.

In order to facilitate the provision of an accounting, JAC upon application will provide a certificate indicating the amount of invoices paid through JAC and the amount of invoices received by JAC that have not been processed for payment. The certificate will only address those billings that JAC has received as of the date of application. The form to apply for a certificate is available on JAC's website at:

http://justiceadmin.com/ind_for_cost/application%20for%20certification%20of%20costs%206-18-10.pdf (pdf version)

and

http://justiceadmin.com/ind_for_cost/application%20for%20certification%20of%20costs%206-18-10.doc (Word version)

Once JAC receives an application, JAC will prepare a notarized certificate as to costs. The information contained in a certification of costs will be based on business records of JAC as of the date JAC issues the certificate and is subject to change upon receipt of additional invoices, amendments or changes to invoices, withdrawal of invoices, or rejection of invoices. The attorney is responsible for verifying that all invoices and billings related to a case are included in the accounting provided to the court including any invoices that JAC may not have received or docketed as of the date JAC issued its certificate of costs. The certification of costs will also not include any costs related to the court, clerk of court, or sheriff for which prepayment was waived pursuant to s.

57.081, F.S. Ultimately, it is the privately retained attorney's responsibility to provide a full accounting to the trial court of any costs expended by the JAC and other state entities for the defense of the case.