

## Six Things a Retained Attorney Should Remember About Having a Client Declared Indigent for Costs:

1. Florida law requires a **written** motion to declare a defendant indigent for costs.

Pursuant to s. 27.40(5)(a), F.S., any motion seeking to have a defendant declared indigent for costs must be in writing. Florida law does not authorize an *ore tenus* or oral motion seeking to declare a defendant indigent for costs. Additionally, Counsel will need to attach to any such motion the following:

1. A completed clerk's application for indigency, and
2. An affidavit attesting to the estimated amount of attorney's fees and the source of those fees.

A trial court cannot consider a motion seeking to declare a defendant indigent for costs until a written motion and the accompanying affidavits are filed with the court and served on JAC.

2. The JAC has standing to participate in the proceedings on a motion to declare a defendant indigent for costs.

Counsel must serve a copy of the written motion along with the affidavits upon JAC prior to the court declaring the client indigent for costs. The motion needs to be served via email at [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org). Under s. 27.52(5)(b), F.S., JAC is entitled to reasonable notice and an opportunity to be heard before a court declares a client indigent for costs. JAC should receive the motion at least five (5) business days prior to any hearing on the motion. JAC has statutory standing to participate in any proceeding related to a motion to declare a defendant indigent for costs. If a court enters an order declaring a defendant indigent for costs without proper notice to JAC, then the order may be subject to a motion to vacate filed by JAC.

3. The retained attorney is required to execute a JAC IFC Contract in order for JAC to process for payment any due process costs.

Under ss. 29.007 and 27.52(5)(f), F.S., Counsel representing a client declared indigent for costs must execute the JAC Attorney Contract for Due Process Services for Persons Who Are Indigent for Costs (IFC Contract). A review copy of the IFC Contract is available on JAC's website at:

[https://www.justiceadmin.org/court\\_app\\_counsel/agreementscontracts.aspx#ifcatty](https://www.justiceadmin.org/court_app_counsel/agreementscontracts.aspx#ifcatty)

JAC will no longer be posting the IFC Contract on JAC's public website. Instead, executable IFC Contracts will only be available through the [My JAC](#) secure website only. First time attorneys wanting to complete an IFC Contract must contact JAC's Contracts section via [secure email form](#); please include your name, Bar ID, and preferred email address. It is the responsibility of the attorney to ensure that the contact/email information on file with JAC is up to date. You will receive an email once you are added to JAC's system.

Attorneys who have not set up a *My JAC* account, will need do so before they can execute the IFC Contract for the next fiscal year.

[Click here to set up a My JAC account.](#)

**JAC cannot process any invoices for payment until the attorney executes the necessary IFC Contract.** This includes payments made directly to due process providers. If Counsel intends to seek reimbursement for due process costs paid by Counsel or Counsel's firm, a properly completed Substitute Form W-9 must be submitted to the Florida Department of Financial Services. Information and the form are available on the [DFS website](#). Otherwise, you will not be eligible for reimbursement of any cost incurred.

4. Retained Counsel representing a client declared indigent for costs can obtain a printable verification from *My JAC* (JAC's secure website) showing that JAC has received the necessary documentation to process payments.

Private Counsel can access *My JAC* (JAC's secure website) for information related to his or her cases. One of the items Counsel can access is a screen showing whether JAC has received the five documents necessary to process payments:

1. The written Motion to Declare the Defendant Indigent for Costs
2. The Clerk's Application for Indigency
3. The Affidavit Attesting to Attorney Fees
4. The Order Declaring the Defendant Indigent for Costs
5. The Charging Document(s)

The attorney can print this screen. Information on how to access [My JAC](#) is available at:

<http://www.justiceadmin.org/FAQ/Quick%20Reference%20GuideAttorney%20Login.pdf>

Before commencing work on an indigent for costs case, a court reporter or other due process vendor may ask the attorney for a copy of this screen to verify that the attorney has provided JAC with necessary documentation.

5. The rates and procedures for obtaining due process costs are the same as private court-appointed cases.

The provision of due process services in an indigent for costs case must be authorized by a written court order. Pursuant to s. 27.52(5)(g), F.S., the established rates for any services in an indigent for costs case are the same rates applicable to court appointed cases. Current rates are posted on JAC's website. Similarly, privately retained Counsel whose client has been declared indigent for costs follows the same procedures as private court-appointed Counsel to obtain due process costs.

Counsel is required to file a motion seeking specific due process costs with service on JAC prior to the court considering the motion. Moreover, any request for services in excess of the established rates must be clearly delineated in the motion for due process costs. JAC is entitled to reasonable notice of any hearing on a motion for due process costs at least five business days prior to the hearing. The trial court is responsible for determining whether the requested costs should be authorized. Counsel has the burden to establish that the due process service costs are reasonable and necessary to the defense of the case. For experts, Counsel must also establish the particularized need for expert services. Absent exceptional circumstances, prior court approval should be obtained prior to any services being performed by due process providers such as experts or investigators.

6. If the defendant in a criminal case is convicted, Counsel is responsible for providing an accounting to the trial court.

Upon conviction, a defendant is liable to pay the amount of any due process costs provided by the state and the clerk of court as directed by s. 27.52(5)(i), F.S. See also § 938.29, F.S. If the defendant is convicted, Counsel is responsible for providing an accounting to the trial court delineating the costs expended on behalf of the defendant within 90 days after disposition of the case, notwithstanding any appeals. If Counsel fails to provide a complete accounting such that costs are omitted from the lien, then JAC is not authorized to pay or reimburse any such costs that remain unpaid and Counsel could be personally liable to repay the state for any such costs that have already been paid.

In order to facilitate the provision of an accounting, JAC upon application will provide a certificate indicating the amount of invoices paid through JAC and the amount of invoices received by JAC that have not been processed for payment. The certificate will only address those billings that JAC has received as of the date of application. The form to apply for a certificate is available on JAC's website at:

<http://www.justiceadmin.org/IFC/application%20for%20certification%20of%20costs.pdf>

Once JAC receives an application, JAC will prepare a notarized certificate as to costs. The information contained in a certification of costs will be based on JAC's business records as of the date JAC issues the certificate and is subject to change upon receipt of additional invoices, amendments or changes to invoices, withdrawal of invoices, or rejection of invoices. Counsel is responsible for verifying that all invoices and billings

related to a case are included in the accounting provided to the court including any invoices that JAC may not have received or docketed as of the date JAC issued its certificate of costs. JAC's certification of costs will not include any costs related to the court, clerk of court, or sheriff for which prepayment was waived pursuant to s. 57.081, F.S. Ultimately, it is privately retained Counsel's responsibility to provide a full accounting to the trial court of any costs expended by the JAC and any other state entities for the defense of the case.