

**Justice Administrative
Commission
Policies and Procedures**

June 2010

**Indigent for Costs Counsel
(Privately Retained or Pro Bono
Attorneys)**



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Executive Director**



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Checklist for Due Process Costs

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

- Written Motion to Declare the Client Indigent for Costs.
- Clerk's Application for Indigency.
- Affidavit Attesting to Estimated Amount of Attorney's Fees.
- Order Declaring the Client Indigent for Costs.
- Charging Document.
- Signed JAC Agreement for Due Process Services for Persons who are Indigent for Costs.
- JAC Invoice/Voucher Cover
- Order authorizing specific due process costs unless costs are authorized pursuant to the order declaring the client indigent for costs.
- Proof of Payment if seeking reimbursement for due process costs paid on behalf of the Client

Section I – Case Opening Documents

A. Having a Client Declared Indigent for Costs

Written Motion Required

In order to have a client declared indigent for costs, privately retained counsel must file a written motion to declare the client indigent for costs. As required by section 27.52(5), Florida Statutes, counsel must also file a clerk's application for indigency and an affidavit attesting to the amount of attorney's fees and the source thereof. All of these documents must be submitted to the trial court for the court's consideration before a client is declared indigent for costs.

Service on JAC

Counsel 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 section 27.52(5), counsel is required to serve a copy of the motion on JAC prior to the trial court considering the motion. JAC is entitled to notice and an opportunity to be heard before a court declares a client indigent for costs. JAC has standing to participate in any hearing on the motion and is authorized to appear telephonically at any hearing on the motion. JAC may seek to vacate any order declaring a client indigent for costs if JAC is not afforded an opportunity to participate in the proceeding to declare the client indigent for costs. JAC must receive a minimum of 5 business days' notice of any hearing on a motion to declare a client indigent for costs.

Presumption of Non-indigency

As part of assessing whether a defendant is indigent for costs, the trial court must consider the amount of the attorney's fees and the source of those fees. If the estimated fees are greater than \$5,000.00 in a non-capital case or greater than \$25,000.00 in a capital case where the state is seeking death, there is a presumption of non-indigency. To overcome this presumption, the defense has the burden to show through clear and convincing evidence that the fees are reasonable based on the nature and complexity of the case. In making this determination, the trial court shall consider the amount of fees a private court-appointed attorney would receive for that type of case.

Court Order Required

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

Costs Must be Specified

The motion must specify the particular due process costs requested as well as the amount requested for those services. The order declaring the client indigent for costs must also specify the particular due process costs that are authorized

and the amount authorized for those costs. If the order only finds a client indigent for costs without specifying the costs authorized, then the attorney will need to obtain a separate order authorizing the particular due process costs. JAC is always entitled to notice and an opportunity to be heard before a court approves any due process costs.

Consistent Case Number

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

Not Retroactive

An order finding a defendant indigent for costs is prospective only. JAC will not pay due process costs incurred prior to the effective date of the order.

B. Case Opening Documents

Packet

Once the court declares a defendant indigent for costs, privately retained counsel should submit the following documents to JAC as a single packet. Because it will contain an original contract, the packet must be mailed to JAC:

1. The 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

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.

Timely Submission

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

Submission of Documents

Unless an original is required or requested by JAC, documents such as motions or court orders may be faxed to JAC at the indigent for costs fax number listed on JAC's website. Additionally, motions and orders may be submitted through e-mail to:

pleadings@justiceadmin.org

Forms or documents requiring an original signature such as Invoice/Voucher Covers, invoices, and travel reimbursement forms, ***may not be faxed.*** Accordingly, such documents should be mailed to JAC at:

Justice Administrative Commission
P.O. Box 1654
Tallahassee, Florida 32302

To distinguish originals from photocopies, all originals must be signed in blue ink.

Responsibility

Counsel is responsible for verifying and ensuring that the required case opening documents are timely and properly submitted, that JAC has received the required case opening documents, and that JAC has entered the case into JAC's database. Counsel may verify that a case has been opened through the JAC website. For information on how to logon to JAC's database, please refer to the Frequently Asked Questions on JAC's website.

Case Numbering Consistency

The case number that appears on the order declaring the client indigent for costs must be used on all further submissions by counsel for that case. If the court consolidates the original case with any subsequent case, or the case receives a new case number when it enters a new stage, any case-related submissions should reference both the original case number and any subsequent case numbers.

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

Case Closure and Accounting

Attorneys must also provide JAC with notice after a case is completed or a client is no longer indigent to enable JAC to close the case in the database.

If a criminal defendant is convicted, the attorney is responsible for providing an accounting to the trial court of any costs expended on behalf of the defendant. Pursuant to section 27.52(5), a defendant found indigent for costs is liable for reimbursement of due process costs expended by the state. The attorney is responsible for providing an accounting to the court of all costs paid or to be paid within 90 days after disposition of the case notwithstanding any appeals. The court shall then enter an order determining the amount of costs paid which will thereafter be recorded as a lien against the defendant.

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 is personally liable to repay the state for any such costs already paid. The clerk of court is authorized to place the attorney on a payment program to obtain repayment of those costs.

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. It will be the attorney's responsibility to ensure that all billings have been submitted prior to JAC's issuance of a certificate. Any request for an accounting must be submitted using the forms posted on JAC's website.

A copy of the accounting filed with the trial court must be served on JAC. Once a criminal case reaches final disposition with a conviction, JAC may decline payment of any further due process costs on that case until JAC receives a copy of an accounting including the cost for which payment or reimbursement is sought.

C. Contract

Agreement for Due Process Services

As directed by sections 29.007 and 27.52(5)(d), Florida Statutes, an attorney whose client is declared indigent for costs is required to execute the Agreement for Due Process Services for Persons Who Are Indigent for Costs. No invoices will be paid on a case until an Agreement executed by the attorney has been received by JAC. This Agreement is available on JAC's website. The attorney must execute the contract and mail it to JAC. The contract must be executed in blue ink and must be mailed to JAC. JAC does not accept faxed contracts.

W-9 Required

If privately retained counsel intends to seek reimbursement for due process costs paid by counsel or counsel's firm, a properly completed W-9 must be attached to the contract. Attorneys who will be seeking reimbursement for due process costs are required to provide JAC with a current W-9 at all times.

Case Specific

The contract is case specific. An attorney must execute a contract for each client that has been declared indigent for costs.

Multiple Cases for Same Client

For a client with multiple related cases only one agreement is needed which references all the case numbers. However, if a client is subsequently found indigent for costs in another case, then the attorney will need to execute another contract addressing that case

D. Charging Documents

Criminal Cases

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

Juvenile Delinquency Cases

The petition for delinquency is required.

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

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

Post Conviction Proceedings

Counsel is responsible for providing enough of the motion so that JAC can identify the type of motion and the issues presented therein. If the motion is less than 20 pages, then the entire motion should be provided.

Dependency Cases / Termination of Parental Rights Cases (TPR)

Unless specifically requested, a charging document is generally not required as long as the order declaring the client indigent for costs is clear as to the nature of the proceeding.

General Civil Cases

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

Appeals

A copy of the Notice to Appeal is required including the order(s) being appealed, as well as a copy of the charging document for the underlying case except for dependency and termination of parental rights cases.

Section II – Due Process Services***A. General Practices and Procedures*****Obligation**

Counsel billing for due process service costs shall follow the requirements of Florida Law, JAC's Agreement for Due Process Services, and JAC's Policies and Procedures.

Any forms and documents submitted to JAC should include counsel's name and bar number.

Due Process Provider Contracts

Pursuant to sections 27.40 and 27.425, those vendors who desire direct payment from JAC must enter into a contract with JAC to facilitate direct payment. JAC only makes direct payment to those vendors who have executed a contract with JAC. Although a contract is generally not required for other state entities, a Florida state entity must be willing to bill JAC directly in order for JAC to make direct payment to the vendor.

If a due process vendor or other entity providing services to the defense does not have a contract with JAC or is unwilling to bill JAC directly, then counsel pays the vendor or other entity and then seeks reimbursement from JAC. To the extent that counsel pays in excess of the established rates or in excess of the amounts

authorized by the court, JAC shall reimburse the attorney for the amounts reimbursable under Florida law or court order.

JAC has established three types of vendor contracts.

- The Type 1 Due Process Agreement will be used for those vendors providing ordinary due process services in private court-appointed cases such as court reporters, interpreters, videographers, private investigators, and private process servers. This Agreement provides that all services will be provided at the rates established by the legislature or by JAC where the legislature has not established a rate. If a provider bills in excess of the established rates, JAC will be authorized to correct the billing to the correct rates and then process the billing for payment.
- The Type 2 Due Process Agreement is generally used for vendors providing extraordinary services such as psychologists, psychiatrists, medical doctors, mitigation specialists, and forensic experts. Although these services should be at the established rates, the Agreement provides a mechanism to exceed those rates where the expertise of the provider or other factors warrants compensation at a rate higher than the established rates. Except in exceptional circumstances, the Type 2 Due Process Agreement will not be executed with providers of ordinary due process services such as court reporters and private investigators.
- The Non-Standard Due Process Agreement is case specific. It will only authorize due process services in relation to a particular case. It otherwise mirrors the Type 2 Due Process Agreement. This Agreement is generally used with out-of-state vendors and in other instances where JAC is unwilling to enter a Type 1 or Type 2 Agreement with a vendor. This Agreement only authorizes due process services in relation to a particular case. If the vendor provides services in other cases, the vendor will need to execute another Agreement with JAC covering that case.

The JAC Due Process Agreements are posted on JAC's website.

Methods of Paying Due Process Costs

JAC will reimburse for due process service costs in one of two ways: JAC pays vendor after counsel certifies; or counsel pays the vendor and is subsequently reimbursed by JAC.

Invoice/Voucher Cover

The Invoice/Voucher Cover is essential for the satisfactory billing for due process service services. Counsel must appropriately complete, execute, and submit the applicable Invoice/Voucher Cover, as well as all necessary supporting documents.

Invoice/Voucher Covers for due process costs and corresponding instructions are available on JAC's website.

An intended billing for due process service costs is not considered submitted to JAC until and unless JAC receives an original Invoice/Voucher Cover signed by counsel and the due process service provider, along with all necessary supporting documents.

The Voucher Cover may not be signed prior to the receipt of the services requested. For example, the attorney may not sign a Voucher Cover for a transcript until after the attorney has actually received the transcript. Any voucher cover signed prior to the receipt of the service will be returned.

An attorney should keep a copy of any voucher covers that he or she signs in relation to an indigent for costs case. Under the JAC Agreement, the attorney and vendor are required to maintain copies of all records and these records are subject to inspection by JAC.

Certification of Due Process Services Costs

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

An attorney cannot execute the certification on the JAC Invoice/Voucher cover until the work is actually completed. **If JAC receives an Invoice/Voucher cover that was executed prior to the date the provider completed the service, then JAC will return the intended billing.**

Original Invoice

All intended billings for due process service costs must be submitted using the applicable JAC Invoice/Voucher Cover. Due process vendors may use their own original invoices as support for the JAC Invoice/Voucher Cover as long as the invoice contains sufficient detail.

If the original invoice is not available, a photocopy of the invoice may be substituted. However, counsel must write on the face of the invoice, and certify with signature and bar license number, the following:

“I certify that the original invoice is not available and that this invoice copy is a true and accurate duplicate of the original invoice.”

(Signed by Counsel, Bar License Number recorded underneath signature).

Prompt Review of Invoices

Any direct payment to a due process vendor is contingent upon indigent for costs counsel providing any and all necessary documentation in support of a billing to JAC in an expeditious fashion. Counsel shall promptly review any billing for direct payment to a due process vendor for accuracy and completeness and must certify that the work was satisfactorily performed. In the event JAC issues a deficiency notice regarding any billing, counsel or the due process provider shall

promptly resolve the deficiency so that JAC can process the billing for payment. Counsel must comply with all JAC policies and procedures in the submission of billings in order for JAC to make direct payment to a due process vendor.

Prohibited Practices

Counsel is prohibited from obtaining due process services for his or her indigent for costs clients from a due process provider or other business entity of which counsel or counsel's spouse or child is an officer, partner, director, or proprietor or in which counsel or counsel's spouse or child, or any combination of them, has a material interest in any form whatsoever.

Counsel is prohibited from soliciting or accepting anything of value to counsel, including a gift, loan, reward, promise of future employment, favor, or service, from a due process provider or other business entity who provides due process services to counsel's indigent for costs clients other than the services rendered on behalf of the indigent client.

A due process provider is prohibited from paying, offering or giving anything of value to counsel including a gift, loan, reward, promise of future employment, favor, or service, as consideration or other remuneration for providing services in court-appointed or indigent for costs cases other than the services rendered on behalf of the indigent client.

Counsel and due process providers waive compensation for due process services in any form whatsoever where either indigent for costs counsel or the process provider has engaged in these aforementioned prohibited practices.

Appointment of Co-Counsel

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

B. Service and Notice

Standing of JAC

JAC shall only pay for due process services reasonably required for the defense of the case as set forth in section 29.007, Florida Statutes. JAC has standing to contest the authorization for any due process service costs and the amount of said due process service costs. Counsel shall have the burden to establish that the due process service costs are reasonable and necessary to the defense of the case.

If attorney obtains services without prior court approval, then attorney may be personally liable to reimburse the due process providers. JAC is not privy to any agreement between indigent for costs counsel and due process providers and in no way accepts responsibility or liability for quality of service, terms and conditions, or any other aspects of any agreement between indigent for costs counsel and service providers.

Notice

Except for those services expressly approved in the order declaring the client indigent for costs, counsel must serve JAC with a copy of the motion for due process service costs prior to a court entering an order regarding any other due process service costs. The existence of an administrative order or local rules authorizing costs without prior court approval does not relieve an attorney from filing a motion seeking prior approval or authorization for due process costs. Absent express waiver from JAC, all due process costs must be approved by the court through specific court order.

A written motion for due process service costs must specify the type of due process service requested, the rate requested, and an estimated maximum amount of costs required. **The motion shall be properly served on JAC a minimum of five (5) business days prior to the date of the hearing on the motion.** JAC's failure to respond to such a motion shall not constitute a waiver of JAC's right to be heard regarding the matter. Unless JAC affirmatively waives the right to a hearing, JAC may seek to vacate any order entered without a hearing or without sufficient notice to JAC.

JAC will not pay for due process service providers that are obtained in violation of these requirements. Counsel is solely responsible for compensating a due process service provider obtained in violation of these requirements.

Contents of Motion Seeking Authorization for Due Process Costs

A motion seeking authorization for due process costs must establish the basis for the requested costs. The motion must indicate how the requested services are necessary for the defense of the case. A motion seeking authorization or additional funds for a private investigator, mitigation specialist, or an expert shall set forth the particularized need for the requested services based on the circumstances of the case.

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

C. General Compensation

Rates and Providers for Due Process Services

JAC reviews due process service invoices to verify compliance with the recognized rates and amount authorized as established pursuant to Florida law. Information on applicable rates is available on the JAC's website. Pursuant to section 27.52(5), the rates applicable in indigent for costs cases are the same as the rates applicable in court-appointed cases.

The rates are established annually in the General Appropriations Act. The current rates will be posted on the JAC's website.

The order must identify the approved due process services and must establish the maximum amount authorized for each due process service. If the rate authorized is different than the rate established by law, then the order must indicate the rate. If the order does not indicate such a rate, JAC cannot pay any rate in excess of the rate established by law.

If the rate for a particular due process service has not been established, JAC may establish a rate. In establishing rates, JAC will rely upon its experience since July 1, 2004, as well as the recommendations of the Article V Indigent Services Advisory Board, in determining the appropriateness of a rate charged and the total amount of compensation.

Expert Witness Categories	Average	Suggested Ranges
Expert Witness Fees -Per Hour	\$154.17	\$150 -\$200
Expert Witness Fees -In Court -Per Hour	\$147.17	\$125 -\$150
Expert Witness Fees -Out of Court-Per Hour	\$111.20	\$50 -\$150
Exp. Wit. Fee -Waiting to Testify -Court -Per Hour	\$71.33	\$50 -\$75
Exp. Wit. Fee -Waiting to Testify -Depo.-Per Hour	\$66.83	\$50 -\$75
Expert Witness Fee -Travel -Per Hour	\$63.50	\$50 -\$75
Expert Witness Fees -Per Case	\$1,580.00	\$1,500-\$2,000
Psychological Exam -Per Exam	\$246.88	\$150 -\$400
Psychologist -In Court/Testify -Per Hour	\$136.60	\$125 -\$150
Psychologist -Waiting to Testify -Per Hour	\$84.80	\$50 -\$75
Medical Doctors -In Court or Depo. -Per Hour	\$156.43	\$150 -\$200
Medical Doctors -Out of Court -Per Hour	\$128.33	\$100 -\$125
Other Pre-Trial Expert -In Court -Per Hour	\$102.67	\$75 -\$100
Other Pre-Trial Expert -Out of Court -Per Hour	\$77.00	\$50 -\$75

The Indigent Services Advisory Board's recommendations are as follows

Investigators

Any private investigator providing services in Florida must be licensed pursuant to Florida law. JAC is not authorized to pay for any private investigator services provided in Florida by a person not properly licensed pursuant to Florida law.

The role of a private investigator is limited to providing investigative services such as locating and interviewing witnesses; locating and securing documents and other evidence relevant to the case; performing background checks; and researching any other factual issues relevant to the case such as credibility and character of witnesses. Where private service of process is authorized, an investigator can also serve subpoenas on ordinary non-law enforcement

witnesses; however, the investigator can only bill the flat rates applicable for private service of process regardless of the amount of time spent serving the subpoena. An investigator is not a substitute for a paralegal or secretary and cannot be used to perform administrative tasks including, but not limited to, retrieving discovery from the state attorney; copying documents from a court file; delivering materials to the defendant; or any other tasks of a paralegal or secretarial nature.

Service of Process

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

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

Mitigation Specialists

Unless otherwise established by law or court order, the rate for a mitigation specialist or mitigation expert is presumed to be the rate established for investigators. Absent a court order authorizing a higher rate, the rate for mitigation specialist services shall not exceed the uniform statewide rate authorized for private investigator services.

Diligent Efforts

If counsel intends to procure due process services at a rate higher than the established rates, counsel must make a showing that the particular due process service is necessary to the defense of the case and that counsel has made a diligent effort to find the service within the established rates. Diligent effort includes, but is not limited to, evidence that counsel sought the services of at least three providers willing to work on the case but none were willing to work at the established rates. If a court authorizes a due process services in excess of the established rates, the order should contain findings as to the diligent efforts counsel made to obtain services within the rates established by law.

Out-of-State Due Process Providers

Counsel 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 counsel obtains an out-of-state due process service provider without making such a showing,

counsel agrees not to request reimbursement for any travel expenses, including compensation for travel time, on behalf of the due process service 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.

Transcripts

JAC may pay for the cost of preparing a transcript of a deposition only if counsel secures an order from the court finding that preparation of the transcript is necessary, in which case JAC may pay for one original and one copy only. The order should reflect the name of the witness and the date of the deposition to be transcribed.

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 finding the defendant indigent for costs authorizing counsel to order “necessary” transcripts does not suffice for payment purposes.

JAC may pay for the cost of one original transcript of any deposition, hearing, or other proceeding. Any other payment for a transcript of that same deposition, hearing, or other proceeding, regardless of whether the transcript is an additional original transcript or a copy, shall be at the rate paid for a copy of a transcript. This applies regardless of which state agency pays for the first original transcript.

Transcripts should not be ordered as a matter of course. It is anticipated that counsel 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.

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

Appearance Fees

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

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

Appearance Fees for Deposition taking after July 1, 2010

For purposes of calculating the amount of an appearance fee for depositions involving multiple witnesses conducted by a court reporter, the amount is calculated per session, not per witness. The first hour is compensated at a rate of \$50.00 per hour and each hour thereafter is compensated at a rate of \$25.00 per hour. Unless there is a break exceeding an hour, the \$25.00 per hour rate continues to apply to any depositions taken in a case.

For example, the defense has depositions for a case from 8:00 a.m. to 12:00 p.m. The court reporter would bill a total of \$125.00 for this session (\$50.00 for the first hour and \$75.00 for the second, third, and fourth hours).

If there is a break of one hour or more, and the same court reporter returns following the break, the court reporter may bill the \$50.00 per hour for the first hour following the break. For example, if the defense has depositions from 8:00 a.m. to 11:00 a.m. and then from 1:30 p.m. to 4:30 p.m., then the court reporter could bill \$100.00 for the first session and \$100.00 for the second session.

When a break is less than an hour, then the session is considered ongoing. It is important to note that break time must be unbilled to be considered break time. Any wait time billed to JAC is not considered break time. For example, if one hour depositions are scheduled for 8:00 a.m., 9:00 a.m., 10:00 a.m., and 11:00 a.m., and the witnesses for 9:00 a.m. and 11:00 a.m. do not show but the court reporter remains onsite during the deposition session, then the court reporter would bill \$125.00 for the session (\$50.00 for the first hour and \$75.00 for the second, third, and fourth hours.) Because the court reporter is being paid for the wait time, the court reporter cannot bill \$50.00 for the fourth hour even though there was a break of 2 hours.

For depositions taken on or after July 1, 2010, when a defense attorney orders a transcript at the time of deposition or contemporaneously with the deposition, the court reporter shall bill either the number of pages for the transcript or the applicable appearance fee, whichever is greater. Where the transcript is ordered contemporaneously with the deposition and the court reporter has already

received payment of an appearance fee, the amount of the appearance fee shall be deducted from the amount of the payment for the transcript.

A transcript is considered to have been ordered contemporaneously with the deposition when it is ordered within 30 days of the taking of that deposition.

Where an attorney orders a deposition transcript more than 30 days after the taking of a deposition, the amount of any appearance fee does not need to be offset from the amount of the transcript.

In situations involving multiple deponents deposed during one deposition session, the amount of the appearance fee shall be equally apportioned among each deponent in determining the amount attributable to each deponent. This amount would be used to determine whether the court reporter would receive the appearance fee or the transcript fee in those situations in which a transcript is ordered at the time of the deposition or contemporaneously with the deposition.

For example, if the defense deposes three witnesses during a two hour deposition session, the total appearance fee of \$75.00 would be divided by three so that the amount attributable to each deponent would be \$25.00. If the attorney ordered transcripts at the time of the deposition of the three witnesses, the court reporter would receive either a \$25.00 appearance fee for a deponent or the amount for the transcript, whichever is greater.

This apportionment only applies to witnesses that are actually deposed. It does not apply to any witnesses that failed to appear. For example, if four witnesses were scheduled but only two appeared at the deposition, then the appearance fee would be divided by two rather than four in calculating the applicable appearance fee for each witness for determining whether a court reporter is paid the appearance fee or transcript fee when a transcript is ordered at the time of deposition or contemporaneously with the deposition.

Certificates of Non-Appearance

For depositions taken after July 1, 2010, the appearance fee paid by JAC includes payment of any certificates of non-appearance issued for witnesses that failed to appear during the deposition session. No additional fees beyond the appearance fee for a deposition session will be paid for a court reporter to prepare any certificate of non-appearance in relation to a witness's failure to appear during a deposition session.

Prepayment/Retainers

JAC does not prepay or provide a retainer for due process services. Counsel shall not seek to have JAC prepay or provide a retainer for due process services. If a due process service provider requires prepayment or a retainer, counsel shall pay the amount and seek reimbursement only after the due process service provider has completed the services for which the prepayment or retainer was paid. Counsel shall only be reimbursed the amount necessary to compensate

the due process service provider at the appropriate hourly rate, irrespective of the amount of the retainer.

Budget for Capital Cases

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

Deposition of State Attorney's Expert

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

Travel Time for Due Process Providers

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

Statutory Exemption/Waiver of Prepayment

As delineated in section 57.081, an indigent shall receive the services of the courts, sheriffs, and clerks, with respect to pending proceedings, despite his or her present inability to pay for these services including filing fees; service of process; certified copies of orders or final judgments; a single photocopy of any court pleading, record, or instrument filed with the clerk; examining fees; mediation services and fees; subpoena fees and services; service charges for collecting and disbursing funds; and any other cost or service arising out of pending litigation. Indigent for costs counsel is responsible for ensuring compliance with the terms of section 57.081 including but not limited to (1) providing necessary documentation to the clerk of court or sheriff and (2) filing appropriate motions with the trial court to obtain such services pursuant to the exemption or without prepayment. JAC shall not reimburse indigent for costs counsel, either directly or indirectly through a due process provider, for charges

paid to the court, the sheriff or the clerk or court, in relation to services which the indigent client was entitled to receive without prepayment pursuant to section 57.081.

Non-reimbursable Expenses

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

D. Methods of Paying Due Process Service Costs

JAC Pays Due Process Service Provider after Counsel Certifies

Upon receiving a bill or invoice from the due process service provider, after completion of the service, counsel may certify the bill or invoice and send it with a completed applicable Invoice/Voucher Cover. Counsel must have submitted the case opening documents before a due process service provider may be paid. JAC may then pay the due process service provider directly. Copies of court orders authorizing such costs must be provided with the intended billing. Counsel may not certify the work is completed until the work has actually been completed. If all procedures are not followed, or appropriate documentation is not provided, counsel remains personally liable to pay the due process service provider. **Any Voucher Cover received by JAC that certifies the work was done prior to completion of the work will be returned.**

Counsel Pays and is Subsequently Reimbursed

Counsel may pay the due process service provider directly and then seek reimbursement from JAC. Reimbursement for due process service costs may be at the time counsel has accrued at least \$500 in out-of-pocket due process costs or after final disposition. After certifying the bill or invoice, counsel must mail the original bill or invoice with a completed applicable Invoice/Voucher Cover. Counsel must also provide proof of payment. Copies of court orders authorizing such costs must be provided with the billing. Counsel is entitled to reimbursement only if all procedures have been followed and appropriate documentation has been provided to JAC. Absent express court approval, counsel may not be reimbursed to the extent the costs exceed the rates or limitations established by law or court order.

In-State Court Reporting Transcripts Only

After delivering the transcript and obtaining certification from counsel, designee, or clerk of the court (where the transcript is filed with the clerk), an in-state court reporter may certify the bill or invoice and send it to JAC with a completed JAC applicable Invoice/Voucher Cover. Counsel must have submitted the case opening documents before the in-state court reporter may be paid. The in-state court reporter must also include a copy of the order authorizing transcripts. JAC may then pay the in-state court reporter directly. Copies of court orders authorizing such costs must be provided with the billing except when no court order is required. In the event all procedures are not followed, or appropriate

documentation is not provided, counsel remains personally liable to pay the instate court reporter.

Section III – Timely Billing and Procedural Requirements

Timely Submission

Counsel (or due process service providers billing JAC directly) shall submit an intended billing for due process costs and expenses ***within 90 days after final disposition of the case***. Failure to submit a properly completed intended billing within 90 days will result in a mandatory fifteen percent (15%) penalty on any due process costs and expenses. See § 27.5304(4), Fla. Stat.

An intended billing will not be considered satisfactorily submitted with JAC until all applicable forms and necessary documentation required under JAC's Agreement for Due Process Services, JAC's Policies and Procedures, and those local requirements promulgated pursuant to Florida law, whether implemented through an Administrative Order or by other means, have been appropriately completed, executed, and submitted.

For any case that was disposed of on or before May 24, 2007, the date of final disposition shall be designated as May 24, 2007 for purposes of the 15 percent penalty. Thus, all applicable forms and necessary documentation must be submitted to JAC by August 22, 2007. An intended billing submitted after August 22, 2007 for a case that reached final disposition on or before May 24, 2007 will be subject to fifteen percent (15%) reduction penalty as set forth herein.

For any case that reaches final disposition on or after July 1, 2010, a 50 percent penalty will apply to any intended billing submitted more than 1 year after the case reached final disposition and a 75 percent penalty will apply to any intended billing submitted more than 2 years after the case reached final disposition.

The statute of limitations to initiate an action seeking payment of due process costs commences once the case reaches final disposition.

Timely Submission with an Appeal Anticipated

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

For example, if a case reaches final disposition at the trial level, but is appealed, counsel must submit for due process costs pertaining to representation at the lower court level within 90 days after final disposition of the case at trial level.

Timely Submission for Appellate Cases

For purposes of the penalty, the date of final disposition is the date of the issuance of the appellate mandate.

Timely Submission for Dependency Cases

A dependency case does not reach final disposition until the Court dismisses the petition as to a party or terminates protective supervision (with or without retaining jurisdiction).

Submission of Documents

Unless an original is required or requested by JAC, documents such as motions or court orders may be faxed to JAC at the indigent for costs fax number listed on JAC's website. Additionally, motions and orders may be submitted through e-mail to:

pleadings@justiceadmin.org

However, forms or documents requiring an original signature such as Invoice/Voucher Covers, invoices, and travel reimbursement forms, **may not be faxed**. Accordingly, such documents should be mailed to JAC at:

Justice Administrative Commission
P.O. Box 1654
Tallahassee, Florida 32302

To distinguish originals from photocopies, all original must be signed in blue ink.

Penalty for Untimely Billing

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

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

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

In the event a due process service provider's bill is subject to this penalty, counsel may be legally responsible for reimbursing the due process service

provider in the event the failure to timely submit the intended billing was the fault of counsel.

Legibility & Intelligibility

Any documentation submitted to JAC must be legible and intelligible. Any documentation submitted to JAC which is illegible or unintelligible will be returned and will not be considered satisfactorily submitted with JAC.

Sufficient Postage

Proper postage for letters and other packages sent to the Justice Administrative Commission (JAC) is the responsibility of the sender. JAC will not accept delivery of letters and other packages with insufficient postage or postage due.

Careful attention has to be paid to the size and dimensions of the package to insure proper postage is applied. Information regarding the US Postal Service's changed postage requirements and postage rate structure may be found on their website: <http://www.usps.gov>. Once again, it is each sender's responsibility to ensure proper postage is applied to letters and other packages being sent to JAC.

Information describing the additional shape-based method for calculating proper postage is available on the website of the US Postal Service:

<http://pe.usps.com/text/dmm100/intro.htm>

Late Fees/Interest/Cancellation Fees

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

Section IV – Necessary and Applicable Forms

Direct Pay of Due Process Costs

All necessary and applicable Invoices/Voucher Covers for direct pay of due process service costs are available on the JAC website. Corresponding instructions for each form are also available on the JAC website.

Counsel Reimbursement of Due Process Costs

All necessary and applicable Invoices/Voucher Covers for reimbursement of due process service costs are available on the JAC website. Corresponding instructions for each form are also available on the JAC website.

Travel Prepayment / Reimbursement

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

Witness Reimbursement

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

Section V – Confidentiality and Public Records

Public Records

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

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

Fla. Att’y Gen. Op. 2001-54.

Confidential Information Should be Redacted

JAC does not require confidential information in order to process payment of submittals. To assist with auditing, JAC has been given the statutory authority to inspect court dockets under chapter 39, and the authority to inspect and copy records under chapter 985. Accordingly, counsel does not have to reveal confidential information when providing a submittal to JAC. The case number and initials of the person represented by appointed counsel are usually enough to allow JAC to set the case up in the JAC database and process payment of the submittal. Counsel should redact any confidential information from documents submitted to JAC. However, documents must not be redacted to the point where the document is meaningless.

Section VI – Witness Travel

A. General Practices and Procedures

Travel

All travel must be pursuant to Florida law, particularly the requirements of section 112.061. Travel reimbursement is limited to witnesses for which reimbursement will be claimed on a uniform travel voucher as promulgated by the Department of

Financial Services. Travel expenses are compensable to the extent authorized by law.

Traveler's Requirements:

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

Privately Retained Counsel

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

Court Order Required

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

B. Travel Reimbursement

Reimbursement

All original receipts are required. When travel is necessary and court-ordered, the individual (i.e. investigator, mitigation specialist, expert witness, etc.) should arrange the travel, pay for any related travel expenses, and upon completion of the travel, submit to JAC for processing of reimbursement payment.

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

Hotels

Hotel accommodations exceeding \$150 per night require written justification. JAC requires counsel to include three (3) internet or travel agency quotes for prices of nearby hotels if billing for more than \$150 per night. For additional information, please refer to the JAC website.

Competitive Carriers:

Counsel is responsible for researching flight, lodging, and/or rental car rates, to obtain the most economical method of travel for each trip. When competitive

carriers do not exist, documentation indicating that the reserved carrier is the sole provider for the area must be provided.

Travelers using their own vehicle:

Travel must be via a usually traveled route from point-of-origin to point-of destination. In state, city-to-city mileage calculations can be found at <http://www3.dot.state.fl.us/mileage>. If an in-state travel destination is not included or available on this website, or if your travel is out-of-state, calculate your mileage using an internet map website that shows such mileage (i.e. www.mapquest.com).

C. Travel Prepayment

Prepayment of Limited Travel Expenses

JAC receives numerous inquiries and requests related to travel for investigators, expert witnesses, and mitigation witnesses. In an effort to assist counsel with travel cost for multiple witnesses, particularly in capital cases, JAC has paid in advance for such costs, such as air fare and lodging. Counsel wishing to have JAC pay for travel is solely responsible for coordinating any necessary travel itinerary for witnesses and themselves. JAC will not act as an intermediary between witnesses and counsel.

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

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

Applicable Procedure for Any Travel Prepayment Request:

- Obtain a valid court order authorizing travel and submit a copy to JAC. Research flight, lodging, and/or rental car rates, as necessary (When competitive carriers do not exist, please provide documentation indicating that the reserved carrier is the sole provider for the area. Hotel accommodations exceeding \$150 per night require written justification. JAC requires counsel to include three (3) internet or travel agency quotes for prices of nearby hotels if billing for more than \$150 per night.).
- When possible, request that each vendor hold the intended travel arrangements until JAC processes the travel request and formally reserves the arrangements via payment. (JAC requires at least 24

hours from receipt of all necessary information and documentation to provide payment).

- Promptly submit to JAC, via email, all intended reservations and at least two additional comparative rate quotes for each type of reservation (i.e., common air carriers, lodging facilities, car rental companies, etc.).
- Appropriately complete, execute, and submit the necessary and applicable Invoice/Voucher Cover for travel prepayment (i.e. Travel Expense Request Form; Court-Appointed Attorney Program Travel Related Purchasing Request Form; Court-Appointed Counsel Authorization for Agent to Arrange Travel), as well as all necessary supporting documentation. All necessary and applicable Invoice/Voucher Covers for travel prepayment are available on the JAC website.
- Upon satisfactory submission, JAC shall review for completeness and compliance with contractual and statutory requirement, whereby JAC will contact and process payment to the designated vendor.

JAC realizes that some travel providers will not hold travel arrangements without prepayment or credit card. Please do not use your own credit card to hold a reservation in which you will seek prepayment. Instead, please help us better assist you in arranging your travel plans by providing JAC with detailed information as expediently as possible. As time is an essential element, JAC cannot guarantee specific accommodations.

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

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

Upon Completion of Travel:

- Counsel should submit all receipts for any incidental expenses to JAC (i.e. cab fares, parking, tolls, etc.)
- JAC staff will prepare a State of Florida travel voucher.
- If the travel voucher is for a vendor of services (i.e. investigator, mitigation specialist, expert witness, etc.), the completed voucher will first be mailed to the vendor for signature. It is then the responsibility of the vendor to forward the signed travel voucher to counsel for his or her signature, thereby certifying the travel expenditures.
- If the travel voucher is for *pro bono* counsel, the completed voucher will be mailed directly to counsel for signature as both traveler and supervisor, thereby certifying the travel expenditures.

- Counsel is responsible for mailing the signed/executed voucher back to the appropriate JAC staff.
- JAC staff will submit the signed/executed travel voucher for process of payment to the traveler of any expenses not prepaid (i.e. incidental expenses).