



**Common Questions & Answers  
Regarding Payment of Attorney Fees, Due Process Costs, and  
Related Expenses for Court-Appointed Counsel and Indigent for  
Costs Cases**

July 2019

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## Responsibilities of Court-Appointed Attorneys

### 1. How does an attorney apply for inclusion on a registry?

Under s. 27.40(3), F.S., the chief judge for each circuit is responsible for selecting attorneys for inclusion in the registry for court appointments. JAC does not select or otherwise recommend attorneys for inclusion in a court-appointed registry. Those attorneys seeking to be added to a court registry will need to contact the appropriate court official for information regarding the process to become a registry attorney in a particular circuit. JAC maintains a [Circuit Registry Contact List](#) on its website. Information regarding the process to become a registry attorney may also be posted on a judicial circuit's website.

For inclusion on the Capital Collateral Attorney Registry, please submit a completed [Application for Statewide Capital Collateral Attorney Registry](#).

### 2. When does an attorney or due process vendor need to sign a contract with JAC?

JAC's contracts with registry attorneys, indigent for cost attorney, and due process vendors have a term corresponding with the state's fiscal year commencing on July 1st and ending on June 30th.

The contracts for the next fiscal year will be posted on JAC's website in mid-June. With the exception of capital collateral attorney contracts, the contracts will only be available through [My JAC](#). Information on how to set up an account and log into the website is available on JAC's website.

Attorneys:

<https://www.justiceadmin.org/login/register.aspx>

[Quick Reference Guide for Attorneys](#)

Due process vendors:

<https://www.justiceadmin.org/login/newVendorSteps.aspx>

[Quick Reference Guide for Due Process Vendors](#)

Prior to executing a contract, a properly completed Substitute Form W-9 must be submitted to the Department of Financial Services. Information and the Substitute Form W-9 are available on DFS's website at:

<https://flvendor.myfloridacfo.com/>

As part of completing the contract, attorneys and due process vendors are required to certify that they have submitted a Substitute Form W-9 to DFS. The form may be submitted electronically through DFS's vendor website.

The failure to execute a registry contract in a timely fashion may result in an attorney being removed from the registry. JAC provides regular reports to each circuit regarding the attorneys who have executed the JAC Contract for each fiscal year.

In most instances, an attorney or due process vendor will only need to execute a single contract during the course of the fiscal year. The main exception to this would occur if the attorney or due process vendor changes a tax identification number.

Once an attorney signs the statewide registry contract, the attorney would be eligible for compensation for all court appointments, including off-registry appointments, made during that fiscal year from any circuit. Attorneys should be aware that executing the Registry Contract does not automatically result in registry appointments. An attorney will still need to seek inclusion in one or more court-appointed registries in order to receive appointments. The registry contract will ONLY become applicable for a particular circuit when the attorney is approved by the Chief Judge in that circuit and JAC receives the registry including the attorney's information from the circuit registry clerk.

**3. When does an attorney notify JAC that the attorney has received a case?**

An attorney must notify JAC within 30 days of appointment to a case by providing the order of appointment and (a) charging document in criminal cases or (b) the initial pleading in civil cases (except Chapter 39 cases). The initial pleading is typically an information, indictment, petition, or other legal pleading. In appellate cases, a copy of the notice of appeal should also be supplied. The documents should be submitted through the New Case Opening System in [My JAC](#).

Pursuant to the registry contract, if the order of appointment is not submitted within (1) 90 days of entry of the order of appointment or (2) prior to the submission of a motion or billing, whichever is earlier, an administrative fee of \$25 may be assessed against any payment of attorney fees.

**4. When must a billing be submitted in a case?**

An attorney or due process provider must submit bills for fees, costs, and related expenses within 90 days after the disposition of the case at the lower court level, notwithstanding any appeals. If the billing is untimely, then pursuant to contract, JAC may impose a penalty of a 15 percent reduction for any bill for attorney fees, due process costs, and/or related expenses. Additionally, for cases that reach final disposition on or after July 1, 2010, a penalty of 50 percent may be imposed if the billing is received more than one year after final disposition and a penalty of 75 percent may be imposed if the billing is received more than two years after final disposition.

**5. If a disposition order is signed by a court, *nunc pro tunc* to an earlier date, which date does JAC use to determine applicability of the penalty?**

The date the order is rendered by the court is the date that used to determine whether the penalty applies. This date of rendition is the date the clerk of court stamps on the order when the order is filed in the court file. Generally, the date an order is executed by the court is the date the order is filed with the clerk. In some instances, the order may not be filed until the next business day.

Nonetheless, the *nunc pro tunc* date is never the date used to determine whether the penalty is applied. The date of rendition can never precede the date that the court signed the order.

**6. When does JAC rely on the *nunc pro tunc* date in an order?**

When a court makes an order *nunc pro tunc*, the court is memorializing a prior act of the court that was not rendered in an order. For example, if the court appointed an attorney to represent a defendant, but did not enter an order of appointment, then the court could enter a later order *nunc pro tunc* back to the date of the original appointment. Thus, JAC will accept the *nunc pro tunc* date in orders of appointment of attorneys, experts, and other due process providers as long as the order is memorializing a prior ruling of court. In some instances, an attorney may obtain a *nunc pro tunc* order that does not reflect a prior ruling of the court. In such instances, JAC will object to any payment based on the terms of that order.

**7. In a case involving a pretrial diversion program, failure to appear, or defendant found incompetent, what is the date of disposition for purposes of applying a penalty for untimely billing?**

As a general rule, a penalty for untimely billing does not apply to these types of cases. JAC is paying based on the circumstances rather than on disposition. However, if the court enters a dispositional order such as an order of dismissal, then the penalty will run from that date.

**8. How do I know that JAC has all of my cases in the database?**

The Justice Administrative Commission allows court-appointed attorneys to login into [My JAC](#) and view case information.

## Flat Rates

### 9. When did the flat rates become effective?

The statewide flat fee structure went into effect for dates of appointment on or after July 1, 2007.

### 10. What are the flat rates for attorney fees for appointments on or after July 1, 2007?

The flat rates for appointments on or after July 1, 2007, are set forth in the General Appropriations Act for each fiscal year. The rates are posted on [JAC's website](#). The new flat rates for certain case types may also be found on JAC's website.

### 11. An attorney is appointed to a case in which the information or indictment contains multiple counts. How should the attorney bill the case?

Pursuant to s. 27.5304(1), F.S., the attorney shall be compensated with the flat fee for the most serious offense for which the attorney represented the defendant regardless of the number of counts in the information or indictment.

### 12. If an attorney withdraws (or is otherwise discharged) from a case and another attorney is appointed to the case, can the original attorney bill immediately upon withdrawal from the case?

JAC will not review and process the case until it is disposed of and all attorneys who worked on the case have submitted billings. Except for capital cases with co-counsel, where multiple attorneys were appointed to a case, any bill received prior to final disposition will be held until the case reaches final disposition and all appointed counsel have submitted their bills. If an attorney does not intend to seek compensation, the attorney may submit a fee waiver form in lieu of a billing. The [fee waiver form](#) is posted on JAC's website.

### 13. If an attorney withdraws from a case to which a new attorney was appointed, will the new attorney be able to bill the full flat rate?

When JAC receives the bills of all attorneys on a completed case each attorney will receive a portion of the flat fee to be determined by the court. The total compensation for all of the attorneys will not exceed the full flat fee for the case under the GAA absent proceedings seeking extraordinary compensation under s. 27.5304(12), F.S. When an attorney is permitted to withdraw from a case and another private attorney is appointed to represent a client, the attorney must indicate on the JAC Invoice/Voucher that an attorney was appointed 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 voucher cover that another attorney was appointed on the case. If the attorney fails to disclose the

appointment of another attorney on a case and JAC issues payment in error based upon that representation, then the attorney may be required to return the payment to JAC. If an attorney does not intend to seek compensation, the attorney may submit a fee waiver form in lieu of a billing. The [fee waiver form](#) is posted on JAC's website.

**14. An attorney has been appointed to a portion of an existing case (i.e., sentencing, motion to withdraw plea, restitution hearing, etc.); at what rate will the attorney be paid?**

The attorney will be paid a portion of the flat fee as determined by the court. The attorney will need to submit a billing in the normal fashion. Upon receipt of a letter of objection, the attorney may file a motion for attorney fees.

**15. The rate for a court-appointed case type is not in the General Appropriations Act. At what rate will the attorney be paid?**

The Legislature included the case types for payment of fees for court-appointed counsel in the General Appropriations Act. With limited exceptions, such as attorneys appointed to representation witnesses in criminal proceedings, JAC has no authority to pay fees in other case types not included in the General Appropriations Act.

**16. The court/clerk made a mistake and appointed an attorney to a case in which the Office of the Public Defender and/or Office of Criminal Conflict and Civil Regional Counsel should have been appointed. Will the attorney be paid for work on the case?**

No. JAC has no authority to pay for cases that have not been properly appointed. The court must first appoint the Public Defender for criminal cases and other cases where the Public Defender is authorized to provide representation. If the Public Defender withdraws due to conflict, the court must appoint the Office of Criminal Conflict and Civil Regional Counsel (Regional Counsel). Alternatively, if the case is a civil case for which Regional Counsel is authorized to provide representation, the court must first appoint Regional Counsel. If the Regional Counsel withdraws due to conflict, only then may the court appoint private counsel from the registry.

The attorney is responsible for verifying that, as applicable, the Public Defender and Regional Counsel have properly withdrawn from the case. The withdrawal of the Public Defender or Regional Counsel from an earlier proceeding shall not create any presumption that those offices continue to have a conflict for later proceedings including, but not limited to, appeals, violation of probation or community control proceedings, motions for post-conviction relief, and any other extraordinary remedies for which court-appointed counsel is authorized under Florida law.

As a general rule, Regional Counsel has primary responsibility for providing representation to indigents in civil cases. Two limited exceptions to this requirement

are for guardianship proceedings under Ch. 744, F.S., where the court cannot determine indigency at the time of appointment and for parental notice of abortion proceedings under s. 390.01114, F.S. In these instances, a finding of conflict is not necessary. Another limited exception is pursuant to s. 39.01305, F.S., where attorneys are appointed to represent children with certain special needs. In these instances, a finding of conflict is not necessary.

**17. Does an attorney have to keep hourly records if the attorney intends to bill the flat fee?**

No. However, if an attorney has reason to believe that the flat rate is confiscatory, and he or she may seek relief under s. 27.2753(12), F.S., then the attorney must maintain contemporaneous billing records. JAC has no authority to pay an hourly invoice if contemporaneous billing records were not kept.

The failure to maintain accurate detailed contemporaneous records can constitute a waiver of the right to seek compensation in excess of the flat fee. A finding by JAC that an attorney waives the right to seek compensation in excess of the flat fee established in s. 27.5304, F.S. and the General Appropriations Act, for failing to maintain detailed and contemporaneous records or for failing to allow JAC to inspect those records shall be presumed to be valid, unless a court concludes that JAC's finding is not supported by competent and substantial evidence.

**18. The State has filed notice that it intends to seek sentencing under the habitual felony and/or prison release reoffender laws. How would this reclassify the charge for billing purposes?**

Generally, the rate is determined by the highest charge on the information regardless of sentence enhancements. However, if the sentence enhancement allows for a sentence of life imprisonment, then the Felony-Punishable by Life flat fee will apply. Please provide any such enhancement documents along with the charging document if available when the case is opened or with the billing.

**19. If an attorney is appointed to multiple cases for the same defendant, may the attorney bill one case on an hourly basis and the other cases on a flat fee basis?**

No. Under the terms of the JAC Contract an attorney must either bill all of the cases on a flat fee basis or the attorney must submit a single extraordinary billing covering all of the cases. When an attorney is appointed to multiple cases involving the same defendant within 30 days or when multiple cases involving the same defendant resolve within 30 days, the attorney is contractually barred from seeking extraordinary compensation on one or more of the cases while seeking flat fee compensation on the other cases.

**24. An attorney has been appointed for a resentencing. What is the applicable flat fee?**



For billing purposes, the applicable flat fee will be based upon the highest charge still pending at the time of appointment. Typically, this will be the highest charge for which the defendant was convicted. However, if the resentencing is limited to particular charges, the highest charge for resentencing purposes will determine the applicable charge for billing purposes. For example, if the matter is remanded for a resentencing as to a second degree felony, the applicable charge for billing purposes will be the second degree felony even if the original charging document contained higher charges. The dispositional document will be the new judgment and sentence entered following resentencing.

For resentencing hearings involving a defendant who received a life sentence (or life sentence equivalent) when the defendant was a juvenile at the time of the offense, the charge for billing purposes will be based upon the highest charge in the sentencing documents. Generally, the applicable charge will range from capital first degree murder (death penalty waived) to a felony punishable by life.

Depending on the reason for the resentencing, JAC would either pay the flat fee or issue a full performance letter. For death penalty cases involving a remand for a new penalty phase, JAC anticipates that a flat fee billing for such cases will be paid without objection. For similar reasons, JAC also anticipates that a flat fee billing in juvenile life sentencing cases will be paid without objection. For other cases, a full performance letter is likely to be issued since the scope of the appointment is limited to a resentencing. In most instances, JAC will not request a hearing for such requests. Once the court approves an appropriate amount (up to the full flat fee), JAC will then process the billing for payment.

## **Extraordinary Billing**

### **25. Can an attorney seek compensation in excess of the flat fee under the General Appropriations Act?**

Yes. Section 27.5304(12), F.S., contains provisions allowing an attorney to seeking compensation in excess of the flat fee. The attorney has the burden to establish through competent substantial evidence that the case involved unusual and extraordinary efforts warranting departure from the statutory fee schedule.

### **26. Are there any requirements that must be met prior to filing a motion for extraordinary compensation?**

Yes. Under s. 27.40(7)(b), F.S., an attorney must maintain accurate and contemporaneous hourly records of the time spent representing the client. The failure to maintain such records constitutes a waiver of the right to seek compensation in excess of the flat fee.

Also, prior to filing the motion, an attorney must submit an intended billing seeking

compensation in excess of the flat fee along with all supporting documentation to JAC. JAC shall review the billing and supporting documentation for completeness and compliance with contractual and statutory requirements. If JAC objects to any portion of the proposed billing, the objection and reasons therefor shall be communicated in writing to the attorney. The attorney may thereafter file the motion, which must specify whether JAC objects to any portion of the billing or the sufficiency of documentation, and shall attach JAC's letter stating its objection. Additionally, the motion for order approving payment of attorney fees in excess of the limits prescribed in s. 27.5304, F.S., and the General Appropriations Act must include a copy of the intended billing; the supporting affidavits and all other necessary documentation that was supplied to JAC; and JAC's letter stating its objection(s). The motion must also specify the number of witnesses interviewed or deposed or both, describe the complexity of the factual and legal issues, and specify the length of the trial.

**27. Who hears a motion for extraordinary compensation?**

Section 27.5304(12)(b), F.S., requires an evidentiary hearing be heard whenever an attorney seeks compensation in excess of the flat fee or statutory limitations. The Chief Judge for the circuit or designee shall conduct the evidentiary hearing. It is the attorney's responsibility to ensure that the motion is set before the correct judge. [JAC maintains an Extraordinary Fee Judge List by Circuit.](#)

**28. What evidence should be presented at hearing?**

The finding of the trial court must be supported by competent substantial evidence. An attorney seeking compensation should present evidence regarding the number of witnesses, the complexity of the factual and legal issues, the length of trial, and any other evidence that show that the case involved unusual and extraordinary efforts.

Pursuant to ss. 27.40 and 27.5304, F.S., JAC's objections are presumed to be correct. To overrule JAC's objections, the court must find in writing that competent substantial evidence exists to overcome the presumption. The attorney is 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.

In order for a court to authorize hourly billing in a criminal case in excess of double the flat fee, the number of work hours must exceed 75 hours *OR* the number of state witnesses deposed must exceed 20 witnesses. If a criminal case does not meet these minimum criteria, then the court may not award more than double the flat fee under the General Appropriations Act.

Per the JAC Contract, an attorney providing representation in dependency, termination of parental rights, and other civil cases appointed on or after July 1, 2007, may not seek compensation in excess of the flat fee set forth in the General

Appropriations Act unless the number of hours worked on the case or cases appointed to the same client would allow for payment of at least double the total flat fee at the hourly rate of \$75 per hour.

**29. If the court allows for hourly billing, what are the rates authorized?**

Pursuant to s. 27.5304(12)(d), F.S., the hourly rates cannot exceed \$75 per hour for non-capital cases and \$100 per hour for capital cases. For billing purposes, a capital case is an offense for which the potential sentence is death, the state has filed a notice listing the aggravating factors, and the state has not waived seeking the death penalty and the appointed attorney is on the capital death registry or is otherwise death-qualified. .

If an attorney is appointed after the state has waived death or death is not a potential sentence, then the non-capital rate of \$75 per hour applies.

**30. May an attorney seek a court order to have a case declared “unusual and extraordinary” prior to submission of a billing in a case?**

No. Under s. 27.5304(12), F.S., the determination of whether a case involved unusual and extraordinary effort is a matter to be determined at the extraordinary fee hearing. This section requires an evidentiary hearing at which the court must make specific findings in order to award a fee in excess of the flat fee or statutory limitations.

## **Indigent for Costs**

**31. When is JAC authorized to provide costs for an indigent defendant?**

Not all indigents qualify for due process services through JAC. JAC only provides due process costs for those case types in which there is a statutory or constitutional right to appointed counsel. For example, JAC would pay for appropriate due process costs in criminal cases, delinquency cases, and dependency cases. JAC would not pay for due process costs in a foreclosure action, divorce case, or probate case.

**32. How does an attorney have a defendant declared indigent for costs?**

An attorney must file a written motion seeking to have a defendant declared indigent for costs. Attached to the motion should be two affidavits; a completed clerk’s application for indigency and an affidavit attesting to the estimated amount of attorney fees. A copy of the motion with the affidavits should be served on JAC a minimum of five business days before any hearing on the motion. A motion to have a defendant declared indigent for costs must not be made *ore tenus* in that JAC is an essential party to the motion and is entitled to notice and an opportunity to be heard.

**33. After the court declares a defendant indigent for costs, what should the attorney do?**

An attorney must execute the JAC contract for indigent for costs cases as required by ss. 27.52(5)(d) and 29.007, F.S. Until the attorney executes this contract, JAC cannot pay any due process costs. The attorney must also provide JAC with the following documentation:

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

These documents are used to officially open a case in JAC's database once a defendant is declared indigent for costs. An attorney must submit the required case opening documents within 30 days of the date the client is declared indigent for costs. Until JAC receives these documents and the signed contract, JAC will not process for payment any billings from due process providers.

**34. Where can an attorney find the current JAC contract?**

The contract for Indigent for Costs cases is available on JAC's website at [http://www.justiceadmin.org/court\\_app\\_counsel/agreementscontracts.aspx](http://www.justiceadmin.org/court_app_counsel/agreementscontracts.aspx)

If privately retained counsel intends to seek reimbursement for due process costs paid by counsel or counsel's firm, a properly completed Substitute Form W-9 must be submitted to the Department of Financial Services. Information and the Substitute Form W-9 are available on DFS's website at:

<https://flvendor.myfloridacfo.com/>

**35. Is there a way for an attorney to determine what documents JAC has on file for a case?**

Yes. If the attorney establishes an account with JAC, an attorney has the ability to see if the required documentation has been received by JAC. A printout of this information may be helpful to give to court reporters or other vendors who request verification prior to providing services on a case.

**36. What information should the order declaring a defendant indigent for costs contain?**

In addition to finding a defendant indigent for costs, the order should also delineate what services are authorized and the amount authorized for each service. In

addition, if the rates requested exceed the rates authorized by law, then the order should also include the rate authorized for the service.

If the order does not authorize costs with specificity, then a supplemental order may be necessary for JAC to pay due process costs. This can result in delay in payment for due process providers. If a supplemental order is necessary, JAC is entitled to notice and an opportunity to be heard before the court authorizes any additional due process costs. A copy of the motion should be provided to JAC at least five business days prior to any hearing on the motion.

### **37. What due process rates apply?**

Pursuant to s. 27.425, F.S., the Legislature sets the rates for due process costs annually in the General Appropriations Act. The Legislature has adopted uniform statewide rates for court reporting and private investigator services effective July 1, 2010, and for mitigation specialists in capital death cases effective July 1, 2011. The same rates that apply to court-appointed cases apply to indigent for costs cases.

Rate charts by circuit are available on JAC's website. If a rate is not set, then JAC relies on the rates recommended by the Indigent Services Advisory Board or another source.

In order to exceed the rate established by law, an attorney has the burden to show diligent efforts to obtain due process services within the rates established by law. The order allowing the defense to exceed the rates should contain findings regarding those diligent efforts.

The sections below relating to attorney expenses, billing and due process costs also apply to indigent for costs cases.

### **38. Does JAC pay for travel expenses for privately retained counsel?**

Unless the attorney is providing services on a *pro bono* basis, JAC does not pay for travel expenses for privately retained counsel. Such travel expenses are an overhead expense that should have been considered when the attorney set his or her fee for the case. For example, if an attorney based in North Florida makes a business decision to provide representation in a case from South Florida, JAC is not responsible for paying travel expenses for the attorney associated with traveling to South Florida.

### **39. Do *pro bono* attorneys representing children with certain special needs pursuant to s. 39.01305, F.S., have access to due process costs?**

Yes. If a *pro bono* attorney intends to pursue due process costs on any case that qualifies under s. 39.01305, F.S., the *pro bono* attorney must follow the procedures outlined in Section II(9) in 2018-2019 Indigent for Cost (IFC) Contract.

## Attorney Expenses

### **40. May an attorney bill for mileage incurred while providing representation?**

JAC will pay mileage only when the destination is in excess of 50 miles (one-way) of the attorney's office. Generally, travel expense including mileage will require court approval. If an attorney is approved for a registry outside of the circuit in which the attorney's office is located, JAC reserves the right to object to mileage to travel to the circuit of the case. Generally, the attorney will not be paid for mileage, travel time, or other travel expenses to travel to the circuit of a case because the attorney made a business decision to participate in that registry. Mileage may be appropriate where the attorney is traveling to a rural county where no or limited registry attorneys are available to accept court appointments.

In indigent for costs cases, an attorney may not bill for mileage unless providing services on a *pro bono* basis. Mileage is considered part of overhead and is part of the attorney fees.

Any request for mileage (or other travel expenses) must be submitted using the travel voucher form approved by the Florida Department of Financial Services pursuant to s. 112.061, F.S. Information on how to complete the travel voucher is posted on JAC's website. Reimbursement for mileage is limited to actual mileage traveled using a personal vehicle. JAC reimburses for the actual mileage incurred during a trip. When a traveler travels on multiple cases, the total amount of mileage billed across those cases cannot exceed the actual distance traveled. A traveler cannot seek reimbursement for the same mileage traveled in more than one case. Mileage must be apportioned appropriately so that the traveler receives compensation for the actual mileage traveled using a personal vehicle.

### **41. May an attorney bill for costs for postage, telephone calls, copies, and/or online research required to complete a case?**

No. The flat rate includes these office overhead type expenses. Similarly, for cases billed hourly under s. 27.5304(12), F.S., these types of expenses are included in the hourly rate. In indigent for costs cases, these expenses are considered office overhead and are not reimbursable due process costs.

### **42. May an attorney bill for costs associated with obtaining documents, medical records, or other discovery?**

An attorney may be reimbursed for costs associated with obtaining documents with limited exceptions. In order to obtain reimbursement, the expense must be supported by a court order. The court order should indicate the amount authorized to obtain such documents.

JAC does not pay for documents obtained from the clerk of court. Under ss.57.081 and 28.345, F.S., the clerk should not require prepayment to provide copies of court documents requested by indigents or their attorneys.

**43. Does JAC pay for mediation expenses in dependency or other civil cases?**

No. The attorney would be responsible for obtaining a waiver (or reduced charge if applicable) based upon the client's indigency for expenses associated with mediation services.

## **Billing**

**44. Can an attorney submit interim billings in criminal cases?**

Yes. The attorney must still comply with the requirements of s. 27.5304, F.S., the JAC Contract and the Policies and Procedures prior to filing a motion for attorney fees. In particular, the attorney must submit an intended billing and await JAC's response thereto prior to filing a motion for attorney fees with the court

Interim billing applies only for criminal cases billed hourly. Interim billing does not apply to any case billed on a flat fee basis. The attorney may submit an interim bill for attorney fees after completing substantial work on a case where the attorney does not anticipate the case will reach final disposition within six months. The attorney may bill the full amount of reimbursable costs that the attorney has incurred. The decision whether to allow interim billing is at the discretion of the trial court.

**45. The defendant has failed to appear for proceedings. How does the attorney bill?**

The attorney may bill for your case 180 days after the failure to appear occurred if the defendant has not been rearrested. If the attorney bills prior to that date, the billing will be placed on hold pending passage of 180 days. When and if the client reappears, the attorney will be required to complete the case for no additional flat fee compensation.

**46. The defendant has been declared incompetent to stand trial. How does the attorney bill?**

The attorney may bill for your case 180 days after the finding of incompetency if the defendant remains incompetent. If the attorney bills prior to that date, the billing will be placed on hold pending passage of 180 days. When and if the client is declared competent, the attorney will be required to complete the case for no additional flat fee compensation.

**47. The defendant was placed in a pretrial diversion program. How does the attorney bill?**

The attorney may bill 180 days after placement if the defendant remains in the program or has completed pretrial diversion, and the state attorney has not filed a voluntary dismissal or *nolle prosequi*. If the attorney bills prior to that date, the billing will be placed on hold pending passage of 180 days. However, if the client fails to complete the program and goes back before the court, the attorney must complete the case for no additional compensation.

The attorney may also bill upon the state attorney filing a notice of voluntary dismissal or *nolle prosequi*.

**48. For criminal and delinquency cases, when is a case considered to be on pretrial diversion for billing purposes?**

JAC typically pays attorney fees when a case reaches final disposition. A case reaches final disposition for billing purposes when the trial court either adjudicates the defendant guilty or withholds adjudication. Thus, in addition to the situation that arises when the state attorney offers a defendant a pretrial diversion program, where a defendant enters a plea, but the trial court defers on adjudication until a later date, the case is considered to be on pretrial diversion for billing purposes. In both of these situations, JAC will not process a billing for payment until either a dismissal is entered or 180 days passes from the date the defendant entered the pretrial diversion program.

**49. Must I bill simultaneously for all cases appointed on the same defendant within a 30 day period?**

Yes. Moreover, under the terms of the JAC registry contract an attorney must either bill all of the cases on a flat fee basis or the attorney must submit a single extraordinary billing covering all of the cases.

**50. If an attorney is appointed to multiple cases for the same defendant within 30 days, what will JAC use as the date of final disposition for purposes of the penalty for untimely billing?**

JAC will use the date the last case reaches final disposition as the date of final disposition for situations in which an attorney is appointed to multiple cases for the same defendant within 30 days.

**51. Can JAC require an appellate attorney to submit briefs along with hourly bills?**

Yes. Under the registry contract, an attorney shall supply a copy of the briefs filed by the attorney in the case.



**52. For a criminal case, what documentation does JAC require as a charging document?**

For a felony case, the attorney must supply an information or indictment as the charging document. If no charges were filed by the state attorney, then the attorney will need to provide other documentation such as a probable cause affidavit or police report that establishes the offense for which the defendant was arrested. If the state attorney does not file formal charges, then the flat fee for no information cases applies.

For a misdemeanor case, if no information is filed, the arrest report would suffice.

For a violation of probation or community control case, the violation affidavit is the charging document.

**53. What is the process to change an address on file with JAC?**

If the only change is a change of address, then a change of address request needs to be submitted through *My JAC*. For payments through state warrants, JAC can only remit payments to the address on the applicable Substitute Form W-9. Problems associated with changing addresses can be alleviated by electing to receive payment through electronic funds transfers rather than mailed warrants.

**54. What is the process to change a tax ID (FEIN)?**

Any change involving a new tax ID (FEIN) requires the execution of a new contract. Until a new contract is executed, JAC cannot remit payment based upon a new tax ID. If an attorney changes firms, in most cases, the attorney will need to execute a new contract because of the change in tax ID.

Prior to executing the new contract, a properly completed Substitute Form W-9 must be submitted to the Department of Financial Services. Information and the Substitute Form W-9 are available on DFS's website at:

<https://flvendor.myfloridacfo.com/>

As part of completing the contract, attorneys are required to certify that they have submitted a Substitute Form W-9 to DFS. The form may be submitted electronically through DFS's vendor website:

Any pending invoices listing the prior tax ID will be paid to that tax ID at the address on file for that tax ID. If you wish to change pending invoices to a different tax ID, you will need to submit an amended JAC Invoice Voucher cover. If you are concerned about JAC paying invoices to the prior tax ID, you may request to withdraw those invoices pending submission of amended voucher covers. To

submit a request to withdraw, please complete the [Request to Withdraw JAC Voucher Cover/Invoices form](#).

As to future invoices, they will be paid based upon the tax ID on the JAC Invoice Voucher cover. If the voucher cover references the former tax ID, then JAC will pay the invoice to the address on file for that tax ID. Similarly, if the voucher cover references the present tax ID, then JAC will pay to the address on file for the present tax ID.

**55. An attorney is appointed to represent a defendant in a delinquency case. This case is direct filed as an adult. How does the attorney bill?**

If there is no delinquency petition filed, the amount of compensation an attorney receives depends on whether the attorney continues to represent the defendant in the criminal case.

1. If the attorney continues to represent the defendant in the adult case, then the attorney will be compensated at the appropriate rate for the criminal case based upon the degree of the offense. The attorney will not be entitled to an additional flat fee in relation to the delinquency case. The delinquency case merges into the adult case for billing purposes.
2. If the attorney does not continue to represent the defendant in the adult case, then the attorney will receive the flat fee applicable to direct files.

If a delinquency petition is filed and then dismissed upon the filing of adult charges, then the attorney can bill the flat fee for the delinquency case based upon the dismissal. If the attorney continues to represent the defendant in the adult case, the attorney may also be compensated for the adult case.

**56. If an attorney is appointed to a violation of probation/community control (VOP/VOCC) and is then appointed to a second instance of VOP/VOCC under the same case number, how does the attorney bill?**

This depends on whether the initial VOP/VOCC reached disposition prior to the second instance of VOP/VOCC. If an attorney is appointed to a VOP/VOCC and that matter reaches final disposition prior to the filing of a second affidavit of VOP/VOCC then the attorney could bill a flat fee for each VOP/VOCC. For example, if an attorney was appointed to a VOP on January 1<sup>st</sup> and the defendant was sentenced on March 1<sup>st</sup> and then a new VOP was filed on June 1<sup>st</sup>, then the attorney could bill a flat fee for the January 1<sup>st</sup> case and a flat fee for the June 1<sup>st</sup> case.

However, if the second VOP/VOCC is initiated before resolution of the first VOP/VOCC, then the matter is considered one case for billing purposes. The second VOP/VOCC is viewed as an amendment to the first VOP/VOCC rather than a new case. For example, if the attorney was appointed to a VOP on January 1<sup>st</sup>

and then appointed to a second VOP on February 1<sup>st</sup>, and sentencing occurs on March 1<sup>st</sup>, the attorney could only bill JAC for one flat fee for the VOP appointment.

**57. What is the rate for an appointment to a proceeding on a belated appeal in a criminal case?**

For billing purposes, an appointment to provide representation for purposes of a motion or petition for belated appeal is considered an appointment to a motion for post-conviction relief and is compensated at the applicable flat fee for such appointments.

## **Due Process Costs**

**58. What due process rates apply?**

Pursuant to ss. 27.425 & 27.5305, F.S., the Legislature sets the rates for due process costs annually in the General Appropriations Act. The Legislature has adopted uniform statewide rates for court reporting and private investigator services effective July 1, 2010. The Legislature adopted a maximum rate for mitigation specialists in capital death cases on July 1, 2011. Rate charts by circuit are available on [JAC's website](#). If a rate is not set, then JAC relies on the rates recommended by the Indigent Services Advisory Board.

In order to exceed the rate established by law, an attorney has the burden to show diligent efforts to obtain due process services within the rates established by law. The order allowing the defense to exceed the rates should contain findings regarding those diligent efforts.

**59. Does an attorney need to file a motion for due process services and serve JAC with this motion prior to the court approving any due process services?**

Yes. JAC has standing to participate in any proceeding regarding the approval of due process costs such as transcripts, court reporter fees, services of process, investigators, and experts. Except when prior court approval is not required, an attorney must serve JAC with a copy of the motion for due process costs prior to a court entering an order approving the due process costs. Also, a court order is always required for any due process services in excess of rates established by law. A written motion for due process service costs must specify the type of due process service requested, the rate requested, and an estimated maximum amount of costs required. The motion shall be properly served on JAC a minimum of five business days prior to the date of any hearing on the motion

**60. As a court-appointed counsel can an attorney hire an out-of-state expert witness?**

Attorneys shall not seek authorization from the court for out-of-state experts or mitigation specialists, absent a showing that there are no such providers with appropriate skills or expertise available, first, in the county in which the case was filed and, second, in any other county in the State of Florida. If the attorney obtains an out-of-state due process provider without making such a showing, the attorney shall not request reimbursement for any travel expenses including compensation for travel time on behalf of the due process provider. An order authorizing the employment must be in writing and contain specific findings regarding the unavailability of a qualified in-state expert or mitigation specialist. The attorney shall submit a copy of the order to JAC.

**61. Must a court order be obtained before an attorney may order a transcript for a court-appointed case?**

Yes. In order for JAC to pay for a deposition transcript, the court must enter a specific order finding that the transcript is necessary. A generic order authorizing transcripts prior to the taking of depositions will not suffice for payment purposes as a general rule. For example, language in the order of appointment authorizing private court-appointed counsel to order “necessary” transcripts will no longer suffice for payment purposes effective July 1, 2010. See §. 27.5305, F.S.

In order to expedite the payment process, the order authorizing transcription should reflect the date of the deposition and the name of the deponent for each deposition to be transcribed.

Transcripts should not be ordered as a matter of course. It is anticipated that private court-appointed attorneys and indigent for costs attorneys will be taking notes during any depositions. Except in complicated cases involving numerous witnesses, deposition transcripts should not be ordered merely to prepare for trial except where the attorney was not physically present at the deposition. Instead, deposition transcripts should only be ordered where the transcript is necessary for use at trial such as to impeach state witnesses or for use in support of a motion such as a verified motion to dismiss.

**62. For appellate transcripts, is an order authorizing the transcript necessary?**

As a general rule, JAC requires an order in order to pay for a transcript. For appellate transcripts only, JAC will accept the designation of the record filed with the clerk of court in lieu of an order authorizing the transcript.

**63. Does JAC pay expedited rates for transcripts?**

As a general rule, JAC only pays the regular rate for transcripts. An order authorizing

transcripts only authorizes payment at the rate for regular delivery. In order to pay at expedited rates, JAC will need a court order specifically authorizing expedited rates for the transcript. Before a court enters such an order, the attorney will need to file a motion seeking expedited rates. This motion should delineate the specific reason for the need for an expedited transcript and must be served upon JAC prior to the court considering the motion. JAC will not pay expedited rates for a transcript absent a court order authorizing expedited rates.

JAC generally pays expedited rates when the circumstances of the case warrant expedited rates such as a deposition taken on the eve of trial. However, JAC typically objects to payment of expedited rates where the reason for expedited rates is attorney inaction.

**64. When JAC receives an order authorizing deposition transcripts, what will JAC pay for?**

With an order authorizing transcripts, JAC will pay for an original plus one copy. Pursuant to s. 27.5305, F.S., JAC is not authorized to pay for more than one copy of a deposition transcript. JAC will also only pay regular rates unless the court order specifically allows for expedited rates.

In determining the number of pages to be billed, JAC will pay for a title page; index, appearance and/or contents page(s); the transcription of the testimony of the proceeding or deposition; one errata sheet for a deponent or witness; and necessary court reporter certification page(s) at the conclusion of the transcript. JAC will not pay for any pages containing word indexes, summaries, or similar information unless specifically required by court rule. All transcripts must comply with the minimum formatting requirements set forth in Florida Rule of Judicial Administration 2.535(f).

**65. Does JAC pay a listening or take down fee when the court reporter transcribes a digital or audio recording?**

For audio recordings (other than deposition and hearing transcripts), the vendor may seek either the applicable per page rate or the applicable listening fee hourly rate. A vendor cannot bill both the “per page” rate and the listening fee hourly rate.

When a court reporter seeks payments on an hourly basis for audio recordings (other than deposition and hearing transcripts), he or she should bill actual time. The court reporter is not entitled to bill an entire hour for a portion of an hour. Services performed beyond a full hour point should be billed in tenths of an hour. For example, services that begin at 10 AM and end at 11:15 AM would be billed at 1.3 hours.

See the [Chart for Billing in Tenths](#).

If the billing covers more than one date or more than one recording, a detailed hourly invoice must be provided. The detailed invoice should include the date of service, type of recording(s), and time spent transcribing the recording(s). A vendor may list

several calls within one block of time. For example, if a court reporter listened to 15 phone recordings continuously, the start time and end time would not have to be indicated for each call. The vendor would be able to indicate what time he or she started (in hours and tenths of an hour) and the time ended; however, the billing may not contain entries in which the court reporter bills for services across multiple dates in a single entry.

**66. Does JAC pay for private process servers to serve law enforcement officers?**

As a general rule, JAC does not pay for service of process on in-county law enforcement officers. Under s. 57.081, F.S., the sheriff is available to provide service of process without prepayment in cases involving indigent persons. Absent exceptional circumstances, the sheriff is capable of rendering service on law enforcement officers within the county. In order to use a private process server to serve in-county law enforcement officers, a specific court order must be provided setting forth the need for use of a private process server.

Moreover, under Florida Rule of Criminal Procedure 3.220(h)(5), service of process is not necessary to serve law enforcement for depositions:

Subject to the general provisions of subdivision (h)(1), law enforcement officers shall appear for deposition, without subpoena, upon written notice of taking deposition delivered at the address of the law enforcement agency or department, or an address designated by the law enforcement agency or department, five days prior to the date of the deposition. Law enforcement officers who fail to appear for deposition after being served notice are subject to contempt proceedings.

Under this provision, service of a witness subpoena is unnecessary. Provision of written notice to the appropriate law enforcement official at least five days prior to the date of the deposition is sufficient under the Florida Rules of Criminal Procedure.

**69. Does JAC pay for private process servers to serve State Attorneys or Inmates?**

As a general rule, JAC does not pay for service of process on State Attorneys or Inmates. If there are exceptional circumstances warrant private service of process of these individuals, the attorney must file a motion justifying private service of process.

**70. Can investigators bill for mileage?**

As a general rule, investigators are paid hourly and that hourly fee includes ordinary travel. Investigators are only paid for extraordinary mileage. Extraordinary mileage requires a trip exceeding 50 miles one way. In instances involving multiple

destinations within a county, the total mileage for the trip must exceed 100 miles. An out-of-county investigator may not bill for mileage between the investigator's office and the county of the case. If an investigator accepts cases for a circuit outside the location of the investigator's office, the investigator cannot seek reimbursement for travel time or expenses to travel to the circuit of the case absent specific authorization from the Court.

**71. What are the rates for investigators?**

The rates for investigators as with other due process providers are set annually in the General Appropriations Act. Currently, the hourly rate for private investigator cannot exceed \$40 per hour.

**72. Can an investigator bill separately for serving subpoenas?**

As a general rule, no. An investigator cannot bill for investigative time and then bill for serving a person during that time. Such billing constitutes double payment. If an investigator serves a witness, the rate applicable is the rate for private services of process if the court has authorized such service. The payment for service of process includes the time to locate and serve the witness regardless of the amount of time it takes to complete the service. As a general rule, the sheriff should be used to serve all process and must be used to serve in-county law enforcement. If an investigator is performing investigative tasks in addition to serving the witness, such as witness interviews, then the investigator may bill for time involved. However, the investigator may not bill for service of process because the investigator is already being compensated for this time for investigative tasks.

**73. How does an investigator get appointed to a court-appointed or indigent for costs cases?**

Generally, the private attorney representing the defendants selects the investigator. JAC's role is limited to providing payment for due process services either through reimbursement to the attorney or through direct payment to the due process vendor. In order for a vendor to receive direct payment from JAC, the vendor must enter into a contract with JAC and the attorney retaining the vendor's services must also have a current contract with JAC.

**74. What does a private investigator need to enter into a contract with JAC to provide services in court-appointed and indigent for costs cases?**

Any private investigator providing services in Florida must be licensed pursuant to Florida law. JAC is not authorized to pay for any private investigator services provided in Florida by a person not properly licensed pursuant to Florida law. If a due process vendor is providing services that require investigator licensing under Florida law, the vendor shall comply with the requirements to be licensed as an investigator. The vendor shall provide the investigative firm license (A license) and the private investigator license (C license) of the investigator contracting with JAC.

If the private investigative firm employs more than one private investigator who will be providing services under the Due Process Contract, the vendor shall provide the private investigative license (C license) of the primary investigator for the firm. The vendor shall also provide the private investigator licenses (C and CC licenses) of all investigators who will be providing services to be compensated through JAC through *My JAC*.

**75. An investigator firm uses more than one investigator on a case. How does the firm bill the services of each investigator?**

The lead investigator will need to certify the JAC Invoice Voucher Cover indicating all the hours worked on the case by each Class C and each Class CC investigator. Attached to the voucher cover must be an invoice or invoices clearly delineating the work done and which investigator completed the work. The JAC Investigator Invoice Voucher Cover and a model hourly statement are available on JAC's website at

[https://www.justiceadmin.org/DueProcess/index.aspx?show\\_div=2](https://www.justiceadmin.org/DueProcess/index.aspx?show_div=2)

The failure to delineate which investigator performed the work on a case may result in significant delay in payment. Also, JAC shall only compensate a single investigator for attendance at meetings with Attorney or other members of the defense team regardless of the number of investigators that attend the meeting. JAC will not pay for any time related to training investigators or investigator interns.

**76. May a Class CC investigator work on court-appointed or indigent for costs cases?**

Yes. However, absent a court order authorizing a different rate, a Class CC investigator intern will be compensated at 60 percent of the rate authorized for investigators with a Class C license. At the statewide rate of \$40 per hour, this equates to \$24 per hour.

**77. What types of services by an investigative/mitigation specialist does JAC pay for?**

The role of an investigator is to provide investigative services for an attorney such as locating and interviewing witnesses; locating and securing documents and other evidence relevant to the case; performing background checks; and researching any other factual issues relevant to the case such as credibility and character of witnesses. In those circuits that authorized use of a private process server, an investigator can also serve subpoenas on ordinary non-law enforcement witnesses; however, the investigator can only bill the flat rates applicable for private service of process regardless of the amount of time spent serving the subpoena. **An investigator cannot bill for both the time spent serving the subpoena and the flat rates for service of process.**



An investigator is not a substitute for a paralegal or secretary and cannot be used to perform administrative tasks. Examples of tasks an investigator cannot bill for include the following: picking up discovery from the state attorney; copying documents from the court file; delivering materials to the defendant; or any other tasks of a paralegal or secretarial nature.

JAC also does not provide reimbursement for clerk of court charges for documents provided to an indigent defendant. Pursuant to ss. 28.345 and 57.081, F.S., the clerk should not require any prepayment to provide certified judgments and sentences and other court pleadings. It is the attorney's responsibility to provide any documentation that the clerk of court may require such as an order of appointment, an order finding the defendant indigent for costs, or an order authorizing the defense to obtain the necessary documents.

A private investigator providing services on a case shall not provide expert or mitigation specialist services on the same case. A person serving as an expert or mitigation specialist on a case is prohibited from also functioning as a defense investigator.

**78. Does a mitigation specialist need to be licensed as a private investigator?**

Unless the mitigation specialist has another professional license in Florida that exempts the mitigation specialist from having a private investigator license, then a mitigation specialist must be licensed as a private investigator to do work on court-appointed and indigent for costs cases. Appropriate professional licenses include licenses in mental health fields, psychology, social work (i.e., LCSW – Licensed Clinical Social Worker), and law (a Florida Bar license). The professional license must be a Florida license.

**79. What is the rate for a mitigation specialist in a capital death case?**

Mitigation specialists are only authorized in capital death cases. In other cases, an investigator should be employed to handle the development of mitigating evidence. The mitigation specialist is a specialty unique to capital cases in which the state is seeking a potential sentence of death.

In capital death cases, the Legislature has authorized a rate of up to \$75 per hour for mitigation specialists to allow for specialized expertise, skills and education beyond that normally required for an investigator. Prior to the authorization of a mitigation specialist, the attorney should file a motion setting forth the specialized expertise, skills and education of the mitigation specialist that warrants compensation in excess of the rate normally authorized for a private investigator. The motion should also indicate the hourly rate requested for the mitigation specialist. **This hourly rate cannot exceed the hourly rate set forth in the General Appropriations Act (currently \$75 per hour).** If the motion is granted, the order must reflect the hourly rate and the maximum amount authorized for the

mitigation specialist. Absent an order authorizing a higher hourly rate, a mitigation specialist will be compensated at the rate authorized for a private investigator. If a mitigation specialist is appointed in a non-death case, the applicable rate is the rate for private investigators, currently \$40 per hour.

**80. Can a mitigation specialist be appointed when a defendant is subject to a sentence of life and was a juvenile at the time of the offense?**

No. However the court may appoint a forensic sentencing expert for purposes of conducting a forensic social evaluation pursuant to s. 921.1401, F.S. The rate for the service cannot exceed \$75 per hour. Under these circumstances, an investigator will also need to be appointed (at the rate of \$40 per hour) for purposes of conducting the investigatory portion of the evaluation such as gathering records and obtaining pertinent information. The scope of the expert's services will be limited to performing the forensic social work up of the defendant.

**81. For guardianship cases, does JAC pay for the examining committee appointed by the court?**

No. If the proposed ward is indigent, then the costs associated with the examining committee are paid for by Court Administration rather than JAC. In most instances, JAC only pays for attorney's fees in guardianship cases involving indigents.

**82. May a court reporter bill for the "first hour appearance fee" a second time when appearing at depositions of multiple witnesses in a single session relating to the same defendant?**

No. JAC pays for the total length of the session regardless of the number of witnesses deposed during that session. This would also apply when deposing witnesses in different cases involving the same defendant. For example, if a court reporter appears at 1:00 p.m. to 2:00 p.m. for the first case and 2:00 p.m. to 3:00 p.m. for the second case, the court reporter could not bill twice for the first hour. Instead, the billing would be for two hours as a single session.

**83. A court reporter has been requested to transcribe civil proceedings in a domestic relations case. How does the court reporter bill for these services?**

JAC only has authority to pay for costs associated with cases for which there is a right to appointed counsel. With the exception of criminal contempt proceedings, JAC has no authority to pay costs in a domestic relations case. Unless these transcripts relate to an appeal of a finding of direct or indirect criminal contempt, JAC has no authority to pay for transcripts in domestic relations cases.

**84. Does an attorney need a court order for expedited or rush service of process (subpoenas)?**

Yes. Expedited or rush services require a motion and order specifically authorizing

these services. The presence of a rush or expedited rate in the circuit administrative order does not mean JAC automatically pays it. The attorney must file a motion (with service on JAC) justifying the request for rush or expedited service. If the circuit does not have a rate for rush service, then the motion and order should reflect the rate requested.

## **Dependency and Termination of Parental Rights**

### **85. For dependency and termination of parental rights appeals, how does an attorney bill the flat fee?**

For dependency cases, an attorney may bill a flat fee of \$750 upon filing of a brief or the granting of a motion to withdraw based upon inability to file a brief in good faith due to a lack of meritorious issues. Therefore, if a brief was filed, the attorney may bill an additional \$250 once the case is final, typically upon issuance of the mandate. See s. 27.5304(6)(c), F.S. Alternatively, if a brief was filed, the attorney may file bill a single flat fee of \$1,000 once the case is final. However, if an attorney was allowed to withdraw due to the inability to file a brief in good faith, then the flat fee is limited to \$750.

For termination of parental rights cases, an attorney may bill a flat fee of \$1,000 upon filing of a brief or the granting of a motion to withdraw based upon inability to file a brief in good faith due to a lack of meritorious issues. Therefore, if a brief was filed, the attorney may bill an additional \$1,000 once the case is final, typically upon issuance of the mandate. See s. 27.5304(6)(d), F.S. Alternatively, if a brief was filed, the attorney may file bill a single flat fee of \$2,000 once the case is final. However, if an attorney was allowed to withdraw due to the inability to file a brief in good faith, then the flat fee is limited to \$1,000.

If the attorney is billing the flat fee, JAC does not require the attorney to provide JAC with a full copy of the appellate brief. The attorney only needs to provide enough of the brief to show that it was actually filed. Typically, the cover page, the table of contents, and the signature page are sufficient evidence to establish that the attorney filed a brief. For hourly bills, the attorney must provide JAC with complete copies of any briefs filed with the appellate court.

### **86. When can the attorney bill for dependency cases?**

The attorney may submit the initial bill at disposition, at dismissal, or upon termination of protective supervision. For later bills, the attorney may bill at the first judicial review in the second year from the date of appointment and each year thereafter.

### **87. For a termination of parental rights case, when can an attorney bill the \$200 for representation after the first year?**

An attorney can bill the \$200 at the first judicial review in the second year following their date of appointment to the termination of parental rights.

Generally, the trial court should enter an order specifically appointing the attorney to the TPR even if the attorney was initially appointed to the dependency case. If the trial court does not enter a separate order of appointment for the TPR, then JAC will rely on the date of the advisory hearing as the date of appointment for the TPR.

**88. An attorney is appointed to an upfront TPR. If the court denies the petition for TPR but finds the child dependent, when can the attorney bill for the dependency.**

Assuming the attorney remains on the case, the attorney (or a successor attorney) can bill the flat rate (\$1,000 for appointments made from 7/1/07 to 6/30/08 or \$800 for appointments made from 7/1/08 to present) for the dependency at the first judicial review following the denial of the TPR petition. Absent an order of appointment to the dependency, the date of the denial of the TPR petition shall be deemed the date of appointment for purposes of future billings.

**89. A dependency attorney's client waives disposition. When can the attorney bill the flat fee (\$1,000 for appointments made from 7/1/07 to 6/30/08 or \$800 for appointments made from 7/1/08 to present)?**

If a parent waives the disposition hearing, then JAC cannot pay the flat fee until the court actually enters an order on disposition that

- (1) Adjudicates the child dependent (or withholds adjudication);
- (2) Approves a case plan; **and**
- (3) Approves a placement for the child.

When the court holds a disposition hearing, JAC may be able to rely on the clerk's notes, the court's progress docket, or other materials to establish the case has reached a billable point. JAC can rely on those documents to establish that there was an oral ruling on disposition. However, when the court does not hold a disposition hearing, the court cannot have made an oral ruling.

**90. In a dependency case, an attorney is appointed at shelter. DCF thereafter files a petition to terminate parental rights in lieu of a petition for dependency. Can the attorney bill for representation on the dependency?**

No. If DCF files a TPR petition in lieu of a dependency petition, then the case is a TPR case rather than a dependency case. The type of petition filed by DCF determines whether the case is a dependency case or a TPR case. When DCF immediately files a TPR petition following the shelter, the attorney can only bill for the TPR once the TPR case reaches disposition. If DCF files a dependency petition but subsequently amends it to a TPR petition, then the attorney could bill for the

dependency and for the TPR. The attorney would be allowed to bill both fees at the disposition for the TPR case.

**91. An attorney was appointed to a dependency case which reaches disposition. DCF then files a TPR petition. The trial court does not enter an order of appointment to the TPR. What is the date JAC will use for purposes of billing?**

When there is no order of appointment to the TPR, JAC will use the date of the advisory (arraignment) hearing as the date of appointment to the TPR. The parent must be present at the advisory (or other post-petition hearing) to be appointed counsel. If the advisory hearing is on or after July 1, 2007, then compensation for the TPR will be pursuant to the fee structure under the General Appropriations Act even if the appointment to the dependency was prior to July 1, 2007. Also, the earliest date an attorney can be appointed to a TPR is the date the TPR petition is filed. If an order of appointment is made *nunc pro tunc* to a date prior to the date the TPR petition was first filed, the date of filing will control for billing purposes.

**92. An attorney is appointed to represent a parent in a dependency case. The case has multiple case numbers. Can the attorney bill more than one flat fee?**

No. In dependency and TPR cases, JAC pays compensation based on the representation of a parent irrespective of the number of case numbers or children involved. Pursuant to s. 27.5304(6)(a) and (6)(b), F.S., an attorney appointed to represent a parent is only entitled to one flat fee regardless of the number of children involved or the number of case numbers assigned to the case.

**93. An attorney is appointed to represent a parent in an ongoing dependency case. After the case reaches disposition, a new child is born into the case. DCF initiates a dependency proceeding as to the new child. The same attorney is appointed to represent the same parent as to the new child. Can the attorney bill a second flat fee under these circumstances?**

No. Section 27.5304(6)(a), F.S., specifically states that “[c]ompensation shall be paid based upon representation of a parent irrespective of . . . the number of children involved, including any children born during the pendency of the proceeding.” The birth of a child into an ongoing dependency case is not a billable event.

**94. If an attorney is appointed to represent more than one parent in a dependency case, can the attorney bill more than one flat fee?**

No. Pursuant to Paragraph XVIII(6) of the JAC Contract for Attorney Services, “[i]n a Dependency case, if more than one parent is represented by the same attorney, the appointment shall be considered one case appointment for billing purposes.” An

attorney appointed to represent more than one parent can only be compensated once under the flat fee payment structure.

**95. In a termination of parental rights case (TPR), how does an attorney certify that he or she either discussed the option of appeal with his or her client, or filed a motion for appeal and appointment of appellate counsel according to s. 27.5304(6)(b), F.S.**

An attorney who is appointed to a TPR case should complete and submit the [Certification of Court Appointed Attorney in Termination of Parental Rights Case](#) at the time he or she bills for the case.

**96. An attorney is representing a parent in a dependency proceeding signs who surrenders prior to the filing of a petition to terminate parental rights. The Department of Children and Families then files a petition to terminate the parent's rights based on those surrenders. Can the attorney bill JAC \$1,000 for representing the parent on the termination of parental rights.**

No. When a parent executes surrenders, they are not entitled to court-appointed counsel in a termination of parental rights proceedings absent a claim that the surrenders were involuntary. Section 39.807(1)(d), F.S., specifically provides that the right to appointed counsel does not apply "to any parent who has voluntarily executed a written surrender of the child and consent to the entry of a court order therefor." Therefore, even if the court appoints an attorney to represent a parent in a termination of parental rights proceeding after the execution of surrenders, JAC does not have statutory authority to pay attorney fees absent evidence that the parent is contesting the voluntariness of the surrenders.

**97. An attorney represents a parent who after the Department of Children and Families filed a petition to terminate parental rights, the parent signs surrenders. After the Court terminates parental rights, does the attorney need to include with the billing packet the certification regarding whether the attorney discussed right to appeal with the parent.**

Yes. However, as long as the attorney discussed with the parent at the time the parent executed the surrenders that he or she had a right to appeal and by executing the surrenders, he or she would be waiving the right to appeal the court terminating his or her rights to the child, the attorney would check the boxes stating that the attorney discussed the possibility of appeal with the parent and that no appeal will be filed. The certification remains necessary because, in some instances, prior to the court terminating parental rights, a parent may seek to have the surrenders set aside on the basis that the surrenders were coerced or involuntary. In those situations, the court-appointed attorney would be obligated to explain the parent's appellate rights to the parent if the court denies the parent's request to set aside the surrenders.

**98. An attorney is appointed to a dependency case after another attorney is discharged. The prior attorney was appointed after July 1, 2007. How much can the second attorney bill for representation of a parent?**

It will depend on the status of the case at the time of the second appointment. If the case is pre-disposition, then the first attorney and the second attorney would share the flat fee billable at disposition for the dependency case once the case reached disposition. The court would be responsible for apportioning the fee between the attorneys. Under these circumstances, the second attorney would use the first attorney's date of appointment for purposes of future billings. If the case is post-disposition but the first attorney has not yet been paid, then again the court would be responsible for apportioning the fee.

If the first attorney has already been paid, then JAC will treat the case as a reactivation of protective supervision case. The second attorney will be allowed to bill a flat fee of \$200 at the first judicial review following the attorney's appointment to the case. Under these circumstances, the second attorney would use his or her date of appointment for purposes of future billings.

**99. A closed dependency has been reactivated due to another event and the same attorney has been reappointed. Will the attorney be paid as if this were a new case (\$800/ first year for appointments made from 7/1/08 to the present) or as if it were same case (\$200/year after the first year)?**

If the case was closed more than a year, then JAC will treat the reactivation as a new case for payment purposes.

## **Capital Cases**

**100. May a privately retained first chair move to have a second chair appointed by the court?**

JAC lacks statutory authority to pay for court-appointed counsel where a defendant is represented by privately retained counsel. Section 27.52(5)(h), F.S., specifically indicates that a finding of indigency for costs is not a basis to appoint counsel where a defendant is represented by privately retained and paid counsel.

**101. The State Attorney has since withdrawn the notice to seek the death penalty. Should second chair seek to withdraw from the case?**

Yes. Once the death sentence is withdrawn, second chair or co-counsel should withdraw from the case. JAC must receive billings from all other court-appointed counsel who worked on the case and review the bills simultaneously.

**103. An attorney has been appointed to a death penalty resentencing pursuant to the Hurst line of cases. What is the applicable flat fee?**

Unless the state has waived death prior to the date of your appointment, the flat fee for 1<sup>st</sup> Degree Murder (Lead Counsel) applies. If death has been waived before the attorney's appointment, then the flat for Capital (Non-Death) would apply.

## Capital Collateral Cases

### **104. Does JAC pay for attorney fees, costs, or related expenses for private court-appointed attorneys in post-conviction capital collateral cases?**

Yes. The contracting and payment of Capital Collateral Registry Attorneys was transferred from the Department of Financial Services (DFS) to the Justice Administrative Commission (JAC) effective July 1, 2013. In order to continue making attorney fee and due process cost payments in existing and new cases, JAC has adopted a case specific contract for these types of appointments. Unlike the JAC circuit criminal registry contract, this contract will be case specific and will remain in effect until the case reaches final resolution or the attorney is discharged. Attorneys with capital collateral appointments prior to July 1, 2013 with DFS contracts may elect to retain their DFS contracts. Attorneys with appointments after July 1, 2013 need to execute the JAC contract as soon as possible in order to receive any fees or costs through JAC. The Department of Financial Services will no longer be directly responsible for such payments as of July 1, 2013.

Effective July 1, 2013, JAC is responsible for processing due process payments for capital collateral post-conviction cases to which private counsel is appointed from the Capital Collateral Registry maintained by JAC, pursuant to s. 27.710, F.S.

Pursuant to s. 27.703, F.S., two of the Offices of Capital Collateral Regional Counsel must have a conflict prior to a court appointing private counsel. For appointments on or after July 1, 2013, the order of appointment must reflect these conflicts.

For more information please see the Policies & Procedures for Capital Collateral Private Court-Appointed Counsel at [http://www.justiceadmin.org/court\\_app\\_counsel/capitalcollateral.aspx](http://www.justiceadmin.org/court_app_counsel/capitalcollateral.aspx)

### **105. If the attorney was appointed to a capital collateral case prior to July 1, 2013, does the attorney need to sign a contract with JAC?**

No, the attorney may elect to retain your Department of Financial Services (DFS) contract, however in order for JAC to directly pay vendors, a private court-appointed Capital Collateral attorney must execute the JAC Contract for Attorney Services for Private Collateral Counsel. Instructions for executing the Contract can be found at:

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



**106. What documents must be submitted to JAC in order to open a capital collateral case for payment purposes?**

For existing cases, an order of appointment and the Florida Supreme Court opinion affirming the sentence of death must be submitted along with the DFS or JAC Contract.

For new appointments, the attorney must submit the order of appointment and Florida Supreme Court opinion affirming the sentence of death along with your current email address to JAC's Contracts Coordinator at: [Contracts@justiceadmin.org](mailto:Contracts@justiceadmin.org). Upon submission of the documents, JAC will send the attorney a JAC Contract for Attorney Services for Private Capital Collateral Counsel.

**107. Will JAC issue payment for billings for capital collateral services rendered prior to July 1, 2013?**

Yes. Payment requests that include entries for services provided prior to July 1, 2013 will be processed and audited by JAC according to Department of Financial Services (DFS) practices and procedures, and paid by JAC if no order approving payment was issued prior to July 1, 2013. Payment requests for services provided on or after July 1, 2013 will be processed and audited pursuant to the terms of the JAC Contract and JAC Policies and Procedures for Court-Appointed Capital Collateral Counsel.

## **Miscellaneous**

**108. Can another attorney work on a case to which an attorney has been appointed?**

Generally no. In most case types, the attorney appointed to a case is expected to perform all of the attorney services on a case. An attorney appointed to a case may not bill or be paid for any attorney services performed by another attorney on a case. Section 27.5304(8), F.S., provides that an attorney may not reassign or subcontract the case to another attorney or allow another attorney to appear at a critical stage of a case who is not on the registry developed under s. 27.40, F.S.

Exception: Section 27.710, F.S., authorizes attorneys appointed to capital collateral post-conviction cases to designate another attorney meeting statutory qualifications to assist him or her. Even though the designated attorney may bill for their assistance, only one attorney bill may be presented per case. See s. 27.711, F.S. Consequently, the designated attorney is paid by the appointed attorney.

**109. An attorney has been appointed to represent a witness in a criminal proceeding. How does the attorney bill?**

Because the Legislature did not set a rate for this case type, please submit an hourly invoice at an hourly rate of \$75. Absent exceptional circumstances, JAC anticipates

this type of representation should only involve 2 to 4 hours of work because of the narrow scope of this representation. The dispositional documentation to include with the billing packet should be the order discharging the attorney from the case.