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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.

Due to the impact of COVID-19, JAC has shifted to a telework environment. JAC requests your patience as our processing of billings, review of pleadings, and responses to inquiries may be delayed. JAC staff is still working diligently to process billings and respond to inquiries as efficiently as possible under current constraints.

**In order to better serve you, please direct any inquiries, issues, or documentation to the appropriate email address listed below.**



**Rip Colvin**  
JAC Executive Director

- JAC's Attorney or Due Process Vendor Contracts issues or questions should be directed to [contracts@justiceadmin.org](mailto:contracts@justiceadmin.org). However, beginning June 15, 2020, through July 15, 2020, contracts questions should be directed to the JAC Online Support Team at [onlinesupportteam@justiceadmin.org](mailto:onlinesupportteam@justiceadmin.org).
- Court-Appointed billing questions should be directed to the JAC Online Support Team at [onlinesupportteam@justiceadmin.org](mailto:onlinesupportteam@justiceadmin.org).
- Responses to Court-Appointed billing audit deficiencies should be submitted through JAC's Online Billing Submission (JACOBS) system in [MyJAC](#).
- JAC Legal questions concerning scheduling or canceling a court hearing or verifying a JAC response to a motion should be directed to [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).
- General legal or court-appointed motions, orders, notices of hearing, or other legal correspondence should also be directed to [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).

JAC will continue to keep you informed during this crisis.

Included in this newsletter is information regarding changes to the Fiscal Year 2020 -21 Contracts; Information about the new IFC Case Opening System in [MyJAC](#); and other pertinent information. The new contracts will be available for execution through [MyJAC](#) around June 15, 2020. When the new contracts are available, JAC will send an email notification, post a notice on JAC's website, and post an announcement on Facebook.

## Changes to Fiscal Year 2020-2021 Contracts

For the upcoming fiscal year, the JAC has made several amendments to JAC's contracts for payment of services provided in court-appointed and indigent for costs cases. The contracts being amended are as follows:

1. Contract for Payments Related to Attorney Services Related to Indigent Defendants (Registry Contract);
2. Contract for Payments Related to Attorney Services Provided to Capital Collateral Defendants (Capital Collateral Contract);
3. Attorney Contract for Payments Related to Due Process Services Provided to Persons Who Are Indigent for Costs in Criminal Cases and Civil Cases Where There Is a Statutory or Constitutional Right to Appointed Counsel or Due Process Costs (IFC Contract);
4. Contract for Payments Related to Due Process Services Provided to Indigent Defendants (Other than Attorney Fees) (Due Process Contracts)
  - a. Type 1- Due Process Costs Limited to Established Rates (Court Reporters, Investigators, Mitigation Specialists); and
  - b. Type 2- For Vendors Providing Extraordinary Services (Experts).

JAC will be taking down the Fiscal Year 2019-20 Contracts in MyJAC on May 29, 2020. JAC anticipates the Fiscal Year 2020-21 Contracts will be posted around June 15, 2020. The substantive revisions to the Contracts are as follows:

### **1. Revised Language Related to Potential Conflicts of Interest:**

Under the current contracts, attorneys are prohibited from obtaining services from due process vendors in which the attorney or the attorney's spouse or child has a material interest in any form. The provision expands the prohibition to the attorney's parent, spouse, child, or sibling. The provision will also be amended to prohibit an attorney from obtaining services from a due process vendor who shares office space with the attorney.

The current contracts also prohibit an attorney from soliciting anything of value from a due process vendor, or a due process vendor from offering anything of value to an attorney in order to secure JAC contract work. The contracts will be amended to prohibit an attorney from providing anything of value to a due process vendor providing services under a JAC contract.

The revisions are intended to ensure that any due process vendor working with a JAC attorney is not associated with the attorney in any fashion beyond the scope of the services provided under the JAC contracts and corresponding court orders.

*Registry Contract: Paragraph IV(24); Capital Collateral Contract: Paragraph IV(23); IFC Contract: Paragraph III(24); Due Process Contracts: Paragraph II(16) & (17).*

### **2. Removal of Outdated Language:**

When the penalty for untimely billing provision was added to JAC's contracts in 2007 to comply with a statutory change, the disposition date for cases that resolved prior to the effective date of the statutory amendment was established as May 24, 2007 in the contracts. This date essentially allowed attorneys and due process vendors a grace period after the change in law to submit billings without a penalty for untimely billing. This provision is no longer necessary because the statute of limitations for submitting court-appointed billings is five years per s. 95.11(2), F.S. Any billing for a case that resolved prior to May 24, 2007, is now barred under the statute of limitations.

*Registry Contract: Paragraph X(1); IFC Contract: Paragraph VII(1); Due Process Contracts: Paragraph VII(1).*

## Changes to Fiscal Year 2020-2021 Contracts (Continued from Page 2)

### 3. Revised Notice of Inspection Language:

Under the current contracts, JAC has the authority to send Notices of Inspection on a single case or a general Notice of Inspection on all records. The revised language clarifies that JAC can opt to send Notices of Inspection for one or more specific cases. This revision makes the contracts consistent with current JAC practices in situations involving records from multiple cases that result in billing more than 24 hours in a single day or more than 50 hours in a calendar week.

*Registry Contract: Paragraph XII(4); IFC Contract: Paragraph VIII(4); Due Process Contracts: Paragraph VIII(4).*

### 4. Recoupment Provision for Failure to Maintain Contemporaneous Detailed Records:

This provision highlights the financial consequences pursuant to s. 27.40(7)(b), F.S., for failing to maintain contemporaneous detailed records. Under both the law and JAC's contracts, attorneys and due process vendors are required to maintain contemporaneous and detailed hourly records supporting payments made by JAC for five years. Moreover, per s. 27.40(7)(b), F.S., registry attorneys waive the right to compensation in excess of the flat fee if they fail to maintain contemporaneous and detailed hourly records.

Under this provision, registry attorneys are liable to repay JAC any payments in excess of the flat fee if the attorneys failed to maintain contemporaneous and detailed hourly records notwithstanding a court order approving payment of attorney fees. Capital collateral attorneys, IFC attorneys, and due process vendors are liable to repay any amount that cannot be substantiated by contemporaneous detailed records notwithstanding any court order approving payment. This provision sets forth JAC's ability to recoup payments after-the-fact when an attorney or due process vendor lacks the supporting records required under Florida law and the contracts.

*Registry Contract: Paragraph XII(8); Capital Collateral Contracts: Paragraph XIII(8); IFC Contract: Paragraph VIII(7); Due Process Contracts: Paragraph VIII(7).*

### 5. Addition of Force Majeure Clause:

In light of recent events, the addition of a *force majeure* clause to the contracts will be implemented. The language is adapted from the Department of Management Services' PUR 1000 General Contract Conditions which lists required and recommended contractual provisions for state entities.

*Registry Contract: Paragraph XVIII(22); Capital Collateral Contracts: Paragraph XIX(12); IFC Contract: Paragraph XIV(9); Due Process Contracts: Paragraph XIII(9).*

### 6. Provision Relating to Reporting Solicitation by JAC Employee:

This provision requires an attorney or due process vendor to notify JAC if a JAC employee solicits something of value from the attorney or due process vendor. The provision indicates the information can be submitted anonymously, provides a link to the JAC Tips Form, and references the protections of Florida's Whistle-blower's Act (s. 112.3187, F.S.).

*Registry Contract: Paragraph XVIII(23); Capital Collateral Contracts: Paragraph XIX(13); IFC Contract: Paragraph XIV(10); Due Process Contracts: Paragraph XIII(10).*

### 7. Uniform Reference to "Due Process Vendor":

The contracts will be amended to consistently refer to "due process vendor" or "due process vendors" throughout. In some instances, the term due process provider was used instead. The consistency in term avoids any potential ambiguity in the contracts resulting from the use of different terms with the same meaning.

## Indigent for Costs (IFC) Case Opening in MyJAC

JAC has created a new online indigent for costs (IFC) case opening system for privately retained attorneys. To use this system, login to [MyJAC](#). On the left sidebar of the homepage menu bar, you will find **Open a New IFC Case**. Click on this to open the online form to enter a new IFC case. **PLEASE READ all the instructions on the top of the form.**

You will be prompted to enter the case information. Please enter all case numbers for the defendant/client. You can enter up to ten case numbers. In criminal cases, select the highest charge (of all the case numbers) as the Case Type. If you represent the defendant/client in multiple cases in different counties, you must open separate cases for each county.

You must upload the following required documents:

- A written Motion to Declare the Defendant/Client Indigent for Costs;
- A completed Clerk's Application for Indigent Status;
- An executed Attorney Fee Affidavit; and
- A Charging Document (in criminal cases) or Petition (in civil cases).

There is some confusion about what constitutes the appropriate charging document to be submitted to JAC.

- In criminal cases, the charging document is usually the Information or Indictment filed by the state attorney.
- In delinquency cases, it is the Petition filed by the state attorney.
- In violation of probation/community control cases, the charging document is the Affidavit of Violation of Probation/Community Control.
- For appellate cases, the charging document is the Notice of Appeal along with the Judgment and Sentence and other order being appealed.
- For post-conviction cases, the charging document is the Motion for Postconviction relief.
- If the motion for indigency is filed before a charging document is filed, a Police Report, Notice to Appear, or Probable Cause Affidavit may be used instead of the charging document.
- For dependency and TPR cases, a charging document is not required. This includes *pro bono* representation of a child with special needs in dependency cases.
- A charging document is also not required for Parental Notice of Abortion cases.
- For other civil cases, the Petition initiating the case is submitted as the charging document. For example, in Guardianship cases, the Petition to Determine Incapacity would be submitted.

After JAC reviews and approves the uploaded documents and opens the case(s), you will receive an email indicating JAC's position on the motion. If JAC has an objection to the motion and requests a hearing, JAC will file a formal response with the court and serve you.

Please make sure all your documents are legible; particularly, the scan of any application for indigency. Although JAC strives to process new case documents within 24 hours, it may take up to three business days to open an IFC case in the JAC system. Please **do not** resubmit the case or the case opening documents. If you submit an IFC case through the online system, please **do not** serve JAC with another copy of the motion and supporting documents via email. This includes any service through Florida Court E-Filing Portal.

The following tips will help ensure proper submission of documents via [MyJAC](#):

- JavaScript should be enabled in your web browser.
- Disable pop-up blockers in your web browser.
- Prepare all your IFC case opening document files for submission. New IFC case opening submission packet documents must be either PDF or TIFF file format. **For Mac/Apple users, TIFF format is preferable.**
- Total file size for new IFC case opening submission packets must be less than 20 MB (megabytes) for all documents.
- All documents submitted online should be legible and scanned right side up. Each page should reflect a full-sized single page of the original document. Documents should be scanned in black and white, with a resolution no greater than 300 DPI.

Once the court determines the defendant is indigent for costs, please submit a copy of the order to JAC via [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org). If you have any questions about the IFC case opening system, please contact the JAC Online Support Team at [onlinesupportteam@justiceadmin.org](mailto:onlinesupportteam@justiceadmin.org).

## Costs to Obtain Records

An attorney or due process provider may be reimbursed for costs associated with obtaining documents with limited exceptions. In order to obtain reimbursement, the expense must be supported by a court order, a detailed vendor invoice, and proof of payment. The court order must indicate the amount authorized to obtain such documents. The order may be specific (such as a specific amount related to one or more invoices) or a general cap covering any such expenses. If a case is only going to involve a single instance, then an order relating to that specific request is appropriate. If a case is going to involve multiple requests, then a more general order with a cap may be appropriate.

An order authorizing payment to obtain case-related documents and materials needs to include the amount authorized (cap). Examples of such costs include charges from the state attorney or law enforcement for discovery or other materials; charges for public records requests made of state entities, such as the Department of Corrections (DOC) or the Florida Department of Law Enforcement (FDLE); and charges for medical records.

The vendor invoice needs to detail the charges incurred for the copies. For invoices from state entities, such as the sheriff, Department of Corrections, or the state attorney's office, JAC processes the amount charged for payment. For medical records, the rate can be up to the amount allowable under s. 395.3025, F.S., generally \$1 per page. For other records, the amounts allowable under s. 92.153, F.S., apply: \$0.15 per page and \$10 per hour for research and retrieval.

JAC does not process for payment documents obtained from the local clerk of court. Under ss. 57.081 and 28.345, F.S., the clerk should not require prepayment to provide copies of court documents requested by indigents or their attorneys, which includes audio recordings of court hearings. It is the responsibility of the attorney to take the steps necessary to have any charges waived. This applies to reimbursement requests from the attorney or a due process vendor. JAC will reimburse an attorney or due process vendor for out-of-county clerk charges where there is a court order.

## Requirement to Maintain Contemporaneous Detailed Records

Pursuant to s. 27.40(7)(b), F.S., the JAC Registry, Indigent for Costs, and Due Process Contracts, and JAC Policies and Procedures, attorneys and due process vendors are required to maintain appropriate documentation to support any billing submitted to JAC. These records and documents are subject to review by JAC, subject to the attorney-client privilege and work-product privilege.

The contracts contain serious consequences for failing to maintain contemporaneous and detailed records. The maintenance of these records is a critical component of the contracts. JAC relies on attorneys and due process vendors maintaining records supporting their billings for five years after payment. It is imperative that these records be maintained in a fashion that allows for timely inspection upon JAC's request.

Failure to maintain contemporaneous and detailed records can result in an attorney or due process vendor being required to repay JAC for any payments that cannot be supported by the records maintained. Notwithstanding any court orders approving payment, JAC is authorized to recoup payments that cannot be supported by contemporaneous and detailed records upon a post-payment review. Per the terms of the contracts, JAC can issue a Notice of Inspection seeking these records even after a billing has been processed for payment.

Contemporaneous and detailed records include information, records, and other documents which were created at the time the services were rendered to the attorney or client and support the amount of time billed for those services. The billing statements provided to JAC must be derived from underlying contemporaneous detailed records such as timesheets, calendar entries, logs, notes, and other records that support the hours or amount billed for the services performed. When preparing the statements submitted to JAC, an attorney or due process vendor must rely upon records generated at the time the services were performed to determine the time and amount billed. Appropriate record keeping is an essential part of any professional practice.

Lastly, if a due process vendor is requested to send records that may contain confidential information to JAC, the due process vendor must consult with the attorney that retained the due process vendor to ensure that any attorney-client or work product privileged information is redacted from the records.

## Distinguishing Between a Felony Punishable by Life and a Life Felony

Distinguishing between a felony punishable by life and a life felony can be difficult. Part of the confusion arises because of a misunderstanding about what constitutes a life felony. Under s. 775.081(1), F.S.,:

Felonies are classified, for the purpose of sentence and for any other purpose specifically provided by statute, into the following categories:

- (a) Capital felony;
- (b) Life felony;
- (c) Felony of the first degree;
- (d) Felony of the second degree; and
- (e) Felony of the third degree.

For a case to qualify as a life felony, it must be classified as a life felony pursuant to the Florida Statutes. An offense that is not classified or reclassified as a life felony is not a life felony for billing purposes. Although an offense may subject a defendant to a life sentence, or even a mandatory life sentence, the offense is a felony punishable by life unless the offense has been statutorily reclassified as a life felony.

The various penalty enhancement statutes contained in s. 775.084, F.S., do not enhance the degree of the offense. These include the provisions related to violent career criminals; habitual felony offenders; habitual violent felony offenders; and three-time violent felony offenders. Although these provisions subject a defendant to minimum mandatory or enhanced sentences, they do not enhance the degree of the offense. Similarly, s. 775.082, F.S., establishes mandatory minimums for prison release reoffenders but does not enhance the degree of the offense.

One provision that may enhance an offense to a life felony is s. 775.087(1), F.S. First, to be applicable, the charging document must reflect that the enhancement portion of the statute is being applied. Section 775.087(2), F.S., creates minimum mandatory sentences for an offense involving a firearm or destructive device but it does not enhance the degree of the offense. If a charging document only cites s. 775.087(2), F.S., the enhancement portion of the statute is not being applied.

Second, to qualify for enhancement under s. 775.087(1), F.S., the use of a weapon or firearm cannot be an essential element of the offense:

Unless otherwise provided by law, whenever a person is charged with a felony, except a felony in which the use of a weapon or firearm is an essential element, and during the commission of such felony the defendant carries, displays, uses, threatens to use, or attempts to use any weapon or firearm, or during the commission of such felony the defendant commits an aggravated battery, the felony for which the person is charged shall be reclassified as follows:

- (a) In the case of a felony of the first degree, to a life felony.
- (b) In the case of a felony of the second degree, to a felony of the first degree.
- (c) In the case of a felony of the third degree, to a felony of the second degree.

For example, armed robbery under s. 812.13(2)(a), F.S., includes a firearm or deadly weapon as an element of the offense. Therefore, armed robbery is not subject to enhancement to a life felony under s. 775.087(1), F.S., and remains a felony punishable by life. If the charging document is silent as to which subsection of s. 775.087, F.S., is being applied, the determination of whether the degree of the offense is being enhanced will hinge upon the elements of the underlying offense.

Absent a provision classifying or reclassifying a felony into a life felony, an offense punishable by a potential sentence of life imprisonment is a felony punishable by life for billing purposes. This applies even when a life sentence is mandatory as a result of the various provisions of the Florida Statutes.

## Minimum Contents of Transcript Orders

Orders authorizing transcripts must contain sufficient information to identify the particular proceedings to be transcribed.

- For deposition transcripts, the order must include the deponent and date of deposition for each deposition to be transcribed. Initials may be used for minors or other confidential witnesses.
- For hearing transcripts, the order must include the type and date of each hearing to be transcribed. If only a portion of the hearing is to be transcribed, such as the testimony of a specific witness, that information should also be provided.
- For appellate transcripts, the designation of the record may be utilized instead of a court order authorizing transcripts.
- For transcription of recordings other than depositions or hearings, sufficient information must be provided to identify the matter to be transcribed typically the date of the recording and the witness or type of recordings. For example, “911 call recorded on 1/1/20”; “statement of John Doe taken on 1/1/20”; or “20 jail calls recorded between 1/1/20 and 1/31/20”.

Any court reporter billings that include a court order without this essential information may be rejected. A single order may authorize multiple transcripts. Also, it is unnecessary to include the estimated cost for transcription in the motion or order.

An order authorizing transcripts allows for payment at regular (10 business day) delivery. To obtain expedited rates for transcripts, the attorney is required to serve JAC with a motion justifying expedited rates, and after JAC responds to the motion, an order authorizing expedited rates. Attorneys cannot obtain an order authorizing expedited rates without specifically requesting expedited rates. In order for JAC to pay expedited rates for any transcript, an order authorizing expedited rates must be provided. The order must specify the necessity for expedited rates.

Please ensure all court orders authorizing transcripts include the necessary information to support the billing for each transcript. Additional information about court reporter billings is available at:

[https://www.justiceadmin.org/DueProcess/index.aspx?show\\_div=1](https://www.justiceadmin.org/DueProcess/index.aspx?show_div=1).

## Legislation Affecting JAC Court-Appointed

On March 4, 2020, the Legislature passed House Bill 5003, the act implementing the FY 2020-21 General Appropriations Act. This bill extended last year’s amendments to ss. 27.40 and 27.5304, F.S., the statutes governing court appointments of private conflict counsel and their compensation, to June 30, 2021. The amendments require that: (1) certification of conflict be in writing; (2) attorneys certify willingness to abide by statutes and registry contract; (3) inclusion of payment contingency language in JAC contracts and forms; (4) JAC review extraordinary billing records before payment; (5) JAC objections have presumption of correctness; (6) 20-day notice of fee hearing must be given; and (7) that s. 27.5304, F.S., constitutes the sole procedure for payment of court-appointed work. Unless renewed again, these amendments will expire on July 1, 2021.



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r/XJSZDWF](https://www.surveymonkey.com/r/XJSZDWF)

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## New Attorney Residual Voucher Form

JAC will be implementing a new online Attorney Residual Voucher Form in MyJAC. When interim payments are made in criminal cases, typically 20 percent of the amount awarded is carried forward until final disposition. The new form is to be used when there is a carry forward amount when the case reaches final disposition. To allow for expedited payment, the attorney will be able to submit this form to receive payment once the case closes without having to wait until the fee hearing on the final billing.

When logging into MyJAC, the attorney will click on the Attorney Invoice Submission link on the left navigation bar and search for a case either by sequence number (the part of the case number following the year) or by defendant name. After clicking on the specific case in the search results box, the attorney will select New Invoice Submission for this case and select Residual Amount in the Billing Type drop down box. The attorney will need to include the order showing the case has reached final disposition as part of the billing packet, as well as the carry forward amount as reflected in the attorney fee order(s) previously entered by the court.

**The new form should be available in MyJAC in mid-June 2020.**

## JAC in Brief

JAC administratively serves 20 Offices of State Attorney, 20 Offices of Public Defender, 5 Offices of Criminal Conflict and Civil Regional Counsel, 3 Offices of Capital Collateral Regional Counsel, and the Statewide Guardian ad Litem Program. Services provided are primarily in the areas of accounting, budget, financial services, and human resources. While JAC administratively serves these JROs, JAC does not supervise, direct, or control the JROs it serves.

JAC also provides compliance and financial review of billings 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 President of the Florida Prosecuting Attorneys Association, and two Public Defenders, appointed by the President of 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 JAC's duties.

**JAC's Vision:** To be the model of exemplary state government.

**JAC's Mission:** To support the entities we serve and Florida's judicial system with fiscal controls, best practices, and exemplary service.

**JAC's Core Values:** We take great pride in exemplary service, adaptability, honesty, integrity, and diversity, as well as respectful and ethical conduct.

**JAC's Core Competencies:**

1. Administrative Service
2. Communication and Collaboration
3. Prompt-Payment
4. Fiscal Accountability
5. Continuous Improvement and Innovation