



# 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

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**Rip Colvin**  
 JAC 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 information regarding the resolution of this year's funding issues; the changes to the Fiscal Year 2019-2020 Contracts; and other pertinent information.

**The new contracts will be available for execution through My JAC around June 18, 2019.** When the new contracts are available, JAC will send an email notification, post a notice on JAC's website, and post on Facebook.

If you are interested in providing feedback, there is a link to a short survey on the last page of this newsletter.

## JAC Funding Update

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JAC exhausted the Fiscal Year (FY) 2018-19 funding appropriated by the Legislature to pay for court-appointed expenditures on April 15th. As a result, payment of these bills has been temporarily delayed. JAC continues to review and process court-appointed bills to ensure they were ready for payment as soon as funds became available. JAC also coordinated with the Department of Financial Services to expedite their audit of court-appointed bills, so that compliant bills would be paid immediately once funding became available.

The Florida Legislature passed \$15.6 million in supplemental funding to address JAC's court-appointed funding shortfall in Senate Bill (SB) 2500.

**On June 14, 2019, SB 2500 was presented to Governor DeSantis for his review and signature. The Governor has fifteen (15) days to take action on SB 2500.**

Once action has been taken by the Governor, JAC will issue a press release with information about when the funds will become available to pay court-appointed bills. The additional amount appropriated should be sufficient for JAC to process billings for the remainder of the FY 2018-19 (which ends on June 30, 2019).

**Once SB 2500 becomes law, no action will be necessary on the part of attorneys and due process providers to receive payment on pending approved billings unless notified otherwise.**

## Changes to Fiscal Year 2019-2020 Contracts

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

- Contract for Payments Related to Attorney Services Related to Indigent Defendant(Registry Contract);
- Contract for Payments Related to Attorney Services Provided to Capital Collateral Defendants (Capital Collateral Contract);
- 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);
- Contract for Payments Related to Due Process Services Provided to Indigent Defendants (Other than Attorney Fees) (Due Process Contracts);

Type 1—Due Process Costs Limited to Established Rates (Court Reporters, Investigators, Interpreters, and Mitigation Specialists); and

Type 2—For Vendors Providing Extraordinary Services (Experts).

### 1. Requirement to use Federal Employee Identification Number (FEIN):

Because of concerns with identify theft and other cyber security issues, the contracts have been amended to require use of an FEIN rather than a social security number absent a waiver granted by JAC. JAC notified attorneys and due process providers regarding this upcoming change in its last newsletter as well as email notifications and Facebook posts. There is no cost associated with obtaining an FEIN through the IRS website. Information about how to update to an FEIN is included in this newsletter.

*Preamble for all Contracts*

### 2. Limitation on Expedited Rates for Transcripts:

To obtain expedited rates for transcripts, attorneys will be required to serve JAC with a motion justifying expedited rates and the order must authorize expedited rates. In some instances, JAC receives a motion for transcripts that does not request expedited rates but the order entered by the court authorizes expedited rates. This provision bars attorneys from obtaining an order authorizing expedited rates without specifically requesting expedited rates. This will ensure JAC has an opportunity to object to requests for expedited rates prior to the court approval.

*Registry & Capital Collateral Contracts: Paragraph IV(21); IFC Contract: Paragraph III(21); Due Process Contracts: Paragraph II(10)*

### 3. New Notice Requirement for Extraordinary Fee Hearings:

Senate Bill 2502 increased the notice requirement for extraordinary fee hearings to 20 days. The Registry Contract has been amended to account for the 20 day notice requirement.

*Registry Contract: Paragraphs X(16) & XI(10)*

### 4. Requirements for In-Court v. Out-of-Court Specification in Hourly Statements:

When submitting a detailed hourly statement, attorneys will be required to provide a single entry for in-court time and a single entry for out-of-court time by date. Similarly, due process vendors will be required

*(Continued on page 3)*

## Changes to Fiscal Year 2019-2020 Contracts (Continued from Page 2)

to submit statements with single entries by date. When attorneys or vendors provide multiple services on the same date, they would provide the amount of time worked on each service in the description of the services. For example:

DATE	TYPE	TIME	DESCRIPTION OF SERVICES
1/5/20	Out-of-Court	3.0	Reviewed discovery, 300 pages (1.6), Called ASA to discuss plea offer (.4), Met with Client (1.0)
1/8/20	In-Court	1.2	Conference with client before hearing (.4), Attend plea hearing (.8)
1/8/20	Out-of-Court	.8	Received text from client and responded (.2), Reviewed mental health assessment, 20 pages (.6)

Attorneys and vendors are required to bill the actual amount of time spent on each date rounded to the nearest tenth. This amendment is intended to reduce the number of separate billing entries to allow for easier review by date. In the future, JAC will be enhancing its online billing system to allow attorneys and vendors to enter their time by date. This amendment will prevent billings with numerous 0.1 hours entries on a single date (such as individual entries for 0.1 hour for each text reviewed or sent on a single date). Attorneys and vendors are limited to billing the actual time worked in a day, rather than numerous 0.1 hour entries for each task performed over the course of a day. Please note that sufficient detail will still be required to support either the in-court or out-of-court entry.

There are two exceptions to the requirement to submit a single entry by date for due process providers. First, if the services involve more than one provider, then separate entries by date should be provided for each provider. For example, if an investigative firm assigns two investigators to a single case and both work on the same day, there would be two entries, one for each investigator. Second, for due process providers (usually experts) providing services at different rates, the hourly statement would have separate entries for services performed at different rates. For example, if an expert had a different rate for travel time, then the hourly statement would contain an entry at the regular rate and a second entry at the travel rate if those services were provided on the same date.

*Registry Contract: Paragraph XI(3); Capital Collateral Contract: Paragraph XII(6); Due Process Contracts: Paragraph VII(10)*

### **5. Hotel Rates:**

This provision requires that the motion seeking authorization for travel expenses indicate when a hotel rate will exceed \$150 per night. This will allow JAC to respond appropriately to the request for travel expenses and raise objections to the requested rate prior to an attorney or due process provider paying a rate in excess of \$150 per night. This will address instances where attorneys or vendors have stayed at very expensive hotels, and despite JAC's objections after-the-fact, courts have approved the rates incurred. By requiring the attorney to indicate in the motion seeking authorization for travel expenses a request for a hotel rate in excess of \$150 per night, JAC will have an opportunity to object to the requested rate prior to the expense being incurred.

*Registry Contract: Paragraph XVIII(15); Capital Collateral Contract: Paragraph XIX(7); IFC Contract: Paragraph XIV(4); Due Process Contracts: Paragraph XIII(5)*

## Changes to Fiscal Year 2019-2020 Contracts (Continued from Page 3)

### 6. Notification of Changes to Travel Arrangement:

In very limited circumstances, JAC prepays for travel expenses for ordinary (fact) witnesses. This provision requires the attorney to notify JAC of any changes to prepaid travel arrangements as soon as feasible so that JAC can act expeditiously. For example, if a trial is continued, the attorney would need to notify JAC as soon as feasible. If the attorney fails to promptly notify JAC, the attorney will be responsible for any resulting increases in travel expenses.

*Registry Contract: Paragraph XVIII(20); Capital Collateral Contract: Paragraph XIX(10); IFC Contract: Paragraph XIV (7)*

### 7. Provision of Charging Document in Indigent for Costs Cases:

This provision requires an attorney seeking to have a client declared indigent for costs (IFC) to provide a copy of the charging document along with the motion to declare the defendant indigent for costs. Currently, the IFC Contract requires the attorney to provide the charging document with the order declaring the defendant indigent for costs within 30 days after a court declares the defendant indigent for costs. The change in timing will allow JAC staff to expeditiously open indigent for costs cases in JAC's database.

*IFC Contract: Paragraph II(5) & (6)*

### 8. Minimum Billing Amount for Experts, Investigators, and Mitigation Specialists.

This provision establishes a minimum interim billing amount of \$500 for billings from experts, investigators, and mitigation specialists. Currently, the \$500 minimum billing amount only applies to investigators. This amendment extends this minimum billing amount requirement to other types of due process providers that regularly submit hourly statements.

*Due Process Contracts: Paragraph VII(17)*

## Statutory Changes (Senate Bill (SB) 2502)

As part of the budgeting process, the Senate has included new language in the bill implementing the General Appropriations Act (GAA): Senate Bill (SB) 2502. SB 2502 contains numerous amendments to ss. 27.40 and 27.5304, F.S. In summary, the changes create several new requirements.

**I. Requirement that certification of conflict be written.** The first amendment requires both the public defender and regional counsel to certify in writing that the office has a conflict of interest. Payment to registry attorneys would be contingent upon such a certification of conflict. For off-registry appointments, payment would be contingent on the court finding there are no registry attorneys available to accept appointment as well as the written certification of conflict. Because the certification requirement arises only when the offices of the public defender or regional counsel are appointed, it would not apply when a court *sua sponte* appoints a lawyer pursuant to s. 27.5303(1)(c), F.S. Further, s. 27.5303(1)(c), F.S., already requires the court to specify the basis for the conflict and the clerk of court to notify the public office and JAC. Registry attorneys are responsible for verifying that the offices of the public defender and regional counsel have filed the necessary certifications of conflict. Failure to do so may constitute a waiver of any right to compensation. **SB 2502 makes payment contingent on these certifications of conflict (except in those instances where the court *sua sponte* finds conflict).**

## Statutory Changes (Senate Bill (SB) 2502) (Continued from Page 5)

### **2. Requirement that attorneys certify willingness to abide by statutes and registry contract.**

To participate in a registry, attorneys must certify their willingness to abide by the requirements of ss. 27.40 and 27.5304, F.S., in addition to the terms of the registry contract. Attorneys must also include in their notice of appearance a willingness to abide by the terms of the registry contract.

### **3. Requirement that payment contingency language is included in JAC contracts and forms.**

JAC's registry contract and all forms must include language that the state's obligation to pay is contingent upon an annual appropriation. JAC's contracts contain this provision and other billing forms will be amended to include this information.

**4. Extraordinary billing records review.** Section 27.40(7)(b)1., F.S., is amended to require JAC to "review such records and shall contemporaneously document such review" for extraordinary billings. Further, JAC must complete and document this review before authorizing payment. Also, the Auditor General is granted authority to review an attorney's contemporaneous records.

**5. JAC presumption of correctness.** JAC's objections would be presumed to be correct. To overrule JAC's objections, the court must find in writing that competent substantial evidence exists to overcome the presumption. This would create a rebuttable presumption of correctness that would impact the course of fee hearings. The attorney would be responsible for providing sufficient evidence to rebut the presumption of correctness. If the attorney fails to provide sufficient evidence to rebut the presumption, the court is required to sustain JAC's objections. Attorneys will need to establish that the case involved extraordinary and unusual effort as required by s. 27.5304(12), F.S. As required by Paragraph XI(1) of the Registry Contract, attorneys are required to provide an explanatory statement that identifies the factual and legal issues rendering the case extraordinary and unusual. Even if JAC has no line item objections to a billing, an attorney seeking compensation in excess of the flat fee must still present sufficient evidence to overcome JAC's objection to compensation in excess of the flat fee.

**6. 20-day notice of fee hearing requirement.** Attorneys will be required to give JAC at least 20 business days' notice of an attorney fee hearing. JAC would be authorized to appear at these hearings in person or telephonically.

### **7. Section 27.5304, F.S., constitutes the sole procedure for payment of court-appointed work.**

The procedures under s. 27.5304, F.S., would constitute the sole procedures and requirements for obtaining payment. This is consistent with the existing JAC contracts and policies and procedures.

## Charging Documents in Felony Cases

The type of document required as a charging document in felony cases varies on the type of appointment:

- **Felony appointments:** the information or indictment. If no information or indictment is filed, the probable cause affidavit or arrest report (the no information flat fee will apply in these instances).
- **Violation of probation:** the affidavit of violation of probation.
- **Felony appellate cases:** notice of appeal along with the judgment and sentence or charging document.
- **Postconviction motions:** the motion for postconviction relief (or sufficient portions to identify the issues for lengthy motions).
- **Postconviction appellate cases:** the notice of appeal and the order being appealed. The postconviction flat fee applies to these types of appointment.
- **Felony resentencings:** the order granting the resentencing and the original judgment and sentence. The flat fee will usually be based on the highest charge being resentenced.

## Updating to an Federal Employer Identification Number (FEIN)

JAC will no longer execute new attorney or due process vendor contracts using a social security number (SSN). Attorneys and due process vendors will need to use a Federal Employer Identification Number (FEIN) in order to execute a JAC contract. All contracts for next fiscal year (July 1, 2019 to June 30, 2020) will need to utilize an FEIN.

### General information regarding FEINs/Online FEIN applications

There is no charge associated with obtaining an FEIN through the IRS.

### ***Updating Substitute Form W-9***

Please be aware that all vendors changing from an SSN to an FEIN will need to update their online Substitute Form W-9 with the Department of Financial Services (DFS). Additional information updating a Substitute Form W-9 is available on DFS's website or from the DFS Vendor Management Section at (850) 413-5519.

### ***Updating Direct Deposit/Electronic Funds Transfer (EFT)***

All vendors changing from an SSN to an FEIN will also need to submit a new Direct Deposit/EFT Authorization form with their FEIN to DFS. Additional information is available on DFS's Vendor website.

Please be aware that it may take DFS a significant period of time (6 weeks or more) to process a Direct Deposit/EFT request. **Until DFS processes the form, payments will be paid through regular state warrants (paper checks).**

If you are providing services in a single case and do not intend to provide services in any other court-appointed or indigent for costs cases, a Direct Deposit/EFT Exemption Form may be submitted to JAC for consideration.

### ***Updating Information In My JAC***

Once an attorney or due process vendor has obtained a new FEIN number and submitted a Substitute Form W-9 to DFS, the attorney or due process vendor will need to update their tax identification number in My JAC.

### ***Attorney Instructions***

1. Existing JAC Registry or IFC attorneys who already have an FEIN in place can log into My JAC and follow the prompts to electronically execute next fiscal year's contract. Contracts will be available around June 18th.
2. Existing JAC Registry of IFC attorneys who need to change their Tax ID to an FEIN will log into My JAC and follow the prompts to electronically execute next fiscal year's contract once the new contracts are available. The FEIN will be updated during the contracting process. Contracts will be available around June 18th.
3. New JAC Registry or IFC attorneys will need to complete an Information form to become a user on My JAC. Once an attorney has been added to JAC's system, the attorney will receive an email with instructions for requesting a registration code through the Register webpage. Upon approval, the attorney will receive a registration code via email. Using that registration code, the attorney will complete the Account Registration

## Updating to an FEIN (Continued from Page 6)

form. The attorney will then log into [My JAC](#) with their new User ID and password and follow the prompts to electronically execute the appropriate contract.

Additional instructions are available on the [Quick Reference Guide: My JAC for Attorneys](#).

### ***Due Process Vendor Instructions***

1. Existing JAC due process vendors who already have an FEIN will log into [My JAC](#) and follow the prompts to electronically execute next fiscal year's contract. Contracts will be available around June 18th.
2. Existing JAC due process vendors who need to change their Tax ID from an SSN to an FEIN will log into [My JAC](#) and click on "**Vendor Tax ID Update Form**" and follow the prompts. The due process vendor will receive an email once their profile is updated. The due process vendor will then log into [My JAC](#) and follow the prompts to electronically execute next fiscal year's contract. Contracts will be available around June 18th.
3. New JAC due process vendors will need to request a registration code using an FEIN on the [New Vendor Registration](#) webpage. Upon approval, the due process vendor will receive a registration code via email. Using that registration code, the due process vendor will complete the [Account Registration](#) form. The due process vendor will then log into [My JAC](#) and follow the prompts to electronically execute the appropriate contract. Additional instructions are available on the [New Vendor Registration \(also for Tax ID changes\)](#) webpage.

## In-Court v. Out-of-Court Time in Attorney Hourly Statements

There has been some confusion regarding what constitutes in-court time and what constitutes out-of-court time for purposes of billing. In-court time includes any services rendered while at court. This includes hearing time, wait time, and time spent in conferences with the client, the prosecutor, or others before and after the hearing while at the courthouse. Essentially, when an attorney is at the courthouse for a hearing, any time spent associated with that hearing is considered part of in-court time. Out-of-court time includes any time that does not qualify as in-court time.

For example, if an attorney meets with a client at the courthouse prior to a hearing, that time is considered part of the in-court time. On the other hand, if the attorney calls the client after returning to the attorney's office, this would be considered out-of-court time. The restriction on billing more than an hour for in-court time for routine hearings covers all in-court time including but not limited to pre or post hearing conferences with the client or others while at the courthouse, wait time, and actual hearing time.

## Timely Submission of Case Opening Documents in Court-Appointed Cases

Pursuant to Paragraph II(5) of the Registry Contract, JAC has the authority to impose an administrative processing fee of \$25 when an attorney fails to provide JAC with the necessary case opening documents within 90 days following the date of appointment. As indicated in the Registry Contract, "[t]he timely opening of cases and submission of orders of appointment is essential and critical to this Registry Contract." Moreover, pursuant to s. 900.05, F.S., JAC is now required to report annual felony and misdemeanor caseloads to the Florida Department of Law Enforcement (FDLE). JAC may begin enforcing the \$25 administrative processing fee effective July 1, 2019, for any case not opened at JAC within 90 days following the date of appointment.

Cases may be opened through the Online Case Opening System in [My JAC](#).



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## Clarification for Appellate Cases Involving Private Attorneys

In criminal cases, JAC is responsible for processing payment of transcripts where the defendant is represented by private counsel at the trial level and the public defender or regional counsel is appointed for the appeal. In those instances involving private court-appointed counsel or indigent for costs counsel, the court reporter may submit the billing for appellate transcripts in the case already opened in the Online Billing Submission system.

In cases involving a private attorney at the trial level (not court-appointed or indigent for costs) and the public defender or regional counsel is appointed for the appeal, the trial attorney or court reporter should submit the notice of appeal and designation to [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org). If JAC is liable for payment of the appellate transcript, JAC will open a case in the Online Billing Submission system. It generally takes 3 to 5 business days for a case to be opened. The court reporter should check My JAC periodically for status updates. If JAC is not liable for costs of appellate transcripts, the documents will be returned via email notifying the attorney or court reporter.

## 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