



Guide to Obtaining Due Process Costs

**How to obtain due process costs
in court-appointed and indigent
for costs cases**

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Introduction:

- This guide delineates the process for an attorney representing an indigent client to obtain due process costs through JAC.
- This guide is intended to be an aid for an attorney. For additional information, please review the JAC Agreement, JAC Policies & Procedures and the Frequently Asked Questions.

JAC's Role:

- JAC is responsible for processing for payment due process costs authorized by the courts in accordance with s. 29.007, F.S.
- Generally, JAC pays for due process costs in private court-appointed and indigent for costs cases pursuant to s. 27.52(5), F.S., where an indigent defendant is represented by privately retained counsel or the defendant is proceeding pro se.



JAC's Role Continued:

- JAC is only authorized to process for payment due process costs for those case types where there is a right to appointed counsel.
- JAC processes for payment due process costs in criminal cases and dependency cases involving court-appointed or indigent for costs counsel or an indigent pro se defendant.
- JAC generally does not pay for costs in civil cases such as family law cases, probate cases, and civil law suits.

What are Due Process Costs:

- Due process costs are those costs for which an indigent defendant is entitled to receive in order to obtain meaningful access to the courts. Generally, these services are necessary for the defense of the case.
- JAC is authorized to pay for due process costs as authorized by ss. 27.425, 27.5305, and 29.007, F.S.



What are Due Process Costs Continued:

- Florida law authorizes JAC to pay the following due process costs in court-appointed and indigent for cost cases:
 - Reasonable court reporting and transcription services including the cost of transcribing and copying depositions.
 - Reasonable foreign language and sign-language interpreters and translators at depositions or witness interviews.
 - Private service of process when the sheriff is not available or unable to provide service.



What are Due Process Costs Continued:

- Confidential mental health experts appointed to assist the defense.
- Other expert witnesses authorized by the court to assist the defense.
- Private investigator services.
- Mitigation specialist services in capital death cases.
- Costs to obtain discovery-related materials and other documents such as medical records.
- Travel expenses for appointed counsel, due process providers, and defense witnesses when authorized by law.



What are Due Process Costs Continued:

- Overhead expenses are not considered due process costs. JAC does not reimburse attorneys for overhead expenses.
- Overhead expenses include but not limited to:
 - Internal or in-house copying, postage, and telephone charges including long distance and collect calls.
 - Computerized research services such as Westlaw and Lexis/Nexis.
 - Computer and office equipment, office supplies, legal materials, books, clothing, personal items, haircuts, manicures, or other such personal services for the client. Counsel shall not bill for any purchase of computer equipment including portable flash and hard drives.



What are Due Process Costs Continued:

- Overhead expenses also includes travel expenses for a privately retained attorney unless the attorney is providing representation on a *pro bono* basis. The attorney's travel expenses should be included in the fee charged by the attorney.

Establishing Indigency:

- JAC processes for payment due process costs involving indigent defendants.
- The attorney seeking costs has the burden to provide JAC with sufficient documentation to establish indigency.
- JAC cannot process for payment any due process costs until JAC receives sufficient documentation to establish the existence of a state liability.



Establishing Indigency (Court-Appointed Cases):

- The attorney must provide JAC with the order of appointment and the charging document (except in Ch. 39, F.S., cases).
- Except in guardianship and parental notice cases, the order of appointment must indicate that the office of criminal conflict and civil regional counsel ***had a conflict precluding representation*** or was otherwise unable to provide representation.



Establishing Indigency (Indigent for Costs Cases):

- When a privately retained attorney has their client declared indigent for costs, the attorney needs to provide JAC with the following documents:
 - The motion to declare the defendant indigent for costs;
 - The completed clerk's application for indigency;
 - An affidavit as to the estimated amount of attorney's fees;
 - The order declaring the defendant indigent for costs; and
 - The charging document (except in Ch. 39, F.S., cases).



Establishing Indigency (Indigent for Costs Cases) Continued:

- Pursuant to ss. 29.007 and 27.52(5), F.S., the attorney must also execute the JAC Agreement for indigent for costs cases.
- Until JAC receives the documents and the attorney executes the contract, JAC cannot process any billing for payment.
- A pro se defendant needs to provide a court order or other court document establishing indigency and the charging document.

Rates:

- Pursuant to ss. 27.425 and 27.5305, F.S., the legislature sets the rates for due process costs annually in the General Appropriations Act. The same rates that apply to private court appointed cases apply to indigent for costs cases.
- The legislature has adopted uniform statewide rates for investigator and court reporting services performed on or after July 1, 2010.
- The legislature also adopted a maximum rate for mitigation specialists in capital death cases effective July 1, 2011. The court will set the rate for mitigation specialists by order not to exceed the rate established by law.



Rates Continued:

- For other due process services, the established rates in effect are the rates approved by the local Indigent Services Committees as of June 30, 2006. Rate charts by circuit are available on JAC's website.
- Current rates can be viewed by clicking on [Current maximum rate chart by circuit](#) (page 25, Frequently Asked Questions).
- If an attorney intends to seek services in excess of the established rates, the attorney needs to obtain prior court approval.

Motion for Due Process Costs:

- Except where JAC has indicated prior court approval is not required, due process costs must be authorized through court order. The motion should be filed and resolved prior to the defense incurring the costs.
- A written motion seeking authorization to incur costs must be filed with the trial court. A copy of the motion must be served on JAC prior to the trial court considering the motion.
- JAC is entitled to reasonable notice, generally five business days' notice, of any hearing set on a motion for due process costs.



Motion for Due Process Costs Continued:

- JAC has standing to contest the authorization for any due process costs and the amount of said due process costs.
- JAC will respond to any motion for due process costs typically within five business days following receipt of the motion. JAC's response will indicate whether JAC desires a hearing on the motion.
- The defense has the burden to establish that the due process costs are reasonable and necessary to the defense of the case.



Order Authorizing Due Process Costs:

- The order authorizing due process costs should contain sufficient information for JAC to process a billing for payment.
- The order should be entered prior to the defense incurring the costs at issue.
 - For example, an order authorizing deposition transcripts should be obtained before the defense orders the transcript.



Order Authorizing Due Process Costs Continued:

- For payment purposes, the order should indicate the services authorized and the maximum amount authorized for each service.
- If the attorney is seeking a rate in excess of the established rates or there is no rate established for the service, then the order must reflect the rate authorized by the court. JAC cannot pay any rate in excess of the established rates without court approval.



Order Authorizing Due Process Costs Continued:

- As long as the order sets forth the due process services authorized, the maximum amount authorized for those services, and the applicable rates when required, JAC can process for payment a billing for those services without the need for further court order as long as the billing is within the amounts authorized by the court order and JAC has no other objections to compensation.

Exceeding the Established Rates:

- When an attorney seeks to procure due process services in excess of the established rates, the motion filed with the trial court must justify services in excess of those rates.
- The attorney has the burden to establish that the due process services are necessary to the defense of the case and that the attorney made diligent efforts to obtain the services within the established rates.



Exceeding the Established Rates Continued:

- The motion should set forth the diligent efforts the attorney made to procure services within the established rates and any other allegations that may justify services in excess of those rates.
- Absent an order expressly authorizing a rate in excess of the established rates, JAC will only process for payment at the established rates. If the attorney procures services at a higher rate, the attorney may be responsible for paying the difference.



Exceeding the Established Rates Continued:

- As with any other motion, a copy of a motion seeking services in excess of the established rates must be served on JAC before the court considers the motion.
- JAC will usually object to compensation in excess of the established rates and may request a hearing on the matter. If the attorney obtains an order authorizing higher rates without notice to JAC, then JAC may object to reimbursement at the higher rates upon receipt of an invoice.

Court Reporting Services:

- JAC may process for payment bills for court reporter appearance fees without prior court authorization. As long as the deposition may be taken without the need for prior court approval, JAC does not need an order authorizing payment of appearance fees.
- In those instances where prior court approval is required, the attorney or court reporter may need to supply JAC with the court order authorizing the taking of depositions.



Court Reporting Services Continued:

- The uniform statewide rates imply that most depositions shall be conducted using digital recording technology. Stenographic reporting should only be used in those instances where due process requires it. Generally, this should primarily occur in capital cases in which the state is seeking death.
- Digital reporting allows for the deposition to be transcribed by a court reporter or transcriptionist other than the reporter who attended the depositions when necessary.



Court Reporting Services Continued:

- Pursuant to s. 27.5305, F.S., JAC may pay for the cost of preparing a transcript of a deposition only if the attorney secures a court order finding that preparation of the transcript is necessary.
- When transcripts are authorized, JAC will pay for one original and one copy only. The order should reflect the name of the witness and the date of the deposition. An order may authorize transcripts for more than one witness.



Court Reporting Services Continued:

- A generic order authorizing transcripts prior to the taking of depositions will not suffice for payment purposes.
 - For example, language in the order of appointment or the order declaring the defendant indigent for costs which authorizes the attorney to order “necessary” transcripts does not suffice. The attorney will need to obtain a specific order authorizing the transcript.



Court Reporting Services Continued:

- As a general rule, the determination of whether a transcript is necessary should not be made until after the deposition has been conducted.
- For hearing transcripts (other than appellate) and transcription of audiotapes, a court order is also required.
- For appellate transcripts, the designation of the record may be utilized in lieu of a court order authorizing transcripts.



Court Reporting Services Continued:

- The rate for appellate and hearing transcripts includes the original and two paper copies and any necessary electronic copies.
- The clerk of court or designee may sign the JAC Invoice Voucher Cover indicating receipt of the appellate transcript.
- JAC may only pay for the cost of one original transcript of any deposition, hearing, or other proceeding. Once an original has been paid from any source whatsoever, any future copies shall be at the rate paid for a copy of a transcript even if the transcript is designated as an original.



Court Reporting Services Continued:

- Under the statewide rates, there are three tiers of rates:
 - Regular
 - 5 day expedited, and
 - 24 hour expedited.
- In order for JAC to pay expedited rates for any transcript, an order authorizing expedited rates must be provided. The order should specify the necessity for expedited rates.



Court Reporting Services Continued:

- JAC generally pays for expedited rates in those circumstances where a transcript could not be obtained at regular rates if the attorney had acted diligently. If the need for expedited transcripts is the result of attorney neglect, then JAC would likely contest payment of expedited rates.
- When the need for expedited transcripts is a result of attorney neglect, then the attorney may be responsible for paying the difference between the regular and expedited rates.

Video Services:

- Except where a deposition is required to be videotaped, a court order is required authorizing the videotaping. The main instance in which an order is not required is the taking of a deposition of a child under the age of 16.
- A deposition should not be attended by both a court reporter and be videotaped absent exceptional circumstances. The videotape is an electronic record from which a transcript may be prepared.



Video Services Continued:

- JAC is authorized to pay for depositions through videoconferencing or other telecommunications equipment. Although an order is required, JAC generally does not object to depositions being conducted in this manner because the net savings in travel expenses and time is substantial.
- The hourly rate for video services includes videoconferencing. The current rate is \$100 per location.



Investigator Services:

- A court order authorizing private investigator services is required for JAC to process a billing for payment. The order authorizing investigator services should be obtained before the commencement of any services.
- The order should set forth the particularized need for private investigator services and indicate the maximum amount authorized for those services.



Investigator Services Continued:

- Pursuant to s. 28.345, F.S., an appointed attorney is exempt from charges by the clerk of court for case-related services. Similarly, pursuant to s. 57.081, F.S., an indigent defendant is entitled to receive the services of the clerk of court, and the court without any prepayment.
- JAC will not reimburse the attorney or a private investigator acting on behalf of the attorney for clerk of court charges that should have been provided pursuant to the exemption or waiver of prepayment.

Mitigation Specialist Services:

- Mitigation specialists are only authorized in capital cases in which the state is seeking death.
- A mitigation specialist must have a valid Class C Investigator License unless he or she:
 - Holds a professional Florida license in a field such as mental health or psychology, or
 - Is a member of The Florida Bar.
- The rate for mitigation specialists cannot exceed the maximum rate authorized in the General Appropriation Act. The trial court will set the rate based on the mitigation specialist's skill, experience and expertise.



Private Service of Process:

- As a general rule, JAC does not pay for service of process on in-county law enforcement officers. Under s. 57.081, F.S., the sheriff is available to provide service of process without prepayment in cases involving indigent persons.
- Absent exceptional circumstances, the sheriff is capable of rendering service on law enforcement officers within the county. In order to use a private process server to serve in-county law enforcement officers, a motion must be filed setting forth the need for use of a private process server.



Private Service of Process Continued:

- Under Florida Rule of Criminal Procedure 3.220(h)(5), service of process is not necessary to serve law enforcement for depositions. Under the rule, timely delivery of a notice of taking depositions to the address designated by the law enforcement agency generally suffices to compel the law enforcement officer to appear for deposition. Service of a witness subpoena is not necessary under the Florida Rules of Procedure.



Private Service of Process Continued:

- For non-law enforcement witnesses, if the circuit has authorized a rate for private service of process, then a court order is not required. If the circuit has not authorized a rate, then the sheriff must be used absent a court order authorizing private service of process.
- When authorized, a private investigator for the defense can provide service of process. However, the investigator may only bill the rate applicable for private service of process.

Expert Services:

- Prior to retaining an expert, the attorney must file a written motion seeking authorization to incur the expert services.
- The motion needs to establish the basis for the expert services by setting forth the reason why the expert's services are necessary for the defense of the case. The defense has the burden to show the particularized need for the expert's services.



Expert Services Continued:

- Generally, experts are compensated on an hourly basis. In limited circumstances, a court may authorize compensation in a different manner such as a flat fee for a competency evaluation; a set rate for a type of DNA test; or a fee for medical procedures like MRIs, CAT scans, or PET scans.
- In those situations, the motion must indicate the set rate or fee for those services.



Expert Services Continued:

- The attorney should obtain a good faith estimate from the expert regarding how much will be needed to perform the services requested in the case. The maximum amount requested for the expert's services should be based upon this amount. If the order authorizing the expert includes a maximum amount, then JAC can pay up to that amount without the need for further court order.



Expert Services Continued:

- The use of out-of-state experts is not authorized when there are competent experts available within Florida. An attorney should not seek authorization from the court for out-of-state experts absent a showing that there are no providers with appropriate skills or expertise available, first, in the county in which the case was filed, and second, in any other county in Florida.



Expert Services Continued:

- If an attorney retains an out-of-state expert without such a showing, then the attorney or expert cannot obtain reimbursement through JAC for travel expenses, including compensation for travel time.
- Any order authorizing the employment of an out-of-state expert must be in writing and contain specific findings regarding the unavailability of a qualified in-state expert.



Expert Services Continued:

- JAC does not prepay a retainer for expert services or any other due process services.
- If an expert requires a retainer, the attorney is responsible for paying the retainer and then seeking reimbursement after the expert has completed the services.
- The attorney shall only be reimbursed the amount necessary to compensate the expert at the authorized hourly rate irrespective of the amount of the retainer. If the expert services do not exhaust the retainer, JAC will not reimburse the attorney for the difference.



Expert Services Continued:

- Generally, the defense is only entitled to one expert in an area (such as mental health).
 - For example, if the defense needs the assistance of a mental health expert, the court is generally authorized to appoint a single expert to assist the defense.
- If the defense desires multiple experts in similar categories, the defense needs to establish a basis for the appointment of multiple experts in the same general area.
 - For example, the motion could allege that the examining psychologist recommended that a defendant be examined by a neuropsychologist.

Exhaustion of Amount Authorized:

- If a due process provider such as an expert or investigator exhausts the amount previously authorized by court order, then the attorney should file a motion to authorize additional services prior to the due process provider providing additional services in the matter.
- The attorney should inform the due process provider of the amount authorized for the case. When the amount is exhausted, the provider should immediately notify the attorney if additional services are required so that the attorney can file the appropriate motion with the trial court.

Discovery Costs:

- With prior court approval, JAC may pay for costs to obtain documents such as charges for discovery-related costs or for medical records of the defendant.
- JAC will only reimburse at the rates authorized by law. Generally, the rates authorized by law are the rates permitted under s. 92.153, F.S., for subpoenaing documents.



Discovery Costs Continued:

- In that appointed and indigent for costs counsel stand in the place of the public defender, the rates for obtaining documents should not exceed \$0.15 cents per page and \$10 per hour for research and retrieval unless a higher rate is authorized elsewhere pursuant to Florida law.
- If extensive discovery is provided in an electronic format such as on a CD, JAC generally does not object to costs to obtain a single paper copy of the documents as long as the copying is prepared by a copy service at commercially reasonable rates.

Travel Expenses:

- When authorized by law, JAC reimburses for travel expenses pursuant to s. 112.061, F.S. Generally, travel expenses must be approved through specific court order.
- All travel must be pursuant to Florida law, particularly the requirements of s. 112.061, F.S. Travel reimbursement is limited to witnesses, due process providers, appointed counsel, and *pro bono* counsel. Privately retained and paid counsel are not entitled to reimbursement for personal travel expenses.
- Reimbursement for travel expenses must be submitted on the uniform travel voucher as promulgated by the Department of Financial Services.



Travel Expenses Continued:

- Use of the DFS travel voucher is mandatory for any reimbursement of travel expenses. Effective July 1, 2011, JAC will no longer accept mileage logs in lieu of the DFS travel voucher.
- Reimbursement for mileage is limited to actual mileage traveled using a personal vehicle. JAC reimburses for the actual mileage incurred during a trip. When an attorney or due process provider travels on multiple cases, the total amount of mileage billed across those cases cannot exceed the actual distance traveled



Travel Expenses Continued:

- Under JAC's procedures, mileage may be authorized for:
 - Trip exceeding 50 miles one way, or
 - Multiple destinations exceeding 100 miles in one trip.
- A request for mileage must be supported by appropriate documentation. In-state, city-to-city mileage calculations can be found at <http://www2.dot.state.fl.us/CityToCityMileage/viewer.aspx>
- If an in-state travel destination is not included or available on the DOT website, or if the travel is out-of-state, mileage may be calculated using an internet map website such as www.mapquest.com. Alternative sources may only be used when there is no entry on the DOT website.



Travel Expenses Continued:

- In certain circumstances, JAC may object to mileage reimbursement such as when an attorney retains an out-of-county due process provider when there are due process providers available in the county.
- In limited circumstances, JAC may prepay for airline tickets and hotel rooms. The procedures for arranging prepayment are set forth in JAC's Policies and Procedures Manuals posted on JAC's website.

Methods of Payment:

- JAC will reimburse for due process service costs in one of two ways:
 - JAC pays vendor after the attorney certifies; or
 - The attorney pays and is subsequently reimbursed by JAC.
- JAC generally processes billings for direct payment only to due process vendors who have executed an agreement with JAC.
- Although a contract is generally not required to make direct payment to other state entities, a Florida state entity must be willing to bill JAC directly in order for JAC to make direct payment.



Methods of Payment Continued:

- 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 the attorney pays the vendor and then seeks reimbursement from JAC.
- JAC maintains on its website a searchable database of due process vendors who have executed Agreements with JAC.

Submission of Billings:

- The JAC Invoice Voucher Cover is essential for the satisfactory billing for due process services. The attorney and/or due process provider must appropriately complete, execute, and submit the applicable voucher as well as all necessary supporting documentation.
- JAC only accepts billings submitted using JAC Invoice Voucher Covers. Any submission of an invoice without a voucher cover is deemed a nullity and is not considered or reviewed for payment purposes.



Submission of Billings Continued:

- It is the responsibility of attorneys and due process providers to use correct and current voucher covers. These voucher covers are updated from time to time to take changes in law and policy into account. Current voucher covers are posted on JAC's website.
- The JAC Invoice Voucher Covers include essential information necessary for JAC to review a billing for compliance with statutory and contractual requirements.
- The failure to use the appropriate voucher cover can result in essential information being omitted from the billing. This can delay the processing of the billing.



Submission of Billings Continued:

- The JAC Invoice Voucher Cover must be fully completed including all essential information requested in the voucher cover. When due process providers attach their own invoices in lieu of completing the billing portion of the voucher cover, the information requested in other portions of the voucher cover must still be completed.



Submission of Billings Continued:

- The attorney is responsible for signing a voucher cover for direct payment to a due process provider. By signing the certification the attorney is certifying that the work was necessary and completed satisfactorily. With the exception of appellate transcripts certified by the clerk, JAC cannot process for payment any voucher cover that is not executed by the attorney or an authorized representative.
- Detailed instructions on how to complete the voucher covers are available on JAC's website. Instructions are provided for each type of voucher cover.

Billing Audit Deficiencies:

- When JAC receives a billing for due process services which lacks necessary documentation or requisite information, JAC may send the due process provider and the attorney a Billing Audit Deficiency. It will indicate the reason JAC is unable to process the billing and will request that the due process provider and/or the attorney provide the lacking documentation or information.
- When JAC issues a Billing Audit Deficiency, the due process provider and/or attorney needs to provide the additional documentation or otherwise resolve the Billing Audit Deficiency in expeditious fashion. Failure to resolve the Audit Deficiency may result in JAC paying the billing at a reduced rate or returning the bill.



Billing Audit Deficiencies Continued:

- When responding to a Billing Audit Deficiency, the due process provider or attorney must use the Audit Deficiency as the cover page for any submission. This will allow JAC staff to identify the appropriate case for which the submission was provided.
- JAC receives numerous documents and submissions on a daily basis so that the failure to use the Audit Deficiency as the cover sheet could result in further delay in payment.

Letters of Objection:

- If JAC has an objection to a vendor's invoice, JAC may issue a letter of objection. The letter will indicate JAC's objection(s) and whether JAC desires a hearing on the matter.
- A billing audit deficiency is not a letter of objection and may not be the basis for filing a motion for payment.
- Upon receipt of a letter of objection, the attorney is responsible for filing a motion for payment of the invoice with the court. A copy of JAC's letter of objection must be attached to the motion. JAC must be served with a copy of the motion.



Letters of Objection Continued:

- JAC may object to the reasonableness of the vendor's billing, the rate charged by the vendor, or the amount of the billing if that amount exceeds the amount authorized by the court.
- If JAC requests a hearing, then the motion should be set for a hearing before the court decides the motion. As with other motions, JAC is entitled to reasonable notice of any hearing on a motion for payment.