



# Justice Administrative Commission Reference Guide For Judges, Law Clerks, and Judicial Assistants

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## ***Overview of the Justice Administrative Commission***

Created in 1965, the Justice Administrative Commission (JAC) provides administrative services to and on behalf of 49 judicial-related offices (JROs). See s. [43.16](#), F.S. In 2004, JAC's duties were expanded to provide compliance and financial review of billings for services provided by private court-appointed attorneys and associated due process vendors representing indigent citizens. In 2011, JAC became responsible for maintaining the registry for private court-appointed counsel for capital collateral appointments for state courts. Subsequently, in 2013, JAC inherited the compliance and financial review of billings by private court-appointed counsel in capital collateral cases from the Florida Department of Financial Services (DFS).

Currently, JAC serves the 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. Overall, JAC annually 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 approximately 85 staff to efficiently and effectively carry out the JAC's duties.

The services that JAC provides to the 49 JROs are distinct from the role JAC plays in regard to private court-appointed and indigent for costs cases. Each of the offices JAC serves has its own budget. Although JAC provides assistance to those entities, JAC does not supervise, direct, or control those offices. However, JAC does administer provision for payment of attorney fees, costs, and related expenses in private court-appointed and indigent for costs cases.

### ***Case Types***

JAC is responsible for processing payments for attorney fees, costs, and related expenses in relation to private court-appointed and indigent for costs cases in accordance with ss. [27.5304](#), [29.007](#), and [27.52](#), F.S. Generally, JAC processes payment of fees and costs in cases where the person is indigent, is entitled to court-appointed counsel, and the offices of the Public Defender and Criminal Conflict and Civil Regional Counsel have a conflict precluding representation; or the defendant has been found indigent for costs in accordance with s. [27.52\(5\)](#), F.S. JAC is not responsible for processing the payment of fees and costs unless there is a statutory or constitutional right to appointed counsel under Florida law. JAC generally does not process payments for costs in civil cases such as family law cases, probate cases, or civil law suits.

## ***Appointment of Counsel***

As directed by s. [27.40](#), F.S., the court appoints an attorney from the circuit's court-appointed registry as compiled and approved by the chief judge of the circuit and as maintained by the clerk of court. The chief judge for each circuit is responsible for selecting attorneys for inclusion in the circuit's court-appointed counsel registry. Each fiscal year, if an attorney is authorized for continued inclusion on a registry or is selected for a registry, the attorney will need to execute the JAC registry contract.

When no registry attorneys are available for appointment, a court may appoint an attorney off the registry. As directed by s. [27.40\(7\)\(a\)](#), F.S., JAC is only authorized to compensate a non-registry attorney if the order of appointment reflects that no registry attorneys were available to accept the appointment. Generally, an order appointing an off-registry attorney should reflect specific findings demonstrating good cause for the off-registry appointment.

In either case, the attorney will need to execute a contract with JAC. Any attorney may execute a JAC Registry Contract. This contract will then apply to any registry or off-registry appointments received through the fiscal year. In most instances, an attorney will only need to execute a single, statewide Registry Contract during a fiscal year. Once an attorney signs the Registry Contract, the attorney may be eligible for compensation for all court appointments, including off-registry appointments, from any circuit provided they are on the circuit's court-appointed registry or provide an appropriate off-registry order of appointment.

Except in limited circumstances, private counsel can only be appointed where both the offices of the Public Defender and Criminal Conflict and Civil Regional Counsel have a conflict or are otherwise not authorized to provide representation. Pursuant to s. [27.40](#), F.S., for criminal cases and those civil cases for which the Public Defender is authorized to provide representation, both the Public Defender and the Regional Counsel must have a conflict precluding representation for the court to appoint private counsel.

For dependency, termination of parental rights, and other civil cases, the Regional Counsel must have a conflict precluding representation for the court to appoint private counsel. There are three exceptions to this requirement: (1) guardianship proceedings under Ch. [744](#), F.S., where the court cannot determine indigency at the time of appointment; (2) parental notice of abortion proceedings under s. [390.01114](#), F.S.; and (3) dependent children with certain special needs appointments as attorney for children under s. [39.01305](#), F.S.

In capital death cases and occasionally other cases, an attorney will seek appointment of second-chair counsel. Florida law allows the appointment of a second lawyer. In death-eligible cases where the State has not waived the death penalty, JAC generally does not object to the court's appointment of second-chair counsel where lead counsel is court-appointed. In cases where death has been waived or in other criminal cases not involving death, the attorney has the burden to show that the complexity of the case warrants a

second attorney. Generally, the attorney would need to show that the case is sufficiently complex that a single lawyer would be unable to provide effective assistance of counsel. Generally, JAC objects to the appointment of second chair counsel in non-death cases.

JAC lacks statutory authority to process payment for appointment of second-chair counsel where lead counsel is privately retained. Therefore, JAC typically objects to any appointment of second-chair counsel where the defendant is represented by privately retained lead counsel. Section [27.52\(5\)\(h\)](#), F.S., specifically provides that a court “may not appoint an attorney paid by the state based on a finding that the defendant is indigent for costs if the defendant has privately retained and paid counsel.”

If the State waives the death penalty, then appointed second-chair counsel should seek to withdraw from the case absent exceptional circumstances. An imminent trial is an example of an exceptional circumstance. Otherwise, the attorneys would need to show that the case is sufficiently complex to warrant the continued involvement of the second attorney.

### ***Capital Collateral Private Attorney Registry Appointments***

Capital Collateral appointments in postconviction death cases function a little differently. For these types of cases, the court shall first appoint the Office of Capital Collateral Regional Counsel for the region designated in s. [27.701](#), F.S. If that Office has a conflict, the court shall appoint one of the other two Offices as directed by s. [27.703\(1\)](#), F.S. If two of the Offices have a conflict, the court shall appoint private counsel from the Capital Collateral Registry maintained by JAC pursuant to ss. [27.710](#) and [27.711](#), F.S. In applying for inclusion, the attorneys certify that they meet the requirements of ss. [27.704\(2\)](#) and [27.710\(1\)](#), F.S., and Rule 3.112(k), Fla. R. Crim. P. JAC does not independently verify this information.

The Capital Collateral Registry is located at:  
<https://www.justiceadmin.org/registry/attorneys.xls>.

Under s. [27.711\(9\)](#), F.S., an attorney is not authorized to have more than 10 active capital collateral appointments. In selecting an attorney, the court may wish to address this issue before entering an order of appointment.

Pursuant to ss. [27.710](#) and [27.711](#), F.S., private counsel appointed by the court in a postconviction capital collateral case shall execute a contract with JAC within 30 days. If the attorney fails to enter into such a contract, JAC is responsible for notifying the court pursuant to s. [27.710\(4\)](#), F.S.

Section [27.711](#), F.S., governs billing for attorney fees and related expenses in capital collateral cases. The statute places attorney fee limits for different stages of the representation and places limits of \$15,000 for investigator fees and for miscellaneous expenses. These limits may only be exceeded if the court finds that the case involves extraordinary and unusual circumstances. Unlike appointments under s. [27.5304](#), F.S.,

there is no requirement that requests for extraordinary fees be heard by the chief judge or designee.

### ***Indigent for Costs***

JAC is responsible for processing payments of due process costs pursuant to s. [29.007](#), F.S., in cases where a defendant is found to be indigent for costs by the trial court. Under s. [27.52\(5\)](#), F.S., a person who is eligible to be represented by the public defender, but who is represented by privately retained or *pro bono* counsel or is proceeding *pro se*, may be found by the court to be indigent for costs (IFC) for purposes of due process services. For cases involving privately retained or *pro bono* counsel, the attorney must serve a copy of the written motion on JAC prior to the court declaring the client indigent for costs. (*Pro se* defendants are addressed below.) Attached to the motion must be a completed Clerk's Application for Criminal Indigent Status and an Affidavit attesting to the estimated amount of attorney's fees and the source of those fees.

The determination of indigency for costs under s. [27.52\(5\)](#), F.S., is different than the finding of indigency for appointment of counsel under s. [27.52\(1\)](#), F.S. A finding of indigency for costs is through court order rather than by clerk determination. As directed by s. [27.52\(5\)\(d\)](#), F.S., the factors the court must consider include the following:

- Whether the applicant applied for a determination of indigent status and the outcome of such application.
- The extent to which the person's income equals or exceeds the income criteria prescribed in s. [27.52\(2\)](#), F.S.
- The factors prescribed in s. [27.52\(4\)](#), F.S., including: (1) whether the defendant has been released on bail in an amount of \$5,000 or more; (2) whether a bond has been posted, the type of bond, and who paid the bond; (3) whether paying for private counsel or other due process services creates a substantial hardship for the defendant or the defendant's family; and (4) any other relevant financial circumstances of the defendant or the defendant's family.
- Whether the applicant is proceeding *pro se*.
- When the applicant retained private counsel.
- The amount of any attorney fees and who is paying the fees.

As directed by s. [27.52\(5\)\(d\)](#), F.S., there is a statutory presumption of non-indigency when the estimated amount of attorney fees exceeds a certain threshold:

There is a presumption that the applicant is not indigent for costs if the amount of attorney's fees exceeds \$5,000 for a noncapital case or \$25,000 for a capital case in which the state is seeking the death penalty. To overcome this presumption, the applicant has the burden to show through clear and convincing evidence that the fees are reasonable based on the nature and complexity of the case. In determining the reasonableness of the fees, the court shall

consider the amount that a private court-appointed attorney paid by the state would receive for providing representation for that type of case.

It is the defense's burden to present evidence to rebut this presumption.

A copy of the motion must be served on JAC prior to any hearing on the motion. Because the statute requires a written motion, *ore tenus* motions for indigency for costs are not authorized. JAC has standing to participate in any hearing on the motion and is authorized to appear telephonically. In most instances, JAC does not take a position on these motions. However, JAC will ask for hearings in several instances such as when the fees significantly exceed the statutory threshold; the defense has failed to provide the necessary affidavits with the motion; the income or assets of the defendant raise questions about his or her indigency; or when the requests for due process costs in the motion would otherwise warrant a hearing.

A finding of indigency for costs pursuant to s. [27.52\(5\)](#), F.S., is through written order. In order to facilitate the processing of payment for such costs, JAC should be provided with a copy of this order as soon as feasible. Any determination of indigency for costs is prospective only. The defense is not entitled to seek payment or reimbursement for costs incurred prior to the date the court found the client indigent for costs. In extraordinary circumstances, the date of indigency for costs may relate back to the date the attorney filed the written motion to find the client indigent for costs. In such instances, the order should indicate the effective date of the indigency determination.

The order declaring a defendant indigent for costs may include specific authorization for due process costs in addition to the finding of indigency for costs. For example, the order finding the defendant indigent for costs could include an authorization for \$1,000 for a private investigator. Generally, requests for such costs should be included in the motion. With respect to submission of billings for due process costs, indigent for costs counsel follow the same procedures as private court-appointed counsel.

### ***Pro se defendants***

To have JAC process a due process cost payment, the court must find the defendant indigent for costs under s. [27.52\(5\)](#), F.S. This finding must occur before a defendant seeks the court's authorization of any due process service provider. A clerk of court's determination of indigence for appointment of counsel under s. [27.52\(1\)](#), F.S., is not sufficient. The defendant must obtain a separate order from the trial court declaring the defendant indigent for costs under s. [27.52\(5\)](#), F.S.

JAC provides the same types of costs to *pro se* defendants as those provided to private court-appointed counsel. See, page 10, Due Process Costs, for a listing. JAC has no authority to process bills for legal materials, office supplies, access to legal research materials, postage, or telephone charges. A defendant is not entitled to additional costs

because the defendant is in jail. To the extent required by law, such supplies are provided by the institution in which the defendant is incarcerated.

As with attorneys, a *pro se* defendant must serve JAC with requests for costs. JAC will typically respond to the motion with a formal written response with a copy mailed to the defendant. This response will indicate whether JAC requests a hearing on the motion.

In some *pro se* cases, the court may appoint standby counsel. In those instances, standby counsel can assist the defendant in relation to obtaining due process costs. This includes filing motions and signing billing documents on behalf of the defendant to help ensure that due process vendors in these cases are compensated for their work.

In post-conviction cases, JAC is not authorized to process any bills for costs until a motion for post-conviction relief has been filed with the trial court and the trial court has issued an order stating that there are issues that need further review or consideration (evidentiary hearing) by a court. Until the court makes a preliminary determination that there are issues which are not refuted by the record, there is no right to due process costs. Once that the determination has been made, the right to due process costs is very limited.

### ***Attorney Fees, Costs, and Related Expenses***

Payment of attorney fees, costs, and related expenses is governed primarily by ss. [27.5304](#) and [29.007](#), F.S. Pursuant to s. [27.5304](#), F.S., the attorney or due process provider submits a billing to JAC. JAC then reviews that billing for compliance with statutory and contractual requirements. All billings must be submitted using the appropriate JAC Invoice/Voucher Cover along with the necessary supporting documentation for that type of billing.

Payment of attorney fees for private court-appointed counsel is generally on a flat fee basis with the flat fees set annually by the Legislature in the General Appropriations Act. In accordance with s. [27.5304](#), F.S., JAC may administratively approve, without need of a court order, payment of a flat fee billing for attorney fees and costs that meets statutory and contractual requirements. There are a few instances in which a court order is necessary. Under s. [27.5304\(11\)](#), F.S., there is a presumption that an attorney is not entitled to the full flat fee when the attorney is discharged or withdraws prior to the completion of the case. Additionally, when there are multiple private court-appointed attorneys assigned over the course of case (other than first and second-chair in capital death cases), the flat fee needs to be divided between the attorneys absent proceedings under s. [27.5304\(12\)](#), F.S. Therefore, JAC will issue a letter of objection in those instances. This letter will indicate whether JAC requests a hearing on the matter.

Pursuant to s. [27.5304\(12\)](#), F.S., provision is made for compensation in excess of the flat fee for cases that involve unusual and extraordinary effort. To obtain compensation in excess of the flat fee, the attorney needs to comply with all requirements of s. [27.5304\(12\)](#), F.S. Prior to filing a motion for compensation in excess of the flat fee, the

attorney must submit an intended billing to JAC as well as all other necessary supporting documents, including supporting affidavits. Upon completion of its review of a compliant billing, JAC will then issue a letter of objection.

Occasionally, there is confusion between the statutory limitations set forth in s. [27.5304](#), F.S., and the flat fee set forth in the General Appropriations Act. The statutory limitations in s. [27.5304](#), F.S., are not flat fees. Pursuant to s. [27.5304\(1\)](#), F.S., the flat fees for each fiscal year are established in the General Appropriations Act. Because these flat fees do not exceed the statutory limitations, the statutory limitations have no impact on attorney compensation.

After receipt of JAC's letter of objection, the attorney will then file a motion for attorney fees, costs, or related expenses. JAC's objection letter must be attached to this motion along with any supporting documentation the attorney intends to present to the court. Under s. [27.5304\(12\)](#), F.S., the chief judge or designee must hold an evidentiary hearing to make specific factual findings based upon the attorney's evidence in order to find the case extraordinary and unusual. The attorney seeking additional compensation must prove by competent and substantial evidence that the case required extraordinary and unusual efforts. These provisions are generally construed to conform with the requirements of the Makemson v. Martin County, 491 So.2d 1109 (Fla. 1986), line of cases which allow for compensation in excess of statutory limitations in extraordinary and unusual cases.

It is the role of the private court-appointed attorney to present evidence at the hearing to justify compensation in excess of the flat fee. Although JAC raises objections to the billing, JAC generally cannot determine nor advise as to: (1) the reasonableness of the number of hours expended; or (2) the extraordinary and unusual nature of the case. Instead, JAC conducts a review of the billing and raises objections based upon objective criteria set forth in the JAC contract and the policies and procedures promulgated thereto. It is the attorney's burden to demonstrate the factual and legal complexities of the case that warrant a finding that the case involved extraordinary and unusual effort.

Although evidentiary in nature, extraordinary fee hearings are not particularly lengthy. Based on JAC's experience, the evidence presented at a hearing is typically limited to the testimony of the attorney, possibly the testimony of one or more experts, the submission of the attorney's billing records, and JAC's letter of objection. Although JAC may cross-examine any attorney or expert witnesses, JAC typically does not present additional evidence. Depending on the complexity of the billing and the extent of JAC's objection, attorney fee hearings can range from as little as five minutes to as much as an hour.

Upon appropriate findings, the chief judge or designee shall order that compensation be paid at a percentage above the flat fee rate, depending on the extent of the extraordinary and unusual effort required. The percentage shall be only the rate necessary to ensure that the fees paid are not confiscatory. Total compensation may not exceed 200 percent of the established flat fee absent a specific finding this amount of compensation would be confiscatory. If the chief judge or designee determines that double the flat fee would be



confiscatory of the attorney's time, the judge shall order the amount of compensation using an hourly rate not to exceed \$75 per hour for a non-capital or non-death case and \$100 per hour for a capital death case.

For JAC to process a billing in excess of the flat fee, the order must contain certain written findings. Pursuant to DFS Chief Financial Officer Memorandum No. 04 (2003-04), a billing cannot be processed for payment unless it includes "a court order directing payment of the fees which contains specific findings that the fees claimed are reasonable and incurred as the result of unusual or extraordinary circumstances associated with the representation." Model motions and orders are posted on JAC's website:

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

Once an order is entered, JAC needs to be provided with a copy. JAC maintains a public email address for service of motions, orders, and other legal pleadings: [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).

### ***Motions to Authorize Due Process Services and Costs***

JAC is a necessary party on any motion for attorney fees, due process costs, or related expenses as well as any motion to declare a defendant indigent for costs. JAC has standing to raise objections and concerns before a court authorizes the defense to incur due process costs. For purposes of e-service, JAC has designated [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org) as the primary email address for service of any motion or other legal pleading. It is not necessary to serve pleadings on a JAC attorney's personal email account. If service is provided through the Florida Courts E-Filing Portal, an attorney does not need to send an additional copy via email or mail. When a document is served on JAC through email, the attorney does not need to mail a follow-up to JAC. Any motion for attorney fees or relating to due process services must be served on JAC prior to a court considering a motion.

JAC responds to motions in two ways. First, JAC usually emails the attorney advising that JAC has received the motion and indicating JAC's position on the motion. Often, JAC indicates that it is taking no position. This does not mean that JAC is stipulating or agreeing to entry of an order. It is still the attorney's burden to establish the need for the requested costs. JAC is simply not requesting to participate in any proceedings related to that specific request. When JAC sends an informal response, the attorney should provide JAC's response along with the motion to the court. When a hearing is not requested, the attorney often provides to the court a courtesy copy of the motion, JAC's informal response, and a proposed order. If the motion and proposed order has already been provided, the attorney may simply forward a copy of JAC's email to the court.

Second, JAC may file a formal written response. In those instances, JAC has specific concerns regarding the motion that may warrant such a response. In most instances, JAC will also be requesting a hearing on the motion. For requests for due process costs, JAC typically requests a hearing in instances where JAC has a contractual or statutory

objection to the request, such as a request for: (1) rates that significantly exceed the rates established by law; (2) out-of-state experts; (3) jury selection or legal experts; (4) attorney travel in indigent for costs cases; (5) expedited transcripts when the need for expedited rates appears to be the result of attorney inaction; and (6) private service of process on in-county law enforcement.

JAC can provide the court with a courtesy copy of formal written responses through email. If a judge wishes that courtesy copies be sent, please contact JAC's paralegals at (866) 355-7902.

Occasionally, confusion arises between authorization for due process costs and approval of due process costs. Under the JAC contract, an attorney cannot seek court approval of a due process vendor billing until the billing has been submitted to JAC, and JAC has issued a letter of objection. Prior to that occurring, the attorney should only seek authorization for costs. Although this should occur prior to the defense incurring the costs, it can occur after-the-fact.

### ***Due Process Costs***

Generally, payment of due process costs must be supported by a court order authorizing the expenditure of due process costs. Except where prior court approval is not required, due process services must be authorized by a court order. As such, the motion should be filed and resolved prior to the defense incurring the costs. Allowable due process costs under s. [29.007](#), F.S., include:

- Court reporting and transcription costs;
- Interpreters and translators at depositions or witness interviews;
- Private service of process when the sheriff is not available or unable to provide service;
- Private investigator services including costs to obtain case-related materials or documents;
- Mitigation specialist services in capital death cases;
- Witness and expert witness fees;
- Mental health professionals;
- Reasonable pretrial consultation fees and costs; and
- Travel costs for witnesses.

JAC processes bills for court reporter appearance fees for payment without the need of prior court authorization. However, transcripts require a court order. Generally, an order authorizing transcripts needs to indicate sufficient information so that JAC can accurately identify the transcript authorized; i.e., the date of deposition and the name of the deponent for deposition transcripts; the date and type of hearing for hearing transcripts; the date and witness name for recorded statements; and the date and recording type (such as 911 or jail calls) for other recordings. For appellate transcripts only, the trial attorney's designation of the record may be used in lieu of a court order. If an attorney is seeking

expedited transcripts, the motion must specifically indicate the request and basis for expedited rates, and the order must reflect authorization for expedited rates.

For other due process services such as investigators, mitigation specialists, and experts, the order should reflect the amount authorized for the particular due process 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 also reflect the rate authorized by the court. JAC cannot pay any rate in excess of the established rates without court approval.

Pursuant to ss. [27.425](#) and [27.5305](#), F.S., the Legislature sets the rates for all due process services 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 investigators, mitigation specialists in capital death cases, and court reporting services. For other due process services, the established rates in effect are the rates approved by each circuit's Indigent Services Committees as of June 30, 2006. Rate charts by circuit are available on JAC's website:

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

When there are no specific rates established by law, JAC relies on the recommendations from the Indigent Services Advisory Board (ISAB) for guidance. The ISAB's recommendations are as follows:

<b>Expert Witness Categories</b>	<b>Average</b>	<b>Sugg. Ranges</b>
Expert Witness Fees - Per Hour	\$154.17	\$150 - \$200
Expert Witness Fees - In Court - Per Hour	\$147.17	\$125 - \$150
Expert Witness Fees - Out of Court- Per Hour	\$111.20	\$50 - \$150
Exp. Wit. Fee - Waiting to Testify - Court - Per Hour	\$71.33	\$50 - \$75
Exp. Wit. Fee - Waiting to Testify - Depo.- Per Hour	\$66.83	\$50 - \$75
Expert Witness Fee - Travel - Per Hour	\$63.50	\$50 - \$75
Expert Witness Fees - Per Case	\$1,580.00	\$1,500-\$2,000
Psychological Exam - Per Exam	\$246.88	\$150 - \$400
Psychologist - In Court/Testify - Per Hour	\$136.60	\$125 - \$150
Psychologist - Waiting to Testify - Per Hour	\$84.80	\$50 - \$75
Medical Doctors - In Court or Depo. - Per Hour	\$156.43	\$150 - \$200
Medical Doctors - Out of Court - Per Hour	\$128.33	\$100 - \$125
Other Pre-Trial Expert - In Court - Per Hour	\$102.67	\$75 - \$100
Other Pre-Trial Expert - Out of Court - Per Hour	\$77.00	\$50 - \$75

To assist the defense, JAC maintains lists of due process vendors with current JAC contracts. An attorney may use this information to search for potential vendors for his or her cases. The information on the list is from the vendors and has not been verified by JAC. It is the responsibility of the defense using the services of a listed vendor to check their professional qualifications. The listing of a vendor on JAC's list does not mean that

JAC recommends or approves the hiring of the vendor or that the vendor will accept the established rates.

For investigators, interpreters, experts, and similar vendors who bill on an hourly basis, it is the attorney's burden to establish a reasonable amount to authorize for services of that provider. Generally, the attorney should consult with the provider to determine an appropriate amount based upon the facts and complexities of the case. For payment purposes, the order authorizing the services needs to contain the amount authorized (cap) for due process vendors who bill on an hourly basis.

A common misperception is that JAC directly pays the billings submitted by attorneys and due process vendors. Rather, DFS is the state agency that actually issues payments. Pursuant to ss. [27.5304](#) and [29.007](#), F.S., JAC is responsible for reviewing billings for compliance with statutory and contractual requirements. Once JAC staff has completed its review, the billing is uploaded to the state accounting system for DFS review. Pursuant to s. [215.422](#), F.S., DFS has the authority to independently audit any billing before approving it for payment. If the billing fails to meet DFS requirements, it will be returned to JAC for further action. Even if a court order directing payment is entered, a billing that does not meet DFS requirements may be rejected upon DFS audit.

### ***Mental Health Experts***

An instance that generally causes confusion is when a court authorizes the services of a mental health expert. When an expert is authorized to assist an assistant public defender or regional counsel, the expert is not paid directly by JAC. Instead, the expert submits his or her billing to the applicable office. The office will then forward the billing in the appropriate format to JAC's Accounting Section to process in the same fashion as other due process costs. The expert only submits his or her billing directly to JAC when the case involves private court-appointed counsel, indigent for costs counsel, or a *pro se* defendant (private court-appointed and indigent for costs cases).

Another area of confusion arises in determining whether the defense or court administration is responsible for payment of a court-appointed expert. The appointment of mental health experts for purposes of sanity and competency evaluations is governed by s. [916.115](#), F.S. Under this provision, the Court can appoint up to three non-confidential experts to evaluate the defendant's competency to proceed. However, the defense is only entitled to retain a single confidential expert to assess competency and sanity issues. If the defendant then waives confidentiality, the Court may appoint up to two additional experts to assess competency to proceed.

- (1) The court shall appoint no more than three experts to determine the mental condition of a defendant in a criminal case, including competency to proceed, insanity, involuntary placement, and treatment. . . .
- (2) The court shall pay for any expert that it appoints by court order, upon motion of counsel for the defendant or the state

or upon its own motion. If the defense or the state retains an expert and waives the confidentiality of the expert's report, the court may pay for no more than two additional experts appointed by court order. If an expert appointed by the court upon motion of counsel for the defendant specifically to evaluate the competence of the defendant to proceed also addresses issues related to sanity as an affirmative defense, the court shall pay only for that portion of the expert's fees relating to the evaluation on competency to proceed, and the balance of the fees shall be chargeable to the defense.

.....

(d) An expert retained by a defendant who is indigent for costs as determined by the court and who is represented by private counsel, other than private counsel appointed under s. [27.5303](#), on a fee or pro bono basis, or who is representing himself or herself, shall be paid by the Justice Administrative Commission from funds specifically appropriated for these expenses.

§ [916.115](#), F.S. Under this provision, the Court can allow the defense to retain a confidential expert, which is paid for by the defense (JAC in private court-appointed and indigent for costs cases). If the defense waives confidentiality, the Court can appoint up to two more experts. These experts will be paid by court administration, except to the extent the experts' evaluations relate to an affirmative defense of sanity (assuming the defense is the party who moved for the appointment of the experts). Generally, JAC is primarily responsible for payment of defense/confidential experts in private court-appointed and indigent for costs cases.