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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. Included is an update on JAC's presence on social media, including the establishment of a Facebook page as well as other pertinent information. I am also pleased to announce that JAC's Online Billing Submission now has a name: JACOBS. If you are interested in providing feedback, there is a link to a short survey on the last page. Also, JAC will be conducting its annual surveys of attorneys and due process vendors in April 2018. Please participate in these surveys as the provided feedback helps us identify issues and areas which need improvement. Please let us know how we can serve you better.



Rip Colvin
JAC Executive Director

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JAC and Social Media

In an effort to better communicate with and educate its customers, JAC has established a presence on two social media sites. JAC is now on YouTube and Facebook. JAC's YouTube channel is accessible through My JAC (JAC's secure website). This page contains instructional videos for private court-appointed attorneys representing indigent citizens and associated due process vendors related to JAC's Online Bill Submission System (JACOBS). The instructional videos show step-by-step processes, such as submitting a due process invoice for payment and the approval of invoices for payment by attorneys.

On September 22, 2017, JAC launched its Facebook page. The page is geared towards introducing information in a more dynamic manner. Each post on JAC's page contains a tidbit of news or information with a link to more detail. Posted topics include tips for due process billing, links to JAC's website for key documents and help manuals, and information regarding JAC's day-to-day business operations. Also, posts include important information about JAC such as a brief description of JAC's duties and responsibilities, a description of each section within JAC, and contact information. If the information posted on Facebook is helpful, please click on the following link to "like" JAC's Facebook page: <https://www.facebook.com/JusticeAdministrativeCommission/>.

Responding to JAC Objection Letters for Hourly Billings

Pursuant to s. 27.5304(12), F.S., JAC **is required to** issue objection letters in response to hourly attorney bills seeking compensation in excess of the statutory flat fee. If JAC's audit of a bill reveals an issue with an entry in the bill, JAC will include a line item objecting to that entry. Any line item objections are typically included in a chart in the letter of objection. JAC often objects to services rendered as administrative under the terms of the JAC contract. Some common administrative objections include the following:

- 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's 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/reviewing 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 the attorney;
- 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; and
- Other administrative work per the terms of the JAC Registry Contract that is not compensable on an hourly basis even if the attorney performs the work.

The objection may also simply be asking for further detail regarding the entry, such as identifying the number of pages reviewed or the nature of the service rendered, or the objection may be based on entries not billed in tenths of an hour or entries billed across multiple dates. Further information regarding billing may be found at:

https://www.justiceadmin.org/court_app_counsel/P&P.pdf

It is JAC's experience that judges generally prefer to have the parties resolve any line item objections prior to the fee hearing when feasible. In order to facilitate resolution prior to a fee hearing, JAC recommends that the attorney either:

- 1) Send JAC a written explanation regarding objected-to entries (noting acceptance or rejection of the objection or providing more detail, as applicable); through pleadings@justiceadmin.org;
- 2) Submit an amended hourly invoice addressing the noted objections through JAC's Online Billing Submission System (JACOBS); or
- 3) Address JAC's objections in the Motion for Attorney's Fees served on JAC through pleadings@justiceadmin.org.

Upon receipt of the information accepting, explaining, or rejecting the line item objection(s), JAC may issue an amended letter of objection reflecting any adjustments or address the matter in an email response to a motion. When responding to JAC's objections, the response should be clear. For example, if an amended hourly invoice is submitted, please bold the corrected entries.

Attorneys also have the option of contacting a JAC attorney via email or telephone to discuss the objection(s). However, this is only recommended when there are a small number of objections that can be resolved relatively quickly. For cases involving large numbers of line item objections, a written response is preferred.

Representing the Same Parent in Multiple Dependency or TPR Cases

An area of common confusion arises when an attorney is appointed to represent the same parent in multiple dependency or termination of parental rights (TPR) cases. Under s. [27.5304\(6\)\(a\) and \(b\)](#), F.S., fees in dependency or termination of parental rights proceedings are based upon representation of the parent irrespective of the number of case numbers involved or the number of children involved including children born or added during the pendency of the case.

For billing purposes, an attorney is only authorized to receive a single flat fee regardless of the number of case numbers assigned or the number of children involved. This applies even if a new child is added to an existing case. For example, if a parent is appointed to represent a parent as to one child and, at a later date, is appointed to represent the same parent as to another child while the original appointment is still in effect, no additional flat fee payment is due even if a new case number is assigned relating to the new child.

As long as the dependency case remains open, any further dependency appointments relating to new children do not entitle the attorney to additional compensation on a flat fee basis. In some instances, because of the extra work involved with a new appointment, there may be a basis to seek extraordinary compensation in accordance with s. [27.5304\(12\)](#), F.S., and the JAC Registry Contract. However, if the dependency case is closed (through an order terminating supervision or jurisdiction), then appointments made after the date of case closure would be compensable.

Also, a TPR appointment generates a new flat fee (as long as the parent appears during the pendency of the TPR proceedings). If an attorney is properly appointed to a TPR proceeding as to a parent, then any ongoing dependency proceedings merge into the TPR case for billing purposes even if the TPR case is later dismissed. A dismissed TPR case remains a TPR case for billing purposes (unless a new TPR proceeding is initiated following a dismissal of the original TPR proceeding). The TPR appointment supersedes the dependency appointment for billing purposes.

The recent case of *JAC v. Jupena*, 226 So. 3d 381 (Fla. 5th DCA 2017), illustrates the applicability of s. [27.5304\(6\)](#), F.S. In this case, an attorney was appointed to represent a parent as to four minor children and was paid the applicable flat fees for the first and second year. The attorney was then appointed to represent the same parent as to a fifth child for which paternity was being disputed. After JAC rejected a billing for an additional flat fee payment as to the new child, the attorney filed a motion for attorney's fees which the trial court granted. Upon appellate review, the Fifth District Court of Appeal quashed the fee award holding that

[F]irst, under section [27.5304\(6\)\(a\)](#), counsel is not entitled to an additional \$800 flat fee for representing Father in the dependency case related to C.C. because the plain meaning of the statute precludes it; and second, to the extent counsel sought additional compensation pursuant to section [27.5304\(12\)](#), the order fails to include the required findings regarding Jupena's "extraordinary" time and effort or reasonable hours expended related to his representation of Father in the dependency proceedings related to C.C. Accordingly, we grant the petition and quash the order under review.

(Footnote omitted.) As indicated by the Fifth District in *Jupena*, the plain language of s. [27.5304\(6\)](#), F.S., precludes payment of multiple flat fees when an attorney is appointed to represent the same parent in relation to a new child added to an existing case.

Multiple Attorneys Appointed to Represent the Same Defendant

When an attorney is permitted to withdraw from a case and another private attorney is appointed to represent a client, the attorney is required to indicate on the JAC Invoice/Voucher Cover that he or she was not the only private court-appointed attorney on the case. Similarly, if an attorney is appointed to represent a client who was previously represented by another private court-appointed counsel, the attorney must indicate on the JAC Invoice/Voucher Cover that he or she was not the only private court-appointed attorney on the case.

In determining whether a case involves another private court-appointed attorney, the attorney should check the order of appointment. If the order of appointment discharges a private court-appointed attorney, the case is a multiple attorney case. Next, if the court docket indicates appointments of other private court-appointed attorney(s), the case is a multiple attorney case. If an attorney withdraws from a case due to a conflict, it is generally anticipated that another private court-appointed lawyer will be appointed. Under these circumstances, the multiple court-appointed attorney box should be checked on the JAC Invoice/Voucher Cover. Also, the name(s) of the other private court-appointed attorney(s) should be listed. This only applies to private court-appointed counsel. It does not apply to a previously appointed assistant public defender or assistant regional counsel.

Upon receipt of billings on multi-attorney cases, the billings will be placed on hold until the matter reaches final disposition and all private court-appointed attorneys have either submitted a billing or a fee waiver. In order for an attorney to be paid the full flat on a multiple attorney case, a fee waiver from all the other private court-appointed attorneys will be required. Once all the fee waivers are received, JAC will administratively pay the flat fee to the attorney assuming there are no other issues.

If multiple private court-appointed attorneys submit billings, JAC will issue a Letter of Objection-Hearing Requested. At that point, the attorneys may file motions for fees. The trial court will then apportion the flat fee. Once the court apportions the flat fee, an order for attorney fees will be issued and JAC will process the order accordingly. If more than one attorney seeks payment of the full flat fee, the matter will need to be set before the designated extraordinary fee judge pursuant to s. 27.5304(12), F.S. The total attorney fee compensation for a case cannot exceed the flat fee absent a judicial finding that the matter involved unusual and extraordinary effort.

Through the fee motion or an agreement on apportionment, the attorneys can agree upon an apportionment of the flat fee. If a fee agreement is made between all parties, JAC will usually withdraw the request for a hearing in the matter either through an amended letter of no objection or via an email response to the fee motion.

In some instances, an attorney will not submit a billing or a fee waiver for a case. If a fee waiver or voucher is not received from all parties appointed to a multiple attorney case, a motion for attorney fees should not be filed until 90 days after the disposition date. After 90 days following disposition, the attorney may use the Notice of Billing on Hold in lieu of an objection letter for purposes of filing a motion for attorney fees. However, the attorney will need to serve the motion and notice of hearing on any attorney who has not submitted a fee waiver.

Additional information regarding multiple attorneys and fee waivers can be located on JAC's website:

<https://www.justiceadmin.org/>.

Multiple Criminal Cases for the Same Defendant

The court will often appoint an attorney to more than one case for the same defendant. When billing multiple cases for the same defendant, there are additional complexities that need to be considered. If an attorney has been appointed to more than one case for the same defendant within a 30 day period, or more than one case reaches final disposition with a 30 day period, the attorney should bill simultaneously for all cases for that defendant. For penalty purposes, the final disposition date is the date that the last case reached final disposition.

Under these circumstances, the attorney must either submit a single hourly billing covering all of the cases or submit individual flat fee billings for each case. The attorney is not permitted to submit hourly billings on some of the cases and submit flat fee billings on the remainder of the cases. The attorney must either bill all cases on a flat fee basis or submit a single billing for all cases seeking unusual and extraordinary compensation.

For an hourly billing, a single bill covering the cases needs to be submitted through JAC's Online Billing Submission System (JACOBS). This is done by selecting the extraordinary fee voucher cover on the lead case, clicking the box for multiple cases, and submitting the information for the other cases. With the billing, a single hourly statement submitted in chronological order covering all of the cases should be provided. In the event the attorney was paid flat fees (for cases that reached disposition earlier), any prior flat fee payments must be also deducted from the total amount of the initial hourly billing (whether an interim or final billing).

Service of Unnecessary Legal Pleadings on JAC

JAC receives motions, orders, notices, communications, and other legal filings through pleadings@justiceadmin.org. In 2017, JAC issued responses to approximately 14,000 filings. However, this email address also receives hundreds of unnecessary legal filings monthly which are unrelated to JAC. If there is no request for due process costs or attorney fees to be paid through JAC, or other peripheral reason for service of a document on JAC, JAC should not be served with that document. JAC staff has to review every document served upon JAC.

While development of the statewide e-portal is a positive step, it also allows for the email service of documents on unnecessary recipients. Please do not serve JAC using this method unless JAC has an interest in the motion. When serving pleadings via the e-portal, please deselect JAC whenever JAC has no interest in the motion. The following are examples of items which do not have to be served on JAC:

- Motions for Bond;
- Motions for Continuance;
- Notices of Appearance, Written Plea of Not Guilty and Demand for Discovery;
- Notices of Taking Deposition/Notices of Cancellation of Deposition; and
- Notices of Hearing for motions unrelated to JAC.

Once JAC has been served with a motion and JAC has issued a response, it is not necessary to serve JAC with the same motion. For example, if an attorney served JAC with a proposed motion and JAC sent a response via email indicating JAC was taking no position as to the motion, the attorney does not need to serve another copy of the motion on JAC when it is filed (unless there are substantive modification to the request). Similarly, if the attorney files a Notice of Filing for JAC's email response, it is not necessary to serve JAC with that document.

Also, JAC only needs to be served once with any motion (unless it is amended). Please do not serve JAC via the e-portal and then following up with a separate email attaching the same motion. Similarly, if a motion involves more than one case number, please only serve the motion once. It is not necessary to serve JAC for each case number associated with the motion. By not serving JAC with unnecessary pleadings, JAC staff can expeditiously respond to those pleadings relevant to you.



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www.surveymonkey.c
om/r/FWBD8G3](https://www.surveymonkey.com/r/FWBD8G3)

For comments, suggestions,
and/or submissions for the
next bi-annual newsletter,
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History of JAC

The **Justice Administrative Commission (JAC)**, created in 1965, provides administrative services on behalf of 49 judicial related offices. Over the years, JAC's statutory charge has experienced many changes. In 2004 JAC's duties were expanded to provide compliance and financial review of billings for services provided by private court-appointed attorneys representing indigent citizens and associated due process vendors. Subsequently, the Offices of Criminal Conflict and Civil Regional Counsel and Clerks of Court Operations Corporation were added to the list of offices administratively served by JAC in 2007 and 2009 respectively. Then, in 2011, the Legislature repealed s. 27.709, F.S., effectively eliminating the Commission on Capital Cases and, as of July 1, 2013, through additional legislative action, the Clerks of Court Operations Corporation is no longer served by JAC. That same year, JAC became responsible for maintaining the registry for private court-appointed counsel for capital collateral appointments for state courts. Section 27.710, F.S., was amended to require JAC to maintain the registry of private attorneys who indicate that they are eligible to be appointed to represent indigent defendants in Capital Collateral cases. Also in 2013, JAC inherited the "contracting and payment" of private court-appointed counsel representing individuals in capital collateral cases from the Department of Financial Services, and the payment of private court-appointed representation in death penalty clemency cases from the Department of Corrections. In 2014, the Legislature transferred the contracting and payment of private court-appointed attorney representation for death penalty clemency cases to the newly renamed office of the Board of Executive Clemency, while JAC began the contracting and payment of private court-appointment counsel in dependency proceedings for children with special needs.

JAC also 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 the JAC administratively serves these offices, the JAC does not supervise, direct, or control the offices it serves. Overall, each year, JAC performs over 421,000 financial transactions for approximately 20,000 employees and vendors throughout the state.

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 the JAC's duties.

If you suspect misuse of state funds in private court-appointed or indigent for costs cases, please let us know through the JAC TIPS FORM or the JAC Help Desk at 1-844-522-5463 (toll free).