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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

Happy New Year 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 court-appointed funding issues as well as other pertinent information. Also, JAC will be conducting its annual surveys of attorneys and due process vendors in April 2019. Please participate in these surveys because the feedback provided helps us identify issues and areas which need improvement. Please let us know how we can serve you better.



Rip Colvin
JAC Executive Director

JAC Funding Update

Inside this issue:	
JAC Funding Update	1
Billings for Appellate Transcripts	2
Flat Fees in Criminal Cases Involving Multiple Attorneys	3
Closing of JAC's Post Office Box	4
Reimbursement for Payment of Ordinary/ Official Witnesses	5
FEIN Required for Upcoming Contracts	5
Reminder: New Contract Hourly Billing Requirements	6

Following passage of the 2018 General Appropriations Act (GAA), JAC projected significant shortfalls in court-appointed funding for Fiscal Year 2018-19 (July 1, 2018, through June 30, 2019). Pursuant to s. 29.007, F.S., the legislature appropriates funds each year for court-appointed counsel which includes attorney's fees, due process costs, and related expenses. Assuming JAC obtains no additional funding, JAC anticipates that the current year appropriations will be exhausted in early April 2019.

Since passage of the GAA in 2018, JAC's Executive Director and other JAC staff have been working with legislative staff and other stakeholders to resolve this matter to avoid delay in payments to attorneys and due process providers. Given the increase in bills received and billed amounts over the past two fiscal years and current appropriation levels, JAC projects a shortfall of \$17.56 million for Fiscal Year 2018-19.

Before, during, and after the 2019 Regular Legislative Session commences on March 5, 2019, JAC will continue to work with legislative staff and other stakeholders to identify additional funding sources in an effort to avoid delays in payment to attorneys and due process vendors. JAC is cautiously optimistic that additional

(Continued on page 2)

JAC Funding Update Continued

funding will be obtained. Nonetheless, any efforts that attorneys or due process vendors may wish to engage in such as contacting their local legislator may be beneficial in resolving this situation without delays in payment.

Please be aware that any impact of the shortfall in funding will only result in potential delays in payment. JAC staff will continue to process billings as they are received even if funds are temporarily exhausted. Once additional funds are obtained, the billings will be transmitted to the Department of Financial Services (DFS) for payment. As additional information becomes available, JAC will provide updates on this matter on JAC's public website.

Billings for Appellate Transcripts

As the court system transitions to the electronic submission of appellate transcripts, confusion has arisen regarding the submission of billings for appellate transcripts. In particular, trial attorneys have been requested to certify billings for appellate transcripts through *My JAC*. Previously, a court reporter would often obtain a signature on JAC's Invoice/Voucher Cover from the clerk's office upon submission of the transcripts. JAC continues to accept appellate transcript billings in this fashion, whereby the court reporter scans the physical JAC Invoice/Voucher signed by the clerk's office and submits it via *My JAC*.

When submitting billings for appellate transcripts through *My JAC*, the billing will often be submitted under the trial case because the defendant is represented by the public defender or regional counsel on appeal. If the defendant is represented by private court-appointed or indigent for costs counsel on appeal, then the billing should be submitted under the appellate case. When submitting the billing, the court reporter should provide the designation of the record and notice of appeal as supporting documentation.

When court reporters submit their JAC Invoice/Voucher Covers electronically through *My JAC*, the trial attorney may be requested to approve the billing. This is appropriate because the trial attorney is responsible for ensuring the appellate record is complete prior to concluding representation. In criminal cases involving appointed appellate counsel, Fla. R. App. Proc. 9.140(d) does not permit trial counsel to be relieved of their professional duties until the record is electronically transmitted to the appellate court.

When the trial attorney is requested to approve appellate transcripts, the attorney should request that the court reporter provide the attorney with an electronic courtesy copy of the transcripts so that the attorney can verify the number of pages set forth in the billing. Because the purpose of providing an electronic courtesy copy is to allow the attorney to approve the vendor's billing, the court reporter needs to provide the copy without charge.

Flat Fees in Criminal Cases Involving Multiple Attorneys

When multiple private attorneys are appointed to a case in succession, s. 27.5304(11), F.S., directs that the flat fee be apportioned between all of the attorneys. Section 27.5304(11)(b), F.S., provides “[i]f court-appointed counsel is allowed to withdraw from representation prior to the full performance of his or her duties through the completion of the case and the court appoints a subsequent attorney, the total compensation for the initial and any and all subsequent attorneys may not exceed the flat fee established under this section and the General Appropriations Act, except as provided in subsection (12).”

In cases involving more than one private court-appointed attorney, if an attorney bills before:

- the case closes; or
- all other attorneys have billed or waived fees;

JAC issues a **Notice of Billing on Hold** to inform the attorney that the invoice will be held until the case closes and all attorneys have billed or waived the fee. Once a case closes and all attorneys have billed, JAC issues a Letter of Objection (hearing requested) or Letter of No Objection (no hearing requested).

A Letter of Objection (hearing requested) will be issued when the attorneys are each seeking the full flat fee. The attorneys should then submit motions and schedule an attorney fee hearing. The court will apportion the flat fee between the attorneys. A Letter of No Objection (no hearing requested) will be issued when attorneys have agreed to split the flat fee. Attorneys who agree to a specific fee split must provide court orders for their fees.

The following are some examples:

- Attorney A is appointed and later withdraws. Attorney B is then appointed and finishes the case. Attorney A and B both submit invoices for the flat fee when the case closes. JAC issues a Letter of Objection for each attorney (hearing requested). A fee hearing and order to pay are required for payment.
- Attorney A is appointed and later withdraws. Attorney B is then appointed and finishes the case. Attorney A waives his fee. JAC can pay upon receipt of Attorney B’s bill and Attorney A’s fee waiver. No hearing or order is required for payment.
- Attorney A is appointed and withdraws. Attorney B is then appointed and finishes the case. The attorneys agree to split the flat fee. Upon receipt of bills from both attorneys and a letter explaining the flat fee split, JAC issues a Letter of No Objection (no hearing requested). A court order to pay is required for payment.
- Attorney A, Attorney B, and Attorney C are successively appointed to a case. Attorney A waived her fees, but Attorney B and Attorney C did not. JAC will issue objection letters (hearing requested) regarding Attorney B and Attorney C bills. A fee hearing and order to pay are required for payment.

Flat Fees in Criminal Cases Involving Multiple Attorneys Continued

- Attorney A, Attorney B, and Attorney C, are successively appointed to a case. Attorney A submits a bill. Attorney B and Attorney C each submit a fee waiver. JAC can process Attorney A's bill upon receipt of the fee waivers. No hearing or order is required for payment.

If the attorneys each seek payment of the full flat fee, the matter needs to be set for hearing before the designated extraordinary fee judge. Although the trial court may apportion the flat fee between two or more attorneys, only the designated extraordinary fee judge may award total compensation in excess of the flat fee as authorized by s. 27.5304(12), F.S. In the absence of hourly statements, the extraordinary fee judge may award up to double the flat fee (with no attorney receiving more than the flat fee). For example, in a matter involving two attorneys, the extraordinary fee judge could determine the matter involved unusual and extraordinary effort and then award the full flat fee to each attorney.

A Notice of Billing on Hold is not a Letter of Objection. However, once the case is more than 90 days beyond final disposition, an attorney may file a motion for fees based upon the Notice. In this situation, a hearing will be required and the attorney will need to provide notice to any attorneys who have not waived their fees for the case. A motion for fees should not be filed based upon a Notice of Billing on Hold until at least 90 days have passed since the final disposition in order to afford the other attorneys appointed to the case to submit a billing (or a fee waiver) in the matter. Although the preferred route is to obtain a fee waiver from attorneys who do not intend to bill, an attorney may move forward with a motion for attorney fees once the case is at least 90 days past final disposition.

Closing of JAC's Post Office Box

On January 1, 2019, JAC discontinued use of its Post Office Box. As JAC has shifted primarily to electronic correspondence, the need for the Post Office Box has diminished. Any mailed correspondence must now be sent to JAC's physical address:

Justice Administrative Commission
227 North Bronough Street, Suite 2100
Tallahassee, FL 32301

Please be aware that submission via email or through *My JAC* is preferred and often required. With limited exceptions, all billings must be submitted electronically through *My JAC*. Any amendment to a billing, including responses to Audit Deficiencies, should also be submitted through *My JAC*.

Similarly, any motion, order, or other court document needs to be served on JAC through pleadings@justiceadmin.org. JAC does not require or desire physical copies of motions, orders, or court documents.

Reimbursement for Payment of Ordinary/Official Witnesses

Attorneys are now able to submit invoices online for reimbursement of ordinary/official witnesses through My JAC. As with other billings, please select the Attorney Invoice Submission link to begin the process.

1. Search for the open case for which you wish to submit an invoice and select that case.
2. Click on “Submit a new invoice for the selected case” and select the “ordinary/official witness(es) reimbursement” billing type from the dropdown list.
3. It is important to fill in all the required fields on the online invoice. However, the witness address is not required if “Check this if law enforcement” is checked.
4. Sign and preview the draft of the invoice.
5. Please upload all required documents by selecting your files in the upload document files panel. Follow the upload documents instructions closely.
6. Complete the JAC Online Billing Certification for the Final Submission of your Invoice.

If you need to correct or amend your ordinary/official witness invoice, you may login to My JAC. After locating the case, check the “amending/adding documents or responding on an audit deficiency to an existing invoice for this case”. A dropdown will appear and list all invoice tracking numbers for this case. Select the corresponding tracking number for the invoice you wish to amend.

For Ordinary or Official Witness payments of less than \$50, payment will be through attorney reimbursement only. Please make sure that all necessary documentation is provided with the invoice including but not limited to proof of payment to the witness.

FEIN Required for Upcoming Contracts

JAC will no longer execute new attorney or due process vendor contracts using a social security number (SSN). Instead, new attorneys and due process providers need to use a Federal Employer Identification Number (FEIN). Increased internet usage to conduct business results in identification numbers being transmitted more often. This results in more opportunity for interception and misuse. Because of increasing concerns regarding identify theft and the enhanced sophistication of cyber criminals, the risk created by relying upon SSNs for contracting purposes outweighs any potential benefit.

JAC will continue to rely upon SSNs for existing attorney and due process vendor contracts until the end of this fiscal year (June 30, 2019). However, any attorney or due process vendor desiring to enter into a contract next fiscal year (July 1, 2019 to June 30, 2020) will need to utilize an FEIN. General information regarding FEINs is available at: <https://www.irs.gov/pub/irs-pdf/p1635.pdf> and online FEIN applications are available at:

<https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online>

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

Please be aware that the same FEIN will need to be used on the substitute form W-9 submitted to the Department of Financial Services (DFS).



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om/r/ZHXDJ68](https://www.surveymonkey.com/r/ZHXDJ68)

For comments, suggestions,
and/or submissions for the
next bi-annual newsletter,
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Reminder: New Contract Hourly Billing Requirements

The Fiscal Year 2018-19 Registry and Due Process Contracts contained several new requirements related to hourly billing by attorneys and due process vendors.

First, any time an attorney or due process vendor seeks to bill for more than 10 hours on a single date or more than 50 hours in a calendar week for services provided by a single person, the attorney or due process provider must provide an explanation. The biller is responsible for tracking the number of hours worked across all cases billed through JAC. In situations involving a single case, the explanation generally does not need to be particularly detailed. Explanations such as “in trial,” or “final preparation of a complex trial,” will be sufficient. However, in situations involving multiple cases, a more detailed explanation will be necessary when a single person bills more than 10 hours on a single date or more than 50 hours in a calendar week. The biller will need to establish the extraordinary circumstances warranting work beyond normal business hours.

Second, for in-court services rendered on or after July 1, 2018, an attorney may only bill for actual time representing the client plus up to 30 minutes for wait-time. If the attorney believes a hearing will involve a substantial amount of wait-time (such as a calendar call), the attorney should bring materials to review on the case or other cases so that the time can be spent in a productive manner.

Third, for hearings held on or after July 1, 2018, an attorney needs to provide a detailed explanation in the hourly statement when the attorney seeks more than one hour for routine hearings such as calendar calls, status conferences, pretrial conferences, or judicial reviews in dependency cases. In the absence of such a justification, JAC will reduce the time billed to one hour.

Fourth, motions seeking extraordinary attorney fees need to specify the factual and legal issues that warrant a finding that the case involved unusual and extraordinary effort justifying compensation in excess of the flat fee. This explanation should be sufficiently detailed to allow the trial court to make the necessary findings under s. 27.5304(12), F.S. In addition, the attorney needs to provide the trial court with the billing information (invoice) submitted to JAC. The JAC Invoice/Voucher Cover, the hourly statement detailing the services provided, and the JAC objection letter need to be included as attachments or exhibits to the motion for attorney fees.

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).