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POINTS OF INTEREST

JAC'S NEWSLETTER FOR COURT-APPOINTED
AND INDIGENT FOR COSTS ATTORNEYS AND
DUE PROCESS VENDORS

A Word From JAC's Executive Director

Greetings from the Justice Administrative Commission (JAC)! I hope you find this latest edition of Points of Interest (JAC's Newsletter for Court-Appointed and Indigent for Costs Attorneys and Due Process Vendors) helpful and informative. Included is an update on the changes to the JAC contracts for the upcoming fiscal year, a legislative update, and other informative articles. JAC is making a significant change to the Registry Contract that should make the contracting process for attorneys easier and more efficient. We have also submitted an article about JAC to the Florida Association of Criminal Defense Lawyers (FACDL) for inclusion in *The Florida Defender* magazine. We plan to work with FACDL and others to continue to improve the billing process. Thank you for taking time to read our newsletter. If you are interested in providing feedback, there is a link to a short survey on the last page. As always, please let us know how we can serve you better.



Rip Colvin
JAC Executive
Director

Changes to Fiscal Year 2016-2017 Contracts

Several provisions of the JAC contracts for attorneys and due process vendors have been revised for Fiscal Year 2016 – 2017. As in prior years, these contracts run with the state fiscal year and will terminate on June 30, 2017. The contracts that have been amended are the Agreement for Attorney Services for Registry Attorneys (Registry Contract); Agreement for Attorney Services for Private Capital Collateral Counsel (Capital Collateral Contract); Attorney Agreement for Due Process Services for Persons Who Are Indigent for Costs (IFC Contract); and the Type 1, Type 2, and Non-Standard Agreements for Due Process Services (Due Process Contracts). The Non-Standard Agreement for Attorney Services for Off-Registry Appointments (Off-Registry Contract) has been merged into the Registry Contract. Specifically, the substantive amendments to the contracts include the following:

1. **Title Change:** The titles of the contracts have been changed to better reflect the nature of the relationship between JAC and court-appointed attorneys and due process vendors. The former contract names suggested that JAC was contracting for services from the attorneys and vendors.

(Continued on page 2)

Legislative Update

JAC received \$2,861,700 in additional funding within the General Appropriations Act (Ch. 2016-66, L.O.F.) to support the increases for court-appointed counsel in most criminal flat fee case types. Chapter 2016-62, L.O.F., among other items, amended s. 27.5304, F.S., to increase the statutory caps of certain court-appointed cases to accommodate the increased flat fees within the General Appropriations Act. The new flat fees go into effect only for appointments made on or after July 1, 2016. **For appointments prior to July 1, 2016, the flat fee in effect at the date of appointment remains in effect.**

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Changes to Fiscal Year 2016-2017 Contracts (Continued)

Instead, JAC's role is to process payments for attorneys and due process vendors who provide services to indigent defendants. This has led to confusion on the part of judges, attorneys, and vendors.

This is particularly important because of recent revisions to the Public Records Law. Under s. 119.0701, F.S., a contractor acting on behalf of a public agency is subject to the provisions of the Public Records Law. However, the Florida Supreme Court held in Kight v. Dugger, 574 So. 2d 1066 (Fla. 1990), that records held in furtherance of representation of an indigent client generally do not fall within the scope of the Public Records Law. With the change in the contract titles, it should be clear attorneys and due process vendors are not acting on behalf of a state agency (JAC), but instead are providing services to indigent defendants.

2. Statewide Contract (Removing the Circuit Registry Prerequisite from the JAC Registry Contract): In prior years, Registry Contracts were circuit specific. Consequently, an attorney needed to be approved for a circuit registry before they could execute a Registry Contract. Also, attorneys on multiple circuit registries had to sign multiple Registry Contracts. Previously, when a court appointed an attorney who was not on the circuit's registry, the attorney needed to sign a case specific Off-Registry Contract. In some instances, attorneys signed several Off-Registry Contracts over the course of a year. To streamline this process, attorneys will now sign one statewide Registry Contract that is not circuit specific. Once the contract is posted, any attorney may execute the Registry Contract. This contract will then apply to any registry or off-registry appointments received through June 30, 2017. In most instances, an attorney will only need to execute a single Registry Contract during the course of the fiscal year. The main exception to this would occur if the attorney changes his or her Tax Identification number.

Once an attorney signs the statewide Registry Contract, the attorney would be eligible for compensation for all court appointments, including off-registry appointments, made during that fiscal year from any circuit. By eliminating circuit specific contracts and the requirement that attorneys be on a registry prior to contracting, the process will become more efficient and user-friendly. Attorneys will be able to execute a new contract each year immediately after it is posted, rather than wait for each circuit to approve its registry and provide it to JAC. An attorney will no longer need to execute multiple contracts. Attorneys will also be able to advise the local circuit that he or she has executed a current JAC contract.

Attorneys should be aware that executing the Registry Contract does not automatically result in registry appointments. An attorney will still need to seek inclusion in one or more court-appointed registries in order to receive appointments. The attorney will need to contact the appropriate local court personnel for information about how to apply for inclusion in a court-appointed registry. The Registry Contract will ONLY become applicable for a particular circuit when the attorney is approved by the Chief Judge in that circuit and JAC receives the registry including the attorney's information from the circuit registry clerk.

(Registry Contract: Preliminary Paragraphs)

3. Addition of Off-Registry Appointment Language: To facilitate combining the Registry and Off-Registry Contracts, language has been added to the Registry Contract requiring off-registry orders of appointment to include language finding there were no registry attorneys available for representation or other good cause for an off-registry appointment. This language is based on the statutory requirements set forth in s. 27.40(7)(a), F.S. In prior years, JAC would not execute Off-Registry Contracts with attorneys until JAC received an order of appointment with language consistent with s. 27.40(7)(a), F.S.

If an attorney receives an off-registry appointment, the attorney will be responsible for verifying there is language justifying the off-registry appointment in the order of appointment. In the event the order is insufficient to justify an off-registry appointment, payment will be delayed until the attorney provides JAC with an appropriate order. The new procedure makes the lack of an appropriate order of appointment a payment issue rather than a contractual issue.

(Registry Contract: Paragraph XVIII(9))

4. Adjustments to Overhead Expenses/Non-billable items: The revised Registry and IFC Contracts adjust the items excluded as overhead expenses. First, courier services and portable devices (including MP3 players) are added to the list of items excluded. These additions are simply to clarify the items for which the contract does not allow reimbursement.

Second, clothing is no longer an excluded item and a new paragraph has been added to allow for purchase of clothing in criminal cases (involving a jury trial) under specified conditions. As a precondition to such purchases, the attorney will need to contact the defendant's family and the Office of the Public Defender (or other local entity) to see if clothing is available. If not, the defense may seek clothing through a motion (with service on JAC). Any clothing purchased must be the most economical, while being appropriate for court. Also, once the case concludes, any clothing purchased with state funds must be turned over to the Office of the Public Defender (or other local entity) for potential use by other defendants. These changes are intended to comply with due process requirements for jury trials in criminal cases.

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Changes to Fiscal Year 2016-2017 Contracts (Continued)

Third, in the Registry and Capital Collateral Contracts, the definition of administrative activities has been clarified to include more examples of activities deemed administrative/non-billable. The revised language provides that the following types of activities are deemed administrative and non-billable:

Time spent on activities not reasonably related to the merits of the underlying case including time spent preparing and reviewing routine pleadings and documents such as notices of hearings and depositions, notices of unavailability, subpoenas, and returns of service; calendaring hearings and setting depositions; and providing instructions to staff.

JAC currently objects to these types of services in hourly billings. This amendment simply elaborates on the more common types of entries/services to which JAC objects.

(Registry Contract: Paragraphs II(2), X(9), & XVIII(19); IFC Contract: Paragraphs II(2) & XIV(6); Capital Collateral Contract: Paragraphs II(2) & XII(7))

5. Definition of Capital Case: This amendment conforms the Registry Contract to the recent statutory provision relating to the death penalty. Ch. 2016-13, s. 2, L.O.F. (HB 7101). It adds the filing of a notice listing the aggravating factors as a prerequisite to a case being defined as a capital death case for billing purposes. An attorney will need to provide this notice to JAC either along with the charging document or thereafter, if the attorney seeks the enhanced compensation authorized for a capital death case.

(Registry Contract: Paragraphs III(8) & (9))

6. Language Regarding Interim Billing: In the past fiscal year, JAC has received several large billings at the conclusion of the case. To encourage attorneys to submit interim billings during the pendency of the case, the amendment suggests that an attorney may and should submit an interim billing if the attorney has accrued more than \$25,000 on a particular case, unless the attorney believes the case will reach final disposition within six months.

This amendment should help spread out the cost of a lengthy case over multiple fiscal years, rather than in a single fiscal year at the conclusion of the case. Moreover, it should facilitate online submission of those billings by keeping the file size of scans (such as hourly statements and dockets) within the system's capacity.

(Registry Contract: Paragraph III(12); Capital Collateral Contract: Paragraph III(9))

7. Attorney and Investigator Travel: This amendment clarifies the general prohibition for attorneys and investigators to travel from a different circuit to the circuit of a case. Currently, the provision only refers to travel time and mileage. The amendment expands the prohibition to any travel expenses such as lodging.

(Registry Contract: Paragraphs IV(11) & XVIII(15); IFC Contract: Paragraphs III(11); Due Process Contracts: Paragraph II(12))

8. Requirement that IFC and Due Process Vendors Submit Bills through JAC's Online Bill Submission System: JAC instituted Phase III of the Online Bill Submission System in June 2015. This phase allowed IFC attorneys and Due Process Vendors to submit their bills online. This provision simply mandates the use of that system with the current year contract. A similar provision was added last year for attorneys in the Registry Contract.

(IFC Contract: Paragraph II(8); Due Process Contracts: Paragraph II(20))

9. Minimum Billing Amount for Investigators: JAC staff has noticed that several investigators are submitting very small billings on a frequent basis. In some instances, JAC has received billings for less than an hour of work. These frequent billings place a significant administrative burden on JAC staff to process the additional billings, impacting the ability to process other billings.

The amendment limits the submission of investigator billings by requiring either an unpaid amount of at least \$500 (12.5 hours of work) or at the conclusion of investigator services on a case. If an investigator submits a billing for less than \$500 prior to completion of services on a case, the billing may be returned.

(Due Process Contracts: Paragraphs II(12))

10. Update of Addendum A for the Due Process Contracts: Based on the recent surveys of attorneys and due process vendors, JAC has made some adjustments to the *Due Process Service Provider Information* requested in Addendum A of the Due Process Contracts. These changes will also be incorporated into the *Due Process Vendor Search* on JAC's website.

(Due Process Contracts: Addendum A)

Legislative Update (Continued from Page 1)

Revised rate charts showing the flat fees applicable for the FY 2016-2017 are posted on JAC's website:

[https://www.justiceadmin.org/court_app_counsel/CAC%20Flat%20Fee%20Rates%20\(7%201%2016\).pdf](https://www.justiceadmin.org/court_app_counsel/CAC%20Flat%20Fee%20Rates%20(7%201%2016).pdf)

The flat fee for Felony, Noncapital Murder is an entirely new fee that will apply to cases involving second and third degree murder with a date of appointment on or after July 1, 2016.

In the General Appropriations Act, JAC received \$4.5 million in non-recurring General Revenue and \$2.4 million was moved within JAC's court-appointed due process categories to address JAC's funding for attorney's fees and due process costs. As a result of this Back of the Bill relief, the total projected shortfall of approximately \$6.9 to \$7.6 million was significantly reduced. JAC anticipates there will be sufficient funds available to conclude the fiscal year with minimal, if any, delays in payment. Even if JAC exhausts its court-appointed funding for this fiscal year, staff will continue to process billings so that once the state fiscal year commences on July 1st, those billings will be paid expeditiously.

Another significant statutory change relates to death penalty cases. Following a recent United States Supreme Court opinion, the Legislature passed Ch. 2016-13, L.O.F., which significantly altered the sentencing process in death penalty cases. As part of those changes, the state is now required to file a notice within 45 days of arraignment listing the aggravating factors the state intends to prove. In light of this requirement, the Registry Contract now requires the filing of this document as a precondition to a case being considered a capital death case for billing purposes. Therefore, an attorney should include the notice (if available) with the indictment when opening the case with JAC, or should provide the notice upon receipt if the case was previously opened.

In addition, until this notice is filed, due process motions related to capital death cases will not be ripe absent truly exceptional circumstances. These motions include a request for appointment of penalty phase counsel, mitigation specialist, or penalty phase investigator. Until the state indicates it intends to seek death by filing the notice listing aggravating factors, these motions will be considered premature.

Online Billing Submission Systems Update

JAC's IT staff is continuing to work on Phase IV of Online Billing Submission. This phase will allow due process vendors to complete their vouchers online. JAC will also be making other improvements to the existing systems. The reduction in bill processing time has resulted in a higher compliance rating for JAC (97.24%) under s. 215.422, F.S. (meaning that JAC processes this percentage of bills received in less than twenty days). With this increased efficiency, staff spends less time on data entry and scanning and more time performing audits. This also means that billings are processed for payment in a shorter time frame. Combined with Electronic Funds Transfer (EFT), in many instances payment are received only a matter of days after JAC has received a compliant billing.

JAC has received favorable and constructive feedback from court-appointed attorneys and vendors. JAC has utilized this feedback to improve and enhance the systems. JAC now receives a substantial number of bills online. In the first quarter of 2016, 98% of attorney fee bills and 61% of due process provider bills were submitted online. JAC recently received its second Prudential Productivity Award for the Court-Appointed Online Bill Submission System.

Confidential Vendor Form

Under Florida law, JAC's records are subject to public records requests. JAC maintains and posts on its website attorney and due process vendor contact information. Florida law protects certain personal information for some positions and individuals who fill those positions. There is no statutory exemption from a public records request for an individual's compensation.

Please be aware that JAC does not require that an attorney or due process vendor utilize a home address or phone number in their contracts with JAC. JAC does not require personal contact information such as a home address for compensation purposes. An attorney or due process vendor may wish to use a P.O. Box or a business address instead. Nonetheless, JAC is aware that some attorneys and due process vendors may use their home address and phone number for business purposes.

Public records law provides exemptions for personal information under certain circumstances. JAC has posted an Attorney/Vendor Privacy Indicator Questionnaire on its website to allow those attorneys and due process vendors who claim such an exemption to do so. This form will also be accessible during the Online Contracting Process. A person seeking an exemption will need to provide supporting documentation showing that the person qualifies for the exemption. JAC maintains a searchable database that contains due process vendors' contact information on its website. If a due process vendor elects to claim an exemption, the vendor's information will not be included in that database.

Contracting Process Overview

The bulk of JAC's contracts are executed through JAC's Online Contracting System. Prior to execution of either the Registry Contract or the IFC Contract, an attorney will need to set up an account in *My JAC* (JAC's secure website). Similarly, prior to executing a Type 1 or Type 2 Due Process Vendor Contract, a due process vendor will also need to set up a *My JAC* account. To access *My JAC*, please go to www.justiceadmin.org and click on the *My JAC* button (top right on JAC's home page).

Although the new Registry Contract will now be available for all attorneys to execute on our website, please be advised the new contract will not become applicable in a circuit until the attorney is approved for a registry in that circuit and JAC receives the registry from the circuit. Attorneys seeking to be included on a court-appointed registry for a specific circuit must contact the registry clerk in that circuit to obtain an application. Similarly, to be removed from a circuit registry, attorneys must contact the registry clerk in that circuit. JAC's role is to process payments for attorney's fees, due process costs and related expenses. Contact information for the registry clerks is posted on JAC's website at: https://www.justiceadmin.org/court_app_counsel/JAC_Website_Court_Registry_List.pdf.

One area of confusion is the difference between the Registry Contract and the IFC Contract. The Registry Contract applies to cases in which an attorney is appointed by a court to represent a defendant pursuant to s. 27.40, F.S. It allows for payment of attorney fees, due process costs and related expenses. The IFC Contract applies to cases in which a privately retained or *pro bono* attorney has a client declared indigent for costs (IFC) pursuant to s. 27.52(5), F.S. It allows for payment of due process costs and related expenses only. **If an attorney has court-appointed and IFC cases, he or she needs to execute both contracts.**

If attorneys or due process vendors wish to change their contact information (i.e., address, telephone, email), they may do so through *My JAC*. (They will not need to execute a new contract). It is the responsibility of the attorney or due process vendor to ensure that the contact/email information on file with JAC is up to date.

When attorneys or due process vendors change their tax identification number (Tax ID), they will need to execute a new contract. If attorneys wish to change their Tax ID, they will need to notify the JAC Contracts Section through *My JAC*. Their old contract will be end dated to allow them to execute a new contract. They will then need to execute a new contract with their new Tax ID. For due process vendors, they will need to set up a new account in *My JAC* utilizing the new Tax ID. Once the account is set up, they will execute a new contract in the same fashion as the prior contract.

When executing their contract, due process vendors are required to certify that they have the necessary occupational and/or professional licenses to provide the services for which they seek compensation. For example, investigators must possess a current Class C and Class A license from the Florida Department of Agriculture and Consumer Services. During the contracting process, due process vendors are asked to provide any license/identification numbers associated with those occupational and/or professional licenses.

As with the Registry Contract, the Due Process Vendor Contracts are not contracts for services; instead, they are contracts for payments relating to services provided to indigent defendants. JAC does not assign work or cases to due process vendors. Instead, they are retained by the attorneys who represent the indigent defendants (or by a *pro se* defendant). To assist attorneys, JAC maintains a searchable database of due process vendors with JAC contracts on its website. If a due process vendor executes a Type 1 or Type 2 contract, the vendor will be included in this database unless the vendor indicates otherwise.

Billing in Dependency and Termination of Parental Rights (TPR)

The first document that must be present for payment of any dependency bill is an order of appointment with appropriate findings of conflict. If different from the date the order is signed, the effective date of the order of appointment will be used for determining when the second year commences. The most common method for the Court to indicate an earlier effective date is the use of the phrase "*nunc pro tunc*."

Dispositional documents often cause confusion in dependency cases. A dispositional document for JAC purposes is a court order or other court document that shows the case has reached a billable stage. When an attorney is appointed pre-disposition on a dependency case, the order of disposition, an order of dismissal, or a notice of voluntary dismissal are appropriate documents to show the case has reached a billable point. Because orders of disposition may not be entered immediately, it is appropriate to submit to the court a summary order reflecting the case has reached disposition. The summary order should reflect at a minimum (1) the date of the disposition hearing; (2) the appointed attorney; and (3) the represented parent. The same type of summary order can be used for other hearings such as judicial reviews.

For cases where the attorney is appointed post-disposition, a judicial review order for a hearing following the date of appointment, a supplemental order of disposition relating to the represented parent, or an order closing the case are appropriate documents to

Billing in Dependency and TPR (Continued)

show a billable point. The order must represent a hearing held after the attorney was appointed to the case. The billable point for payment for the second year and any succeeding years occurs on or after the anniversary date of the last billable appointment. If a case does not reach the second year, then no additional flat fee payment is due. An order for a judicial review held after the anniversary date is an appropriate document to show a cause has reached the second year. An order closing the case will also suffice as long as the order shows the case actually reached the second year of representation.

In dependency and TPR cases, the attorney represents the parent, not the child. Therefore, compensation is based on representation of a parent regardless of case numbers assigned or children involved during the pendency of the case. A new child added to an open case, even if a new case number is assigned, does not qualify as a billable event.

If TPR proceedings are initiated, an order of appointment must be entered for the TPR proceedings. The parent must appear during the pendency of the TPR proceedings in order to have counsel appointed even if the parent was previously represented by appointed counsel in dependency proceedings. If the parent fails to appear during the TPR proceedings, then any appointment of counsel will be invalid for payment purposes. Assuming a valid TPR appointment, any dependency proceedings merge into the TPR proceedings for billing purposes. If the TPR appointment occurs before the anniversary date of the dependency appointment, then the second year payment for dependency does not apply. If the TPR appointment occurs after the anniversary date, the second year dependency payment would apply even if no judicial review was held in the second year prior to the TPR appointment.

In 2014, the Legislature established a right to appointed counsel for children with certain special needs. The order of appointment will need to reflect (1) the statutory special need that applies; and (2) that no *pro bono* counsel was available to accept the appointment. An order for a hearing following the date of appointment will usually suffice for the first year payment such as a judicial review order, an order on disposition, or an order closing the case. Payments for the second and subsequent years use the same rules for anniversary dates as other dependency appointments.

Sometimes a dependency case closes and reopens with the same attorney being appointed to represent the parent. If the case closed due to termination of jurisdiction, the matter is treated as a new case. If the case closed with the court retaining jurisdiction, the flat fee is based on the length of time the case was closed. If the case was closed less than a year from the date of reappointment, the flat fee is limited to \$200 for the first year and each subsequent year. If the case was closed for more than a year, the case is treated as a new case. If a case is closed and a new attorney is appointed when the case is reopened, the matter is also treated as a new case.

In some instances, private court-appointed counsel is discharged following disposition and a new attorney is appointed. If the first attorney was paid for the first year, the new attorney's appointment is deemed to commence the second year. In these instances, the applicable flat fee will be \$200. Generally, a judicial review order or an order closing the case will be sufficient to show the case has reached a billable point.

JAC has posted flowcharts on its website showing common dependency and TPR billing scenarios:

https://www.justiceadmin.org/court_app_counsel/dependencytpr/Dependency%20and%20TPR%20billings%20scenarios.pdf

These charts can assist attorneys in determining the appropriate fee to bill.

Reporting Potential Misuse of State Funds to JAC

In recent years, JAC has received various reports from attorneys, due process vendors, and others suggesting fraud or misuse of state funds in relation to private court-appointed and indigent for costs cases. After an initial investigation, JAC has referred two of these matters to the Office of Fiscal Integrity (OFI) within the Department of Financial Services. OFI is a criminal justice agency whose mission is to detect and investigate the misappropriation or misuse of state assets. As a result of these referrals, the persons involved have been charged with criminal offenses. To facilitate future reports, JAC has added a JAC Tips Form to its website to allow any person to report misuse of state funds involving private court-appointed or indigent for costs cases. Examples of misuse of state funds include:

- Seeking payment for services not performed.
- Inflating billings beyond the services actually provided.
- Forging signatures on billing documents.
- Altering or falsifying billing documents including court documents.
- Seeking money or other remuneration from vendors as consideration for using their services.

If a person wishes to provide a tip anonymously, they can leave a message with the JAC Help Desk at 1-844-522-5463 (toll-free).

Billing Guardianship

Billing attorney fees on an appointment to represent an alleged incapacitated person can seem a little confusing at times. In order to assist in billing these cases, JAC provides the following tips:

- JAC only pays fees when the alleged incapacitated person is indigent. If the person is not indigent, the fees are paid from the estate of the alleged incapacitated person. JAC pays fees on a flat fee basis. Currently, the flat fee is \$400.
- Many times the case will start out with a mental health (MH) case number before it is assigned a guardianship (GA) case number. If the order of appointment lists a MH case number the case eventually closes with a GA case number, please provide official court documentation that links the case numbers, such as clerk notes or court dockets, showing both case numbers.
- You may be appointed to represent the alleged incapacitated person on an emergency temporary guardianship and a regular guardianship. You can bill \$400 for each appointment. Please do not submit one \$800 billing to cover both appointments. When using the Online Case Opening System, open each case separately by uploading the appropriate order of appointment.
- For an emergency temporary guardianship, choose (GA) GUARDIANSHIP as the Court Type. Then choose GUARDIANSHIP – EMERGENCY - CH. 744, F.S. as the Case Type. When it is time to bill this appointment, remember to choose the emergency temporary guardianship case in the Online Billing Submission System. The document to upload as a Disposition may be an order appointing emergency guardian, an order of appointment to a regular guardianship case, or an order dismissing or denying the emergency petition. For a regular guardianship, choose (GA) GUARDIANSHIP as the Court Type. Then choose GUARDIANSHIP - CH. 744, F.S. as the case type. When it is time to bill this appointment, remember to choose the regular guardianship case in the Online Billing Submission System. The document to upload in the Disposition field would be the order appointing a guardian or an order dismissing or denying the petition.
- If you are using an order on the report of the general magistrate as the Disposition, please submit the report and recommendation by the magistrate as well. This may be insufficient because it lacks the necessary findings to show the case has reached final resolution.
- Sometimes a guardianship case will conclude with an order appointing the guardian and the attorney will later be appointed on the same case. This often occurs when there are further proceedings such as allegations of restoration of capacity or a requirement for court authorization for medical procedures. The reappointment will need to be opened as a new case. Once the new proceeding is concluded, the attorney will be entitled to another \$400 flat fee.
- JAC only pays for attorney fees for the alleged incapacitated person when that person is indigent. The fees of the examining committee are paid through Court Administration rather than JAC. JAC also does not pay fees for court monitors, guardians, or other persons involved in the guardianship process.

Indigent for Costs (IFC) Accounting Requirement

A defendant who is found indigent for costs (IFC) under s. 27.52(5), F.S., is liable to repay the state for any costs incurred on the defendant's behalf upon conviction. When a defendant who has been found IFC is convicted, the attorney must provide an accounting to the trial court of any costs expended on behalf of the defendant within 90 days after disposition, notwithstanding any appeals. The court will then enter an order determining the amount of costs paid which will be recorded by the clerk as a lien against the defendant.

Once the case has concluded with a conviction, JAC needs proof the attorney representing the defendant has complied with the requirements of s. 27.52(5), F.S., including the filing of an accounting with the court. Therefore, a due process vendor may receive an Audit Deficiency from JAC indicating no authorization to pay or reimburse any due process costs that remain unpaid until the attorney complies with the requirements of s. 27.52(5), F.S. This Audit Deficiency should be responded to by the attorney. If the accounting is not filed with the court, JAC is not authorized to pay or reimburse any unpaid costs.

JAC can provide a certificate of costs expended through JAC. The form to request such a certificate is available at:

<https://www.justiceadmin.org/IFC/application%20for%20certification%20of%20costs%206-26-15.pdf>

The request for a JAC certification of costs should be sent via email to compliance@justiceadmin.org. Please be aware JAC can only report billings previously submitted. It is the attorney's responsibility to ensure that any unbilled costs are included in the accounting provided to the court. It is helpful to JAC if the attorney sends the disposition when requesting a certification of costs.

While JAC can assist the attorney by supplying a certification of costs, it is the attorney's responsibility to file the accounting and provide it to JAC. Also, the attorney may be requested to provide JAC with the order imposing the costs as a lien against the defendant. Once an IFC case reaches final disposition with a conviction, the attorney needs to comply with the requirements of s. 27.52(5), F.S., before any remaining billings are paid through JAC.



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Interim Billing in Unusual and Extraordinary Criminal Cases

When s. 27.5304, F.S., was amended in 2007, the provision for interim attorney fee billing in criminal cases was removed. Instead, s. 27.5304, F.S., provides for payment of attorney fees upon final disposition of the case. Nonetheless, JAC still accepts interim attorney fee billings in criminal cases appointed after July 1, 2007. To qualify for interim billing, the case will need to involve unusual and extraordinary effort under s. 27.5304(12), F.S. At a minimum, the case should involve more than 75 hours of work or more than 20 state witnesses deposed.

If an attorney seeks to submit an interim bill for a case appointed on or after July 1, 2007, the attorney must still comply with the requirements of s. 27.5304, F.S. The attorney must submit an intended billing and await JAC's objection letter prior to filing a motion for attorney fees. Once JAC issues an objection letter, the attorney will file a motion for attorney fees and set the matter for hearing before the designated extraordinary fee judge. In addition to establishing that the case involves unusual and extraordinary effort, the attorney will need to establish a basis for interim billing notwithstanding the statutory requirement that an attorney wait until final disposition before receiving compensation.

Generally, an attorney should not seek interim payment until the attorney has been on the case for at least six months and has incurred substantial fees in the matter. The amount incurred should significantly exceed the flat fee established for the case. Although a lesser amount may be appropriate depending on the nature of the case, JAC encourages interim billing if the amount exceeds \$25,000 and the case is not likely to resolve within the next six months. For cases lasting an extended period, no more than one interim billing should be submitted each year absent truly exceptional circumstances.

When the Court awards fees on an interim basis, a portion of those fees (typically 20 percent) will be held by JAC until the case reaches final disposition. However, the attorney may receive the full amount of any reimbursable costs the attorney has incurred.

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JAC in Brief

The Justice Administrative Commission administratively serves 20 Offices of State Attorney, 20 Offices of Public Defender, 3 Offices of Capital Collateral Regional Counsel, 5 Offices of Criminal Conflict and Civil Regional Counsel, and the Statewide Guardian ad Litem Program. JAC also provides compliance and financial review for services provided by private court-appointed attorneys representing indigent citizens and associated due process vendors.

The Commission is comprised of two State Attorneys, appointed by the Florida Prosecuting Attorneys Association, and two Public Defenders, appointed by the Florida Public Defender Association. The Commission appoints an Executive Director, who is charged with oversight of necessary staff to efficiently and effectively carry out the JAC's duties.

Vision: To be a model of exemplary state government and provide unparalleled services.

Mission: To be responsible stewards of taxpayer dollars, while providing the highest quality service to the 49 judicial related entities, private court-appointed counsel, and associated vendors we serve, by ensuring compliance with laws, rules, regulations, and best business practices.

Values: We take great pride in excellence in service, innovation, adaptability, collaboration, honesty, integrity, accountability, and diversity, as well as respectful and ethical conduct, and fiscal responsibility.