

Twelve Things Counsel Should Remember About Obtaining Fees for Court-Appointed Work

1. Counsel seeking fees through JAC must execute a JAC Contract for Attorney Services.

Generally, the courts appoint attorneys from a registry of attorneys authorized to accept court-appointed cases. The chief judge for each circuit is responsible for selecting those attorneys for inclusion in the circuit's registries. To participate in a court-appointed registry, an attorney is statutorily required to execute the JAC Contract. This Contract is posted on JAC's website:

http://justiceadmin.com/court_app_counsel/agreementscontracts.aspx

In rare circumstances, a court may appoint a non-registry attorney. As directed by s. 27.40(7)(a), F.S., JAC is only authorized to compensate a non-registry attorney if the order of appointment reflects that there were no registry attorneys available. A non-registry attorney will need to execute a Non-Standard JAC contract for Attorney Services to receive compensation through JAC. Upon appointment, the attorney should contact the JAC contracts section to obtain a copy of the Non-Standard Contract.

2. JAC is only authorized to pay attorney fees when there is a statutory or constitutional right to appointed counsel.

JAC is responsible for processing for payment of attorney fees for court-appointed Counsel in accordance with ss. 27.5304 and 29.007, F.S. Generally, JAC pays attorney's fees in cases where the person is indigent, is entitled to court-appointed counsel, and the offices of the public defender and criminal conflict and civil regional counsel have a conflict precluding representation or are not authorized to provide representation for that particular type of case. **The order of appointment must reflect that, as applicable, these offices have a conflict.** For criminal cases and those civil cases for which the public defender is authorized to provide representation, the public defender and regional counsel must have a conflict precluding representation for the court to appoint private counsel. For other civil cases, regional counsel must have a conflict precluding representation for the court to appoint private counsel except for appointment to guardianship cases where the court cannot determine indigency at the time of appointment and to parental notice of abortion cases.

3. The compensation structure established by the legislature is primarily a flat fee structure.

Compensation for court-appointed cases appointed on or after July 1, 2007, is primarily through flat fee payment structure. Pursuant to s. 27.5304, F.S., the legislature sets the flat fees annually in the General Appropriations Act. The flat fees are posted on JAC's website:

http://www.justiceadmin.com/court_app_counsel/Flat%20Fee%20Rates.pdf

Payment of attorney fees is generally authorized once the case reaches final disposition. Except where authorized by law or procedure, interim billing prior to final disposition of the case is not authorized. For cases involving unusual and extraordinary effort, s. 27.5304(12), F.S., sets forth the procedure by which Counsel can seek compensation in excess of the flat fee.

4. Any billing that is not submitted in a timely fashion may be subject to a contractual penalty for untimely billing.

Counsel must submit an intended billing for fees within 90 days after final disposition of the case. Failure to submit a properly completed intended billing within 90 days may result in the imposition of a contractual penalty for untimely billing. The imposition of a penalty for untimely billing is a contractual matter between JAC and contracting Counsel. If Counsel believes that there is a basis to waive the penalty, Counsel needs to provide the information to JAC. Because imposition of the penalty is contractual, the courts generally do not have any authority to waive the penalty.

5. Prior to filing any motion for attorney fees, Counsel must submit an intended billing to JAC and receive a response thereto.

Prior to filing any motion for attorney fees, as required by s. 27.5304, F.S., and the JAC Contract for Attorney Services, Counsel must first submit an intended billing and supporting documentation to JAC. Generally, the billing packet will consist of the applicable JAC Invoice Voucher Cover, the dispositional document showing the case has reached a billable stage, and other pertinent documentation. Upon receipt of an intended billing, JAC will initiate its review process. During this review, JAC may issue a Billing Audit Deficiency indicating the reason JAC is unable to process the billing and requesting that Counsel provide additional information or documentation. Because JAC has not completed its review, Counsel may not file a motion for attorney fees based upon an audit deficiency.

Once JAC has completed its review, JAC will either process the billing for payment or will issue a letter of objection or no objection. If Counsel has submitted a flat fee billing that comports with statutory and contractual requirements and Counsel is entitled to the full flat fee, then JAC will process the billing for payment administratively without the need for further court order. Otherwise, JAC will issue a letter of objection or no objection. Upon receipt of such a letter Counsel is authorized to file a motion for attorney fees. JAC's letter must be attached to the motion.

6. Any motion for fees must comport with the intended billing submitted to JAC.

A motion for fees must comport with the intended billing submitted to JAC. With a limited exception, Counsel cannot seek more than the amount of the intended billing. If Counsel intends to seek an amount greater than the intended billing, then Counsel needs to submit an amended intended billing to JAC and receive a response thereto before filing a motion for fees. If JAC's letter indicates that Counsel made a mathematical error or billed the wrong rate, then the motion may request the amount

Counsel should have billed once the error is corrected even if this amount is higher than the amount billed. Other than this exception, any increase in the amount requested must be supported by an amended intended billing and JAC's response thereto.

7. JAC is entitled to five business days' notice of any hearing on a motion for attorney fees.

If JAC requests a hearing on the motion, then the matter must be set for a hearing. JAC is entitled to at least five business days' notice of any hearing on a motion for fees. If Counsel provides JAC with at least five days' notice, then the hearing time does not need to be cleared with JAC as long as JAC can appear telephonically. If Counsel intends to set a hearing with less than five days' notice, then the hearing time must be cleared with JAC prior to setting the hearing. If JAC will be required to appear in person, then the hearing time must be cleared with JAC.

8. An order on a motion for attorney fees must be promptly provided to JAC.

Any court order on a motion for fees must be provided as soon as feasible usually within 3 days following entry of the order. Upon receipt of a fee order, JAC will then process the billing for payment unless JAC intends to seek appellate review of the order.

9. In cases involving unusual and extraordinary effort, the courts may authorize compensation in excess of the flat fee.

For case appointed on or after July 1, 2007, hourly billing is only authorized in cases involving unusual and extraordinary effort. Any billing seeking more than the flat fee must be supported by an hourly statement justifying the requested compensation. The hourly statement must be sufficiently detailed so that JAC can assess the reasonableness of the billing. Generic descriptions are usually insufficient. Counsel should include in the hourly statement the following information:

- Name and number of persons deposed/interviewed;
- Name or type of pleading or motion prepared;
- Type and number of pages of document reviewed;
- Length or duration of audio or recorded statements;
- Type or purpose of hearing attended;
- Legal issue researched; and
- Detailed description of other activities performed

Each entry in the billing must be in hours and tenths of an hour. Counsel cannot bill in quarter hour increments or in hours and minutes.

Each billing entry must indicate the precise date that the service was rendered and cannot contain any language suggesting ambivalence regarding the date the activity was performed such as "on or about." A billing may not contain entries in which Counsel's bills for services across multiple dates in a single entry (**aka** block billing). Counsel should also avoid abbreviations, shorthand, or other terms unique to Counsel in the hourly statement because JAC staff may not understand or recognize what this

language means. As a general rule, the information provided in the hourly statement needs to be sufficiently detailed so that a person unfamiliar with the case can assess the objective reasonableness of the billing.

If Counsel performs several activities on a case on a particular date, then Counsel cannot bill for more than the actual time worked. The attorney cannot bill each activity separately in order to inflate the amount of time work beyond the actual time worked. Moreover, the time billed across court-appointed cases cannot exceed the actual amount of time worked. Similarly, if Counsel appears before the court on multiple cases, then the time spent in court must be apportioned between those cases even if the attorney later bills some of the cases on a flat fee basis.

10. When Counsel is appointed to represent a defendant on multiple cases, Counsel may not bill some of those cases on an hourly basis and others on a flat fee basis.

For criminal cases in which Counsel is appointed to represent the defendant on multiple cases, and Counsel is seeking to bill hourly, Counsel must submit a single hourly billing covering the cases utilizing the JAC multi-case hourly voucher cover. Counsel is not authorized to bill one or more of the cases on a flat fee basis while seeking hourly compensation as to other cases appointed to the same defendant. Counsel must either bill all cases on a flat fee basis or submit a single intended billing for all cases seeking unusual and extraordinary compensation.

11. When seeking compensation on an hourly basis, Counsel is not authorized to obtain payment for administrative activities.

Administrative activities are not billable time even if performed by Counsel. For purposes of the JAC Contract and pursuant to JAC Policies and Procedures, the following constitute administrative activities:

- Services performed by support staff, paralegals, law clerks, and secretaries;
- Time related to or in furtherance of billing, or time related to defending a disputed bill;
- Time spent reviewing invoices of due process providers;
- Time spent preparing motions for attorney fees and costs, due process costs, and/or related expenses and time spent in hearing on said motions;
- Time spent on activities not reasonably related to the merits of the underlying case including time spent preparing routine documents such as notices of unavailability, calendaring hearings, setting depositions, and providing instructions to staff;
- Time spent on office or administrative functions including secretarial and administrative work performed by any person, including Counsel;
- Time spent defending against a bar complaint, 3.850 motion, or other grievance filed by the client;
- Time spent on any other activity not reasonably related to the defense of the case;
- Time spent on correspondence with JAC and conversations with JAC personnel.

These activities constitute administrative work that is not compensable even if Counsel seeks compensation on an hourly basis.

12. There are minimum thresholds established by law and contract before an attorney can seek compensation in excess of the flat fee.

For cases appointed on or after July 1, 2007, there are minimum thresholds in order to exceed the flat fees under the General Appropriations Act.

For criminal cases, to exceed the flat fee under the General Appropriations Act, Counsel must establish that the case involved unusual and extraordinary effort. Upon such a showing, the court may award up to double the flat fee depending on the nature of the case and the work involved. Pursuant to the JAC Contract, the amount awarded cannot exceed the amount Counsel would receive on a hourly basis at the rates set forth in s. 27.5304(12)(d), F.S. In order to receive compensation on an hourly basis in excess of double the flat fee, Counsel must have deposed more than 20 state witnesses or worked more than 75 hours.

In civil cases pursuant to the JAC Contract, the number of hours worked on the case or cases appointed to the same client must allow for payment of at least double the total flat fee at the hourly rate of \$75 per hour. If the number of hours worked does not meet this minimum threshold, the compensation is limited to the flat fee.

The meeting of these minimum thresholds does not necessarily constitute competent substantial evidence of extraordinary and unusual effort. Counsel still has the burden to demonstrate to the court through competent substantial evidence that the case involved unusual and extraordinary effort.