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# Guide to Indigency for Costs

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**How to have a client declared indigent for costs and how to obtain due process costs once the client is declared indigent for costs**

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# Introduction:

- This guide delineates the process for an attorney representing an indigent client to have the client declared indigent for costs and obtain due process costs through JAC.
- This guide is intended to be an aid for an attorney. For additional information, please review the JAC Contract, JAC Policies & Procedures and the Frequently Asked Questions.

# Historical Background:

- Under general constitutional principles, the state has an obligation to provide an indigent defendant with the basic tools to present an adequate defense. See Oklahoma v. Ake, 470 U.S. 68, 77 (1985); Britt v. North Carolina, 404 U.S. 226, 227 (1971). See also Morgan v. State, 639 So. 2d 6, 12 (Fla. 1994); Bullard v. State, 650 So. 2d 631, 632-33 (Fla. 4th DCA 1995). Although the state is not obligated to provide a defendant with those services that a wealthier defendant might elect to purchase, the state is obligated to provide those services necessary to ensure meaningful access to the courts. A defendant represented by privately retained indigent for costs counsel is entitled to the same services that the defendant would receive if the defendant was represented by the public defender or other appointed counsel.

## Historical Background Continued:

- An indigent defendant represented by privately retained counsel remains eligible for the provision of due process costs through the state. See Leon County v. Harmon, 589 So. 2d 429, 430 (Fla. 1st DCA 1991); Guy v. State, 473 So. 2d 234, 234-35 (Fla. 2d DCA 1985); Behr v. Gardner, 442 So. 2d 980, 981-82 (Fla. 1st DCA 1983); Johnson v. Snyder, 417 So. 2d 784, 785 (Fla. 3d DCA 1982); Arline v. State, 277 So. 2d 791, 792 (Fla. 1st DCA 1973).
- In assessing whether a defendant is indigent for costs, the court should look to the assets of the defendant. See Leon County v. Harmon, 589 So. 2d 429, 430 (Fla. 1st DCA 1991); Guy v. State, 473 So. 2d 234, 234-35 (Fla. 2d DCA 1985); Price v. Mounts, 421 So. 2d 690, 691 (Fla. 4th DCA 1982).



## Historical Background Continued:

- A court should not consider the assets of the defendant's family in assessing whether a defendant is indigent for costs. See Guy v. State, 417 So. 2d 234, 234-35 (Fla. 2d DCA 1985); Johnson v. Snyder, 417 So. 2d 783, 784 (Fla. 3d DCA 1982).
- A finding of indigency for costs entitles an indigent defendant to reasonable due process costs necessary for the defense of the case. The Justice Administrative Commission (JAC) is responsible for processing for payment due process costs authorized by the courts in accordance with s. 29.007, F.S. Additionally, an indigent defendant is entitled to the services of the court, clerk of court, and sheriff without any requirement for prepayment.



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## Historical Background Continued:

- JAC is only authorized to process for payment due process costs for those case types where there is a right to appointed counsel but an indigent defendant has been able to retain a private attorney to assist him or her in the case. JAC generally processes for payment due process costs in criminal cases and dependency cases involving court-appointed or indigent for costs counsel or an indigent pro se defendant. Except for dependency cases and other civil cases where there is a right to appointed counsel, JAC does not pay for costs in civil cases such as family law cases, probate cases, and civil law suits.

## 2010 Statutory Changes:

- In 2004, the responsibility for paying due process costs largely shifted from the counties to the state through the revisions to Article V of the Florida Constitution. JAC is tasked with the responsibility for administering the state system for paying due process costs in private court-appointed and indigent for costs cases in accordance with s. 29.007, F.S. In 2005, the legislature amended s. 27.52, F.S., to provide a mechanism through which a defendant represented by privately retained counsel who would otherwise be entitled to representation by the public defender could be found indigent for costs.



# 2010 Statutory Changes Continued:

- Although largely similar to the manner in which a defendant is found indigent for purposes of appointment of counsel, there were several significant differences in the manner in which a defendant represented by privately retained counsel was declared indigent for costs. See § 27.52(5), F.S. One of the major distinctions between indigency for appointment of counsel and indigent for purposes of costs was that the trial court was required to enter an order finding the defendant indigent for costs.

## 2010 Statutory Changes— Factors to be Considered:

- During the 2010 Regular Legislative Session, the legislature substantially amended s. 27.52(5), F.S., in order to clarify the factors that need to be considered by the courts in determining whether a defendant is declared indigent for costs. See Ch. 2010-162, § 8, Laws of Fla. 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.

## 2010 Statutory Changes— Factors to be Considered Continued:

- 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’s fees and who is paying the fees.

See § 27.52(5)(d), F.S.



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## 2010 Statutory Changes— Factors to be Considered Continued:

- In assessing whether a defendant is indigent for costs, the court should consider all of these factors in assessing whether the defendant is indigent for costs. See Mansfield v. State, 16 So. 3d 302, 303 (Fla. 5th DCA 2009). The court's inquiry should be based upon the circumstances present at the time the court considers the motion to declare the defendant indigent for costs unless there is evidence that the defendant deliberately transferred assets or impoverished himself or herself in order to be found indigent for costs. See Mansfield v. State, 16 So. 3d 302, 303 (Fla. 5th DCA 2009).

## 2010 Statutory Changes— Presumption of Non-Indigency:

- Section 27.52(5), F.S., establishes a presumption of non-indigency where the estimated attorney's fees exceed certain specified amounts. As amended, s. 27.52(5), F.S., provides as follows:

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.



## 2010 Statutory Changes— Presumption of Non-Indigency Cont.:

- In assessing the reasonableness of an attorney's fees, the amount of compensation the attorney will receive should be comparable to the amount a private court-appointed attorney would receive for the type of case. The amount a private court-appointed counsel will receive is governed by s. 27.5304, F.S., and the General Appropriations Act. The General Appropriations Act lists the applicable fees based upon the type of case and/or the degree of the offense charged. If a court determines that an appointed case involves unusual and extraordinary effort, the court could award up to double the flat fee.



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## 2010 Statutory Changes— Presumption of Non-Indigency Cont.:

- If double the flat fee is found to be confiscatory, the court may authorize hourly billing in an appointed case at a rate not to exceed \$75 per hour in a non-capital non-death case or \$100 per hour in a capital death case.
- If an attorney would receive compensation significantly greater than the amount that private court-appointed counsel would receive then the court should not find the defendant indigent for costs particularly if the difference between what the attorney would receive and the amount private court-appointed counsel would receive would be sufficient to cover the due process costs necessary for the defense of this case.

## 2010 Statutory Changes— Other Statutory Changes:

- In addition to the changes set forth above, there were several other changes to s. 27.52(5), F.S., enacted during the 2010 Regular Legislative Session:
  - Section 27.52(5)(a), F.S., specifically requires that a **written motion** be filed with the court. Attached to this motion should be a completed application for indigency and an affidavit attesting to the estimated amount of attorney's fees and who paid those fees.
  - If the defendant did not previously apply for a determination of indigent status in the same case and is not already liable for the application fee required under s. 27.52(1), F.S., the defendant becomes liable for payment of the fee upon filing the motion with the court.

## 2010 Statutory Changes— Other Statutory Changes Continued:

- A copy of the motion must be served on JAC prior to any hearing on the motion. JAC has standing to participate in any hearing on the motion and is authorized to appear telephonically.
- Costs shall be reimbursed at the rates established by law in ss. 27.425 and 27.5305, F.S. An attorney representing an indigent for costs client must comply with the procedures and requirements governing private court-appointed counsel as set forth in Ch. 27, F.S.
- A court may not appoint an attorney based upon a finding of indigency for costs where the person has privately retained and paid counsel.



## 2010 Statutory Changes— Other Statutory Changes Continued:

- If the defendant is convicted, the defendant is liable for reimbursement of due process costs expended by the state. The attorney is responsible for providing an accounting to the court of all costs paid or to be paid within 90 days after disposition of the case notwithstanding any appeals. The court shall then enter an order determining the amount of costs paid which will thereafter be recorded as a lien against the defendant.

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## 2010 Statutory Changes— Other Statutory Changes Continued:

- If the attorney fails to provide a complete accounting such that costs are omitted from the lien, then JAC is not authorized to pay or reimburse any such costs that remain unpaid and the attorney is personally liable to repay the state for any such costs already paid. The clerk of court is authorized to place the attorney on a payment program to obtain repayment of those costs.

See Ch. 2010-162, § 8, Laws of Fla. These changes went into effect on July 1, 2010.



## Procedural Requirements:

- A person who is eligible to be represented by a public defender under s. 27.51, F.S., but who is represented by private counsel not appointed by the court for a reasonable fee as approved by the court, on a pro bono basis, or who is proceeding pro se, may move the court for a determination that he or she is indigent for costs and eligible for the provision of due process services, as prescribed by s. 29.007, F.S., funded by the State. In order for a criminal defendant to obtain costs from the state, the procedures set forth in s. 27.52(5), F.S., must be followed.

## Procedural Requirements— Written Motion Required:

- In order to have a defendant declared indigent for costs, the attorney must file a written motion seeking to have the defendant declared indigent for costs. Florida law does not authorize oral motions to have a defendant declared indigent for costs. Accompanying the motion should be a completed application for indigent status and an affidavit attesting to the estimated amount of attorney's fees. The application for indigency should be either the form approved by the Florida Supreme Court or the local version of that form typically available through the local clerk's office. See Fla. R. Crim. P. 3.984. As a general rule, another financial affidavit may not be sufficient because it may omit essential information required in the application for indigency.

## Procedural Requirements— Attorney Fees Affidavit:

- The affidavit on attorney's fees should include the source of the fees and the estimated amount of those fees. If the attorney is representing the defendant on multiple cases, the affidavit should list all of those cases and the fees to be paid in those cases as well. In cases in which the attorney is billing hourly, the affidavit should indicate the hourly rate and the anticipated fee that the attorney would receive for the case. The affidavit should also indicate the amount of any retainer or fees already paid in the matter.

# Procedural Requirements— Attorney Fees Affidavit Continued:

- In cases in which the attorney is receiving a flat fee, the affidavit should indicate the amount of the flat fee. If the attorney has not received the entire flat fee, it can be helpful to include the amount currently received and the manner in which the remaining fee will be paid. The manner in which the fee is being paid may be material information for the court to consider. For example, a flat fee of \$25,000 of which \$5,000 has been paid and the balance is being paid in monthly installments of \$1,000 may be considered by the court to be substantially different from a flat fee of \$25,000 which has been paid in its entirety.



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## Procedural Requirements— Attorney Fees Affidavit Continued:

- The date which the fees were paid may also be material. If the fees were paid a substantial time prior to the proceedings, this may impact whether the defendant is found indigent for costs particularly if the attorney has already performed significant work on the case. If the attorney has already earned the entire fee or substantial portion thereof, this may impact whether the defendant is indigent at the time the motion is heard. See Mansfield v. State, 16 So. 3d 302, 303 (Fla. 5th DCA 2009) (indicating that the determination of whether a defendant is indigent is based on current circumstances).



## Procedural Requirements— Attorney Fees Affidavit Continued:

- If the source of the fees is another person, then the court cannot consider the assets of the person providing the fees. With one limited exception, a defendant's family is not under any obligation to provide additional funding to assist the defendant. See Leon County v. Harmon, 589 So. 2d 429, 430 (Fla. 1st DCA 1991); Guy v. State, 473 So. 2d 234, 234-35 (Fla. 2d DCA 1985); Price v. Mounts, 421 So. 2d 690, 691 (Fla. 4th DCA 1982); Johnson v. Snyder, 417 So. 2d 783, 784 (Fla. 3d DCA 1982). However, this does not prevent the court from considering the amount of the attorney's fees particularly where the amount of fees is considerably more than what an appointed counsel would receive for a similar case.

## Procedural Requirements— Minors and Adult Tax-Dependents:

- There is a limited exception to this rule for minors and adult tax-dependent persons. If the parent or legal guardian of a minor or adult tax-dependent person is not indigent, then the parent or legal guardian is responsible for “the necessary legal services and costs incident” to a delinquency proceeding or a criminal proceeding if the child is tried as an adult. See § 27.52(6), F.S. If a parent or legal guardian fails to provide for these costs, then the parent or legal guardian may be liable for payment of those costs. “Liability for the fees, charges, and costs of the representation shall be imposed in the form of a lien against the property of the non indigent parents or legal guardian of the minor or adult tax-dependent person.” § 27.52(6), F.S.

## Procedural Requirements— Service on JAC:

- The attorney must serve a copy of the written motion along with the affidavits upon JAC prior to the court declaring the client indigent for costs. Under s. 27.52(5)(b), F.S., JAC is entitled to notice and an opportunity to be heard before a court declares a client indigent for costs. JAC has statutory standing to participate in any proceeding related to a motion to declare a defendant indigent for costs. If a court enters an order declaring a defendant indigent for costs without notice to JAC, then the order may be subject to a motion to vacate filed by JAC.

## Procedural Requirements— Case Opening Documents:

- Once the court declares a defendant indigent for costs, an attorney should submit the following documents to JAC as a single packet unless any document was submitted previously. These documents should be submitted via email:
  - The written Motion to Declare the Defendant Indigent for Costs
  - The Clerk’s Application for Indigency
  - The Affidavit Attesting to Attorney’s Fees
  - The Order Declaring the Defendant Indigent for Costs
  - The Charging Document(s)
- An attorney should provide these documents to [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).



## Procedural Requirements— Case Opening Documents Continued:

- All of these documents should be submitted as one packet unless they were previously submitted separately. After submission, an attorney may verify which documents have been received by JAC by checking the information provided on JAC's website. 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. JAC cannot process any billing for payment until the attorney supplies JAC with the necessary case opening documentation.

# Procedural Requirements— JAC Contract:

- Under ss. 29.007 and 27.52(5)(f), F.S., an attorney representing a client declared indigent for costs must execute the JAC Contract for Indigent for Costs Cases. This Contract is available on JAC's website at:
  - [https://www.justiceadmin.org/court\\_app\\_counsel/agreementscontracts.aspx#ifcatty](https://www.justiceadmin.org/court_app_counsel/agreementscontracts.aspx#ifcatty)
- **JAC cannot process any invoices for payment until the attorney executes this Contract.** This includes payments made directly to due process providers. If the attorney intends to seek personal reimbursement for due process costs paid by the attorney or the attorney'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/>

## Procedural Requirements— JAC Contract continued:

- Once an attorney executes the annual indigent for costs Contract, the attorney will not need to execute any further Contracts during the term of the contract. The single Contract will cover any of the attorney's clients declared indigent for costs under s. 27.52(5), F.S., or other applicable provisions of Florida law authorizing due process costs for indigents through JAC.



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# Procedural Requirements— JAC Contract continued:

- The annual Contract will remain in place for existing and new cases found indigent for costs through the term of the Contract (even after the term of the Contract expires) unless the attorney executes a superseding Contract.
- Once an attorney executes the new annual indigent for costs Contract, it will supersede any prior indigent for costs Contracts executed by the attorney. This will allow the attorney to function under a single Contract covering all of his or her indigent for costs clients including those clients found indigent for costs prior to the execution of the new Contract.



## Procedural Requirements— *My JAC* (JAC's Secure Website):

- JAC has created a secure website through which the attorney can submit billings and obtain information regarding both unpaid and paid bills submitted to JAC. Through *My JAC*, the attorney can determine whether JAC has received a billing and whether JAC has approved the billing for payment. The attorney can also access letters and notices related to the billing, such as audit deficiencies and letters of objection.
- Instruction on how to setup access to *My JAC* is available at: <https://www.justiceadmin.org/login/login/Quick%20Reference%20Guide-Attorney%20Login.pdf>
- The JAC Online Support Team can assist the attorney in setting up an account and in using *My JAC*.



## Procedural Requirements— *My JAC (JAC's Secure Website) cont.:*

- One of the items the attorney can access is a screen showing whether JAC has received the five documents listed above in relation to a specific case as well as the IFC Contract. The attorney can print this screen. Before commencing work on an indigent for costs case, a court reporter or other due process vendor may ask the attorney for a printout of this screen to verify that the attorney has provided JAC with necessary documentation.

## Obtaining Due Process Costs:

- In order for JAC to pay any due process costs, the court must enter a written order finding the client indigent for costs. The provision of due process services in an indigent for costs case must be authorized by a written court order. The order declaring the defendant indigent for costs should indicate the due process costs that are authorized and the maximum amount authorized for those costs. If the order only finds a client indigent for costs without specifying the costs authorized, then the attorney may need to obtain a separate order authorizing the particular due process costs. JAC is always entitled to at least five day's notice and an opportunity to be heard before a court approves any due process costs.



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# Obtaining Due Process Costs Continued:

- A general order finding a defendant indigent for costs without specifying the costs authorized will generally only authorize costs associated with the taking of depositions. Where the Florida Rules of Procedure authorize the taking of a deposition without the need for prior court approval, JAC can pay for the costs at the rates established by law associated with the taking of the deposition such as court reporters costs and ordinary witness fees as authorized by statute. However, transcription of any deposition requires a court order finding that a transcript is necessary. This can generally only occur after the taking of the deposition.

# Obtaining Due Process Costs— Due Process Costs Defined:

- Due process costs are those costs an indigent defendant is entitled to receive in order to obtain meaningful access to the courts. Generally, these services are necessary for the defense of the case. JAC is authorized to pay for due process costs as authorized by ss. 27.425, 27.5305, and 29.007, F.S. Florida law authorizes JAC to pay the following due process costs in court-appointed and indigent for cost cases:
  - Reasonable court reporting and transcription services including the cost of transcribing and copying depositions.
  - Reasonable foreign language and sign-language interpreters and translators at depositions or witness interviews.



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# Obtaining Due Process Costs— Due Process Costs Defined Continued:

- Private service of process when the sheriff is not available or unable to provide service.
- Confidential mental health experts appointed to assist the defense.
- Other expert witnesses authorized by the court to assist the defense.
- Private investigator services.
- Mitigation specialist services in capital death cases.
- Costs to obtain discovery-related materials and other documents such as medical records.
- Travel expenses for due process providers and defense witnesses when authorized by law.
- Overhead expenses are not considered due process costs. JAC does not reimburse attorneys for overhead expenses.



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# Obtaining Due Process Costs— Due Process Costs Defined Continued:

- Overhead expenses include but are not limited to:
  - Internal or in-house copying, postage, and telephone charges including long distance and collect calls normally associated with the type of representation.
  - Computerized research services such as Westlaw and Lexis/Nexis.
  - Computer and office equipment, office supplies, legal materials, books, personal items, haircuts, manicures, or other such personal services for the client. Counsel shall not bill for any purchase of computer equipment including portable flash and hard drives.
- Overhead expenses also include travel expenses for a privately retained attorney unless the attorney is providing representation on a *pro bono* basis. The attorney's travel expenses should be included in the fee charged by the attorney.

# Obtaining Due Process Costs— Prospective Only:

- An order finding a defendant indigent for costs is prospective only. JAC will not pay due process costs incurred prior to the effective date of the order. An attorney may not 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. However, JAC is not liable for any costs incurred prior to the date the attorney initially sought to have the client declared indigent for costs.

# Obtaining Due Process Costs— Applicable Rates:

- JAC only pays for due process services reasonably required for the defense of the case as set forth in s. 29.007, F.S. Pursuant to s. 27.52(5)(g), F.S., the established rates for any services in an indigent for costs case are the same rates applicable to court appointed cases. The current rates are posted on JAC's website. The trial court is responsible for determining whether the requested costs should be authorized. The attorney has the burden to establish that the due process service costs are reasonable and necessary to the defense of the case. Absent exceptional circumstances, prior court approval should be obtained prior to any services being performed by due process providers such as experts or investigators.

# Obtaining Due Process Costs— Motion for Due Process Costs:

- Except for those services authorized in the order declaring the client indigent for costs, the attorney must serve JAC with a copy of the motion seeking authorization for due process service costs prior to a court entering an order regarding any other due process service costs. A written motion for due process service costs should specify the type of due process service requested, the rate requested if the rate exceeds the established rates or if no rate has been established, and an estimated maximum amount requested at this time. The motion must be served on JAC prior to a court considering the motion. Generally, the motion should be served at least five business days prior to any hearing on the motion.



# Obtaining Due Process Costs— Motion for Due Process Costs Cont.:

- A motion seeking authorization for due process costs needs to establish the basis for the requested costs. The motion should indicate how the requested services are necessary for the defense of the case. A motion seeking authorization or additional funds for a private investigator, mitigation specialist, or an expert should set forth the particularized need for the requested services based on the circumstances of the case. The information provided in the motion should be sufficient for the court and JAC to assess the reasonableness of the request for due process services.

# Obtaining Due Process Costs— Exceeding the Established Rates:

- When an attorney seeks to procure due process services in excess of the established rates, the motion filed with the trial court will need to justify services in excess of those rates. The attorney has the burden to establish that the due process services are necessary to the defense of the case and that the attorney made diligent efforts to obtain the services within the established rates. The motion should set forth the diligent efforts the attorney made to procure services within the established rates and any other allegations that may justify services in excess of those rates.



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# Obtaining Due Process Costs— Exceeding the Established Rates Cont.:

- Absent an order expressly authorizing a rate in excess of the established rates, JAC will only pay or reimburse for due process services at the established rates. If the attorney procures services at a higher rate, the attorney may be responsible for paying the difference.
- As with any other motion, a copy of a motion seeking services in excess of the rates established by law must be served on JAC prior to the court considering the motion. In many cases, JAC will object to compensation in excess of the established rates and may request a hearing on the matter. If the attorney obtains an order authorizing higher rates without notice to JAC, then JAC may object to reimbursement at the higher rates upon receipt of the due process provider's invoice.

# Obtaining Due Process Costs— Out-of-State Providers:

- As to out-of-state experts and mitigation specialists, the court must make additional findings. When there are qualified experts available within Florida, the use of out-of-state experts is not authorized. See § 27.5305(4), F.S. In order to retain an out-of-state expert or mitigation specialist, the attorney “must obtain authorization from the court to employ an out-of-state expert or mitigation specialist upon a showing that an expert or mitigation specialist who has appropriate skills or expertise is not available from within the county in which the case was filed or from elsewhere in the state. 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.” Id. See also § 27.52(5)(g), F.S.



## Submission of Billings:

- There are generally two ways by which JAC reimburses for costs. First, JAC can make direct payment to the due process provider. For this to occur, the vendor must have entered into a contract with JAC. With the exception of other state entities, JAC only makes direct payment to vendors that have executed a contract with JAC. Second, the attorney can pay the due process provider and then seek reimbursement from JAC. The attorney must submit the appropriate voucher cover and provide proof of payment along with the order(s) authorizing the due process costs. The attorney will only be reimbursed pursuant to the established rates or the court order authorizing higher rates.

# Submission of Billings— JAC Invoice Voucher Cover:

- Any billing submitted to JAC must be submitted using the appropriate JAC Invoice Voucher Cover. The JAC Invoice Voucher Covers and instructions for completing them are posted on JAC's website. It is the responsibility of attorneys and due process providers to use correct and current voucher covers. These voucher covers are updated from time to time to take into account changes in the law and policy. The failure to use the appropriate voucher cover can result in essential information being omitted from the billing. This can delay the processing of the billing.

# Submission of Billings— Certifying Attorney:

- The attorney is responsible for certifying that the work was completed satisfactorily. JAC tracks cases by the attorney who executed the JAC Contract. When executing voucher covers and submitting documents, it is critical that the documentation indicate the attorney who executed the JAC Contract rather than another attorney. Failure to follow this procedure will likely delay payment to due process providers. If it is necessary for another attorney in a law firm to sign documentation on behalf of the attorney who executed the JAC Contract, then the documentation must indicate as much. In other words, the certifying attorney would indicate he or she is signing on behalf of the contracting attorney.

# Submission of Billings— Billing Audit Deficiency:

- When JAC receives a billing for due process services which lacks necessary documentation or requisite information, JAC may send the due process provider and the attorney a Billing Audit Deficiency. It will indicate the reason JAC is unable to process the billing and will request that the due process provider and/or the attorney provide the lacking documentation or information.
- When JAC issues a Billing Audit Deficiency, the due process provider and/or attorney needs to provide the additional documentation or otherwise resolve the Billing Audit Deficiency in an expeditious fashion.
- Failure to resolve the Audit Deficiency may result in JAC paying the billing at a reduced rate or returning the bill.



# Submission of Billings— Billing Audit Deficiency:

- When responding to a Billing Audit Deficiency, the due process provider or attorney must use the Audit Deficiency as the cover page for any submission. This will allow JAC staff to identify the appropriate case.
- Billing Audit Deficiencies should be submitted either (1) through the Online Billing Submission system using the Tracking Number for the billing or by (2) email to [pleadings@justiceadmin.org](mailto:pleadings@justiceadmin.org).
- JAC receives numerous documents and submissions on a daily basis so that the failure to use the Audit Deficiency as the cover sheet could result in delay in payment.
- When requesting reinstatement of a billing, the Reinstatement portion of the Audit Deficiency must be signed. A response to an audit deficiency will not be deemed submitted until JAC receives a signed request for reinstatement. This request may be submitted through the Online Billing Submission system or via email.



## Providing an Accounting:

- Upon conviction, a defendant is liable to pay the amount of any due process costs provided by the state and the clerk of court as directed by s. 27.52(5)(i), F.S. See also § 938.29, F.S. If the defendant is convicted, the attorney is responsible for providing an accounting to the trial court delineating the costs expended on behalf of the defendant within 90 days after disposition of the case, notwithstanding any appeals. The trial court shall then enter an order determining the amount of costs paid which will thereafter be recorded by the clerk as a lien against the defendant. The lien is enforceable in the same manner as provided in s. 938.29, F.S.

# Providing an Accounting— Failure to Provide Accounting:

- If the attorney fails to provide a complete accounting such that costs are omitted from the lien, then JAC is not authorized to pay or reimburse any such costs that remain unpaid and the attorney will be personally liable to repay the state for any such costs already paid. The clerk of court is authorized to place the attorney on a payment program to obtain repayment of those costs. See § 27.52(5)(i)3, F.S. “The clerk of the court may establish a payment plan under s. 28.246 and may charge the attorney or pro se defendant a one-time administrative processing charge under s. 28.24(26)(c).” Id.



# Providing an Accounting— Application for Certificate of Costs:

- In order to facilitate the provision of an accounting under s. 27.52(5)(i), F.S., JAC upon application will provide a certificate indicating the amount of invoices paid through JAC and the amount of invoices received by JAC that have not been processed for payment. The certificate will only address those billings that JAC has received as of the date of application. It will be the attorney's responsibility to ensure that all billings have been submitted prior to JAC's issuance of a certificate. The form to apply for a certificate is available on JAC's website at:
  - <https://www.justiceadmin.org/IFC/application%20for%20certification%20of%20costs.pdf> (pdf version)
  - OR –
  - <https://www.justiceadmin.org/IFC/application%20for%20certification%20of%20costs.docx> (Word version)



# Providing an Accounting— Certificate of Costs:

- Once JAC receives an application, JAC will prepare a notarized certificate as to costs. This certificate should constitute a self-authenticating record admissible before the trial court. The information contained in a certification of costs will be based on business records of JAC as of the date JAC issues the certificate. The information is subject to change upon receipt of additional invoices, amendments or changes to invoices, withdrawal of invoices, or rejection of invoices. The attorney is responsible for verifying that all invoices and billings related to a case are included in the accounting provided to the court including any invoices that JAC may not have received or docketed as of the date JAC issued its certificate of costs.



## Providing an Accounting— Certificate of Costs Continued:

- The certification of costs will not include any costs related to the court, clerk of court, or sheriff for which prepayment was waived pursuant to s. 57.081, F.S. Ultimately, it is the privately retained attorney's responsibility to provide a full accounting to the trial court of any costs expended by the JAC and other state entities for the defense of the case. Failure to provide a full accounting could result in costs being rejected for payment and the attorney being personally liable to repay those costs.



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## Providing an Accounting— Certificate of Costs Continued:

- A copy of the accounting filed with the trial court will need to be served on JAC. Once a criminal case reaches final disposition with a conviction, JAC may decline payment of any further due process costs on that case until JAC receives a copy of an accounting including the costs for which payment or reimbursement is sought.