



Justice Administrative Commission
Policies and Procedures

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Executive Director

For Capital Collateral Private Court-Appointed Counsel



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Checklists

Attorney Fees & Costs

For attorney fees and costs to be paid, JAC must have received the following documents:

- ⇒ Order of Appointment. See § I-D
- ⇒ Order Affirming Sentence of Death See § I-C
- ⇒ Billable Stage documents See § I-E

- ⇒ Invoice/Voucher Cover. See § II-A
- ⇒ Itemized Hourly Statement. See § II-D

Miscellaneous and Investigative Expenses

For miscellaneous and investigative expenses to be paid, JAC must have received the following documents:

- ⇒ Order of Appointment. See § I-D
- ⇒ Order Affirming Sentence of Death See § I-C
- ⇒ Invoice/Voucher Cover. See § III-A

- ⇒ Order authorizing specific costs is generally required. See § III-C

Section I – Appointments/Opening a Case

A. General Practices and Procedures

Appointment

JAC has no authority to pay for cases that Counsel has not been properly appointed to as Capital Collateral Registry private counsel.

Registry

The court shall appoint private counsel from the Capital Collateral Registry maintained by JAC pursuant to ss. 27.710 and 27.711, F.S. Information regarding fee and due process payments and a link to the JAC Capital Collateral Registry Attorney Contract (registry contract) can be found at:

http://www.justiceadmin.org/court_app_counsel/capitalcollateralindex.aspx

Contractual Contract for Services

Pursuant to ss. 27.710 and 27.711, F.S., private counsel appointed by the court on behalf of a person entitled to court-appointed representation in a postconviction capital collateral case shall enter into a contractual contract for services (registry contract) with JAC.

JAC's Contract for Attorney Services for Private Capital Collateral Counsel (registry contract) is case specific and will remain in effect until the case reaches final resolution or the attorney is discharged.

Upon appointment to a capital collateral case, the attorney must submit the Order of Appointment to JAC through e-mail to contracts@justiceadmin.org. The e-mail should clearly indicate that this is for a Capital Collateral appointment.

Information and a review copy of the registry contract can be found on JAC's website at:

http://www.justiceadmin.org/court_app_counsel/agreementscontracts.aspx

Upon receipt of an Order of Appointment, JAC's Contract Section will e-mail you an executable copy of the registry contract Counsel may print and execute the registry contract by signing it in blue ink and then mailing a single copy to JAC. Once JAC has completed its review and executed the registry contract, a copy will be e-mailed to you for your records.

Substitute Form W-9

Prior to executing the registry 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 registry 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:

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

If you have any questions regarding the Substitute Form W-9, you may contact DFS's Vendor Management Section at (850) 413-5519 or

FLW9@myfloridacfo.com.

The JAC Help Desk cannot answer questions or otherwise provide assistance in the completion or submission of this form.

Death of Counsel

Upon the death of Counsel, the inventory attorney assigned pursuant to Rule 1-3.8 of the Rules Regulating the Florida Bar, or the personal representative or other administrator of the estate, shall provide JAC one (1) copy of the death certificate. If the personal representative or other administrator of the estate is seeking payment due to Counsel in a private court-appointed case, then that person shall also provide JAC with a copy of the letters of administration or other documents authorizing the person to administer the attorney's estate.

The following is required for each court-appointed case for which payment of attorney fees is sought posthumously:

1. Copy of the death certificate and letters of administration.
2. Copy of the docket sheet.
3. Copy of Counsel's time report for any case payable on an hourly basis.
4. Appropriately completed and executed Invoice/Voucher Cover, as well as all necessary supporting documents.

The following is required for each court-appointed case for which services may have been ordered and not yet paid, and for which payment of costs is sought posthumously:

1. Copy of documentation that indicates services were ordered.
2. Inventory attorney or the administrator of the estate may certify receipt of those services ordered and rendered prior to death.
3. Private counsel subsequently appointed by the court to any open case of deceased counsel may certify receipt of those services ordered prior to death regardless of when services were rendered.

Counsel Separates from Law Firm

If Counsel is named in the order of appointment and Counsel is the payee under the registry contract, then Counsel retains the case even if Counsel changes law firms absent further court order.

If Counsel is named in the order of appointment, but the payee under the registry contract is a law firm or other legal entity, then Counsel retains the case even if Counsel changes law firms absent further court order. If Counsel desires to direct payment to a new legal entity, Counsel will have to execute a new registry contract.

Counsel Becomes Magistrate or Judge

When Counsel becomes a magistrate or judge, the new magistrate or judge may be unable to conclude JAC's payment process after assuming his or her official duties. If a motion and court order are required for compensation, the new magistrate or judge may be prohibited from filing such a motion. Judicial Canon (5)(G) prohibits a judge from practicing law.

Another attorney may act on behalf of the new magistrate or judge to complete the payment process. The order to pay needs to reflect that payment will be made to the person or legal entity identified in the registry contract executed by the new magistrate or judge.

Discharge for Malfeasance or Suspension

If Counsel is discharged from a case due to malfeasance, misfeasance, or nonfeasance, or due to a suspension or disbarment by the Florida Bar, JAC objects to payment of attorney fees and costs relating to Counsel's representation of the client. JAC's liability for payment shall be limited to activities and services that will not have to be duplicated by successor counsel.

B. Definition of "Case"

Generally

In general, a "case" is each matter assigned a case number by the Clerk of the Court to an inmate under sentence of death.

C. Case Opening Documents

Mandatory Documentation

Upon appointment, Counsel must submit (1) using the new case opening system on *My Access* (JAC's secure website) or (2) e-mailing to compliance@justiceadmin.org the following required case opening documents: an Order of Appointment to JAC along with the Florida Supreme Court opinion affirming the sentence of death.

Submission of Documents

Unless an original is requested by JAC, documents such as motions or court

orders should be submitted through e-mail to:

pleadings@justiceadmin.org

Any motion, order or other legal pleadings for which JAC is an interested party shall be sent by e-mail to the e-mail address designated for service of legal pleadings unless an original is requested. Legal pleadings including orders will not be deemed served on JAC until an electronic copy has been provided. Any response to a billing audit deficiency that does not contain a legal pleading shall be sent to the e-mail address designated for responses to audit deficiencies. Counsel shall not send more than one electronic copy of any legal pleading or other document to JAC. Prior to resubmitting any document, Counsel shall verify that JAC has not received the document. Absent exigent circumstances, Counsel shall not provide any legal pleading or other document to JAC via facsimile without prior consent.

Responsibility

Counsel is responsible for verifying and ensuring that the Order of Appointment is timely and properly submitted, that JAC has received the required case opening documents, and that JAC has entered the case into JAC's database. Counsel may verify that a case has been opened through the JAC website.

Case Numbering Consistency

The case number that appears on the Order of Appointment provided by Counsel must be used on all further submissions by Counsel for that case.

D. Order of Appointment

General Requirements

An Order of Appointment is required for every case in which Counsel is seeking attorney fees and costs, and related expenses, from the State of Florida. The Order of Appointment must be dated and indicate the name of the judge, the style of the case, and the case number. It is Counsel's responsibility to ensure that his or her Orders of Appointment are provided to JAC in a timely fashion.

Billable Stage Documents

In order to demonstrate that a case has reached a billable stage or stages as set forth in s. 27.711(4), F.S., the attorney needs to submit documentation such as the motion for postconviction relief, the final order granting or denying such motion, or the Supreme Court brief.

Section II – Attorney Fees & Costs

A. General Practices and Procedures

Attorney Fees Online Billing Submission

JAC now accepts attorney fee billing electronically. When a case has reached a billable point, the attorney can submit the billing through *My Access* (JAC's secure website). Prior to submitting the billing, the supporting documents need to be prepared. To submit a billing online, the case must have been previously opened. A case can be opened through the case opening system in *MY ACCESS*.

To submit a billing, search for the opened case and follow the steps on the JAC website. During the billing process, JAC Invoice/Voucher will be generated and then electronically signed. All electronic document files submitted must be separate and unique (i.e. please do not scan the charging document with the dispositional document). The files must be in either PDF or TIFF format. A confirmation e-mail will be sent upon submission of a billing packet which contains a unique tracking number that should be retained. Please **DO NOT** mail the billing packet to the JAC as duplicate submission may delay payment.

Obligation

Counsel billing for attorney fees and costs shall follow the requirements of Florida Law, the registry contract, and JAC's Policies and Procedures.

Any forms and documents submitted to JAC should include Counsel's name and Florida Bar license number.

Invoice/Voucher Cover

The Invoice/Voucher Cover is essential for the satisfactory submission of any request for attorney fees and costs. Counsel must appropriately complete, execute, and submit the applicable Invoice/Voucher Cover, as well as all necessary supporting documents.

All necessary and applicable Invoice/Voucher Covers for attorney fees and costs are available on the JAC website. Additionally, corresponding instructions are also available on the JAC website.

Certification of Time

Counsel shall itemize legal services (itemized in tenths of an hour increments) and certify the time. By executing the applicable Invoice/Voucher Cover, Counsel is certifying under oath that Counsel has completed the work listed in the itemized statement. The JAC Invoice/Voucher Cover is the functional equivalent of a verified pleading and should be read and reviewed with the same degree of diligence as a pleading. Instructions on how to properly complete the applicable Invoice/Voucher Cover are available on the JAC website.

Certification of Costs

If Counsel seeks reimbursement for costs (i.e. reimbursable expenses), such costs are required to be certified. By executing the applicable Invoice/Voucher Covers available on the JAC website, Counsel is certifying that Counsel actually expended the funds for which Counsel is seeking reimbursement. For services rendered on or after July 1, 2013, Counsel shall not bill for work performed by a paralegal, secretary or other similar clerical office support, legal assistant, administrative assistant, or any other employee of Counsel's law practice. Counsel shall not bill for clerical or secretarial work, or work of a similar nature, performed by Counsel. Counsel shall not bill for overhead expenses either directly or indirectly through a due process vendor. Overhead expenses include but are not limited to expenses associated with postage, internal or in-house copying, telephone charges including long distance and collect calls, and computerized research services such as Westlaw and Lexis/Nexis. Counsel shall not bill for purchase of computer equipment including portable flash and hard drives, office equipment, office supplies, legal materials, books, clothing, personal items, haircuts, manicures, or other such personal services for Client. Counsel may only be compensated for services reasonably necessary for defense of the case. Instructions on how to properly complete the applicable Invoice/Voucher Cover are available on the JAC website.

Disposition Documentation

Counsel must submit appropriate court documents indicating the case has reached a billable point as set forth in s. 27.711(4), F.S. or the court has discharged Counsel from the case.

Billable Point Documentation

Counsel must supply a copy of the document(s) showing that the case has reached a billable point, except where billing is authorized prior to final disposition. Counsel shall also provide JAC with a copy of the Motion for Postconviction Relief and any appellate briefs or petitions filed by Counsel. The briefs and petitions may be provided in either electronic or paper format; however electronic submission through e-mail is preferred.

Withdrawal / Limited Appointment Disposition Documentation

If Counsel has not completed the case or if the case has not reached final disposition prior to discharge, Counsel shall provide JAC a copy of the Order discharging the attorney. However, if the Order does not clearly reflect the reason for withdrawal, the Motion for Withdrawal must also be submitted to JAC.

If Counsel is discharged due to the client's retention of privately retained counsel, then the Order or the Motion should reflect that this is the basis for discharge.

For those cases in which an attorney takes the case to a billable point, the attorney does not need to supply JAC with an Order authorizing discharge. An Order of discharge is only required where an attorney is discharged prior to the completion of the case.

Designation of a Second Attorney

Under s. 27.711, F.S., Counsel may designate a single attorney to assist Counsel. If Counsel designates an attorney, Counsel will need to submit a written designation indicating the designated attorney and certifying that he or she meets the qualifications of s. 27.710, F.S. A designation form is available on the JAC website. The designated attorney will not enter into a contract with JAC. Instead, his or her services would fall under Counsel's registry contract. Counsel will submit a single billing incorporating both of the attorneys' services. This billing must clearly indicate which attorney provided the services either through (1) separate hourly statements or (2) a single hourly statement with each entry indicating who provided that service through initials or other designation.

Review and Response

Upon submission of an intended billing for attorney fees and costs, JAC shall review the billing for completeness and compliance with contractual and statutory requirements. Upon review, JAC will send Counsel an appropriate response including those set forth below.

Billing Audit Deficiency

When JAC receives an intended billing for attorney fees and costs which lacks the applicable forms, necessary documentation, or requisite information, JAC may send Counsel a Billing Audit Deficiency. The Billing Audit Deficiency will indicate the reason JAC is unable to process the intended billing and will request that Counsel provide the lacking materials.

JAC may, at its discretion, send a Billing Audit Deficiency in an effort to resolve a math error, a rate error, or any other error/issue pertaining to the intended billing.

A Billing Audit Deficiency is not a Letter of Objection and cannot be relied upon as a basis to file a motion. Accordingly, Counsel may not file a Motion for Attorney Fees and Costs based upon JAC's Billing Audit Deficiency.

Responses to Billing Audit Deficiencies should be submitted either by appending the response to the billing through the Online Billing Submission System or via e-mail to compliance@justiceadmin.org

If Counsel or a vendor fails to respond to a Billing Audit Deficiency or fails to provide necessary documentation within a reasonable period of time, then JAC may take appropriate action including, but not limited to, rejecting the bill for payment, issuing a Letter of Objection to payment, or paying the amount authorized under the established rates or applicable court order. If the Billing Audit Deficiency is not responded to within a year, then the billing is deemed abandoned without further notice.

Returned Bills

JAC will return any intended billing for which it lacks statutory authority to pay for the type of representation that is being billed. JAC will also return any intended

billing that is duplicative of an intended billing previously received by JAC or DFS. JAC may also return an intended billing for other reasons including, but not limited to, failure to provide additional information or documentation as requested in a Billing Audit Deficiency.

If Counsel files a motion for attorney fees and costs, JAC is entitled to notice and an opportunity to be heard. JAC's return of an intended billing does not constitute a waiver of JAC's right to a hearing on the matter. Until and unless JAC specifically indicates it does not wish to appear at a hearing or otherwise waives its right to a hearing, JAC is presumed to desire a hearing on any matter relating to attorney fees, costs, or related expenses when a bill is returned to an attorney or vendor.

Letter of Objection

When JAC objects to any portion of an intended billing for attorney's fees and costs, JAC will send Counsel a Letter of Objection. The Letter of Objection will identify JAC's specific objection(s) and indicate JAC's corresponding reason for the objection(s).

The receipt of JAC's Letter of Objection is a mandatory condition precedent to Counsel's filing of a motion for attorney fees and costs. Upon receipt of the Letter of Objection, Counsel may file a motion for attorney fees and costs with service upon JAC a minimum of five (5) days prior to any hearing on the motion. Pursuant to s. 27.711, F.S., and the registry contract, Counsel shall not file or set for hearing a motion for attorney fees and costs until JAC issues a Letter of Objection or a Letter of No Objection. Any motion for attorney fees and costs must specify whether JAC objects to any portion thereof or the sufficiency of documentation. Counsel shall attach JAC's Letter of Objection to the motion. Counsel must serve a copy of the motion on JAC along with all attachments including JAC's Letter of Objection.

The filing of a motion for payment of attorney fees, costs, or related expenses prior to receipt of JAC's Letter of Objection or No Objection constitutes a breach of the registry contract.

Letter of No Objection

When an intended billing for hourly attorney fees and costs is satisfactorily submitted, and JAC has no objection to any portion thereof, JAC will send Counsel a Letter of No Objection. Upon receipt of JAC's Letter of No Objection, Counsel may file a motion for attorney fees and costs. Counsel shall attach JAC's Letter of No Objection to the motion.

Additional Information

If Counsel, after having received an objection letter, wishes to provide additional information in an effort to remedy and/or satisfy the objections set forth in the JAC's Letter of Objection, Counsel may do so. This information should be sent to compliancereview@justicedmin.org. However, any such additional

information should be presented in such a manner that permits for the additional information to be readily ascertainable. For example, an amended hourly statement should have the amended information bolded and/or underlined to assist the auditor with easily identifying the amendments. At its discretion, JAC may issue an amended letter based upon the additional information provided. If JAC issues an amended letter, Counsel is responsible for filing the letter with the court.

Changes / Alterations

As a general rule, JAC will not alter or change any intended billing for attorney's fees and costs without the signed authorization of Counsel. If a vendor or attorney bills in excess of the rates established by law, JAC reserves the right to correct the billing to the established rates and process the billing for payment at the corrected amount.

When JAC corrects a billing, JAC will provide the attorney or due process vendor with a notice advising him or her of the correction(s).

JAC can accept a corrected voucher cover reducing the amount of a billing by facsimile or e-mail. However, to increase the amount of a billing, the corrected voucher cover must be an original. When increasing the amount, a new corrected voucher cover must be submitted to JAC. This should be done through the Online Billing Submission system by appending an amended voucher cover into the existing billing.

Electronic Communications

Counsel must maintain sufficient internet capability, including an e-mail account, to communicate with JAC. Counsel must be prepared to accept communications including billing audit deficiency forms and Letters of Objections or No Objection via e-mail.

Counsel must also be capable of accepting legal pleadings including but not limited to responses to motions for attorney fees, costs, or related expenses by e-mail in PDF format.

Electronic Funds Transfer (E.F.T.)

Counsel and vendors seeking direct payment from JAC must participate in a direct-deposit program under which the attorney or due process vendor authorizes the transfer of funds electronically to an account in the attorney's or vendor's name at a federal-chartered or state-chartered financial institution.

The information and forms necessary to enroll in the E.F.T. program are available on website for the Department of Financial Services:

http://www.myfloridacfo.com/aadir/direct_deposit_web/index.htm

The forms for enrollment into the E.F.T. program must be sent to the Department of Financial Services. **JAC does not process these forms.** The address and

contact information for DFS are as follows:

Direct Deposit Section
Department of Financial Services
200 E. Gaines St.
Tallahassee, Florida 32399-0359
Telephone (850) 413-5517

These forms must be completed accurately in order for DFS to enroll a person into the E.F.T. program.

If Counsel or the due process vendor seeks an exemption from this provision, Counsel or the due process vendor must submit in writing a request for exemption specifically delineating why Counsel or the vendor cannot comply with this provision. The form for requesting an exemption is posted on JAC's website. JAC may exempt Counsel or a vendor from compliance with this provision only if JAC determines that participation in a direct-deposit program creates a financial hardship for Counsel or the vendor.

B. Legal Challenges

Notice Requirement

Unless JAC has expressly waived its right to a hearing, JAC must be served with a copy of a written motion and notice of hearing prior to a court entering an order regarding any motion for attorney fees, costs, or related expenses. Thus, Counsel shall not seek to obtain a court order prior to obtaining a response from JAC. A copy of the motion must be served on JAC a **minimum of five (5) business days** prior to the date of the hearing on the motion. Pursuant to the registry contract, to be considered served, an electronic copy of the pleading must be submitted via e-mail to

pleadings@justiceadmin.org

JAC's failure to respond to any motion shall not constitute a waiver of JAC's right to be heard regarding the matter. Similarly, JAC's returning of a bill does not constitute a waiver of its right to a hearing unless the notice of returned voucher specifically indicates JAC does not wish to participate in a hearing on the matter. If Counsel obtains an order in violation of this notice requirement, Counsel agrees not to contest any motion to vacate filed by JAC.

Orders

Any order directing JAC to pay attorney fees and costs must be served upon JAC no later than 72 hours after entry of the order. Counsel is responsible for ensuring JAC receives any such order in a timely and proper fashion. If Counsel does not provide an order to JAC in a timely and proper fashion, Counsel shall not contest any motion to vacate filed by JAC.

C. General Compensation

Compensation Rates

Counsel's compensation rates for attorney fees and costs are governed by s. 27.711(4) through (7), F.S.

D. Hourly Billing Practices

Procedural Requirement

Counsel seeking hourly compensation on a case are required to file a motion for attorney fees and costs. Counsel is required to attach to the motion a copy of JAC's Letter of Objection or Letter of No Objection. Prior to filing a motion for fees and costs, Counsel must comply with the requirements of ss. 27.710 and 27.711, F.S. other provisions of Florida law, the registry contract, and these Policies and Procedures. A motion filed prior to JAC's response is legally premature as set forth above in Section II-A. Accordingly, JAC may seek to vacate any resulting order.

Hourly Billing Records

If Counsel intends to seek hourly compensation on a case, Counsel must maintain contemporaneous records for the time spent on the case. **Failure to keep such records constitutes a waiver of the opportunity to seek extraordinary or hourly compensation on a case.** JAC has no authority to pay hourly billing unless Counsel has kept and maintained contemporaneous records.

JAC's determination as to whether Counsel has waived the opportunity to seek extraordinary compensation in a case is entitled to deference and may only be overturned if a court concludes that JAC's determination is not supported by any competent substantial evidence.

Billing Must be in Tenths

When billing hourly, Counsel shall submit an itemized billing in tenths of an hour increments as demonstrated in the chart below. JAC will round down for any submitted hourly billing that is not billed in tenths.

1.0	1-6 minutes
2.0	7-12 minutes
3.0	13-18 minutes
4.0	19-24 minutes
5.0	25-30 minutes
6.0	31-36 minutes
7.0	37-42 minutes
8.0	43-48 minutes
9.0	49-54 minutes
10.0	55-60 minutes

Total Time Billed

The total time billed for any particular work session on a case cannot exceed the amount of actual time expended during that work session on the particular case. For example, if Counsel reviewed three separate pleadings during a particular work session for a total of five minutes, then Counsel should bill .1 for that totality of that activity of reviewing all three pleadings. Counsel should not individually bill .1 three separate times for review of each separate pleading.

Block Billing and “On or About” Language Prohibited

A billing may not contain entries in which Counsel bills for services across multiple dates in a single entry. Each billing entry must indicate the precise date that the service was rendered and cannot contain any language suggesting ambivalence regarding the date the activity was performed. Pursuant to the registry contract Counsel is required to maintain detailed contemporaneous records of his or her time spent on court-appointed cases.

A billing containing block billing entries or “on or about” type language may result in JAC finding that Counsel has failed to maintain detailed contemporaneous records as required by JAC Policies and Procedures.

Billing for Multiple Services in a Single Day

A billing may not contain multiple entries in a single day billed together as one time increment. When multiple services are reported on one line, time for each service should be listed individually. The services should be billed individually in order for JAC to ascertain the reasonableness of the entries. JAC may return a bill for failure to separate daily entries.

Example Acceptable/Unacceptable Hourly Descriptions

Acceptable	Unacceptable
Attended hearing on motion to Suppress; to Continue; in limine	Attended hearing
Review depositions of Halm and Brown-.5 hr/ 50 pgs; police reports 2.0 hr/75 pgs	Receive and Review discovery
Draft Motion to suppress/motion to continue	Draft Motion/pleading
Research issue on abandonment/ hearsay exception/prior testimony	Research

Interview witness - .4 hr /review witness statements – 50 pgs - 1.2 hr	Investigation
Telephone call to/from client/conf. with State Attorney	Telephone call
Reviewed letter from State Attorney [2 pgs]	Reviewed letter
Read depositions 100 pgs - 3.2 hr/witness statements 50 pgs - 1.1 hr	File Review
Drafted letter to Expert/Client	Drafted Letter
Reviewed deposition of J. Smith for hearing 65 pgs	Reviewed deposition
Attended deposition of J. Doe	Attended deposition
Prepared questions/reviewed witness statement	Prepared for deposition
Drafted memo of law on probable cause	Draft memo to file
Trial prep – prepare opening 1.0 hr.; .5 hrs.; prepare questions for 25 docs - 2.1 hr John Doe 1.5 hrs.; review jury questions -.8 hr; examine exhibits, prepare proposed voir dire questions	Trial Prep

The above examples are illustrative and not intended to be a complete list. The examples are minimum descriptions. Counsel is encouraged to provide greater detail.

Non-Billable Items

For services rendered on or after July 1, 2013, non-billable items include, but are not limited to, the following:

1. Services performed by:
 - a.) support staff,
 - b.) paralegals,
 - c.) law clerks, and
 - d.) secretaries.
2. Time related to or in furtherance of billing, or time related to defending a disputed bill.
3. Time spent reviewing invoices of due process vendors.
4. Time spent preparing motions for attorney fees and costs, investigative and miscellaneous costs, and/or related expenses and time spent in

- hearing on said motions.
5. Activity not reasonably related to the merits of the underlying case. This includes time spent preparing routine documents such as notices of unavailability, calendaring hearings, setting depositions, and providing instructions to staff.
 6. Office or administrative functions. This includes secretarial and administrative work performed by any person, including Counsel assigned to the case. Even if Counsel completes the work, administrative work cannot be billed.
 7. Time spent defending against a bar complaint, 3.850 motion, or other grievance filed by the client.
 8. Activity not reasonably related to the defense of the case.
 9. Correspondence with JAC and conversations with JAC personnel.

Apportionment of Time between Cases

When Counsel performs activities attributable to more than one case, the time must be apportioned between all the cases. If Counsel is in court on multiple cases, the time spent shall be apportioned among all the cases regardless of the manner in which the cases are billed.

If there is a hearing or other proceeding that can be attributed to more than one case, then Counsel shall divide the time spent between those cases in such a manner that the total amount of time divided among the cases is the actual time spent in the hearing or other proceeding. Counsel may not charge more than the actual time spent on a matter. For example, Counsel may not bill two hours for a one hour hearing simply because the defendant has two cases being heard at the same time (a/k/a stacked-billing or double-billing).

Interim Hourly Billing

Although s. 27.711, F.S. references billable stages, the statute does not prohibit bills covering more than one billable stage. If the bill submitted covers more than one billable state, please indicate on the voucher cover which stages are covered in the billing, and please delineate on the timesheet when one stage is completed and another initiated.

Generally, Counsel should only seek to bill after the case has reached a billable stage as set forth in s. 27.711, F.S. Those billable stages are:

1. \$2,500 from appointment to filing notice of appearance.
2. \$20,000 through filing motion for postconviction relief.
3. \$20,000 through issuance of final order on motion for postconviction relief.
4. \$20,000 through filing of briefs on appeal of order on motion for postconviction relief.
5. \$10,000 through issuance of a final order on motion for postconviction relief upon remand from appellate proceedings.
6. \$4,000 through denial of appeal.
7. \$2,500 for petition for writ of certiorari to the U.S. Supreme Court.
8. \$5,000 for proceedings following issuance of a death warrant.

Maintenance and Inspection of Billing-Related Records

Pursuant to the registry contract, Counsel is required to keep contemporaneous detailed records to enable JAC to verify all costs, expenses, and time expended in representation of court-appointed clients. The records shall include supporting documentation necessary to adequately evaluate and substantiate payments made to Counsel. The attorney shall maintain appropriate documentation, including contemporaneous and detailed hourly accounting of time spent representing the client.

These records and documents are subject to review by JAC, subject to the attorney-client privilege and work-product privilege. Counsel may redact information from the records and documents only to the extent necessary to comply with the privilege. Counsel must maintain the records and documents in a manner that enables the attorney to redact information subject to a privilege in order to facilitate and not impede JAC's review of the records and documents.

Upon JAC's issuance of a notice of inspection of records and documents as to a particular case, Counsel must deliver to JAC copies of any and all contemporaneous billing records related to that case within a reasonable period of time. This time period shall not exceed 30 days unless an extension is granted by JAC in writing. Counsel's failure to provide the contemporaneous billing records within a reasonable period of time shall be deemed a refusal to allow JAC to inspect the contemporaneous billing records.

Counsel must retain and make available for inspection and audit at Counsel's place of business, upon reasonable notice, all books, statements, ledgers and other financial records relating to services in court-appointed cases for a period of five (5) years from the date of each payment, or until all Federal or State audits that may relate to each payment are complete for the applicable fiscal year, whichever is later, unless ordered sealed by the Court. For purposes of this inspection, 14 days notice shall be deemed reasonable notice.

Tuition and Expenses

Section 29.711(7), F.S. provides a maximum of \$500 per fiscal year for continuing legal education pertaining to the representation of capital defendants. Counsel should indicate on the voucher cover that a billing includes this expense and provide invoice(s) and proof of payment for these expenses.

Contemporaneous Records

To seek compensation, Counsel must maintain appropriate documentation, including a contemporaneous and detailed accounting for the time spent on the case. Counsel must record with sufficient detail all the activity performed during the same general period of time as the occurrence of those activities. These records and documentation are subject to review by JAC, subject to the attorney-client privilege and work product privilege.

Procedural Compliance

Prior to filing a motion for compensation Counsel must submit the appropriately

completed and executed Invoice/Voucher Cover for attorney fees and costs, as well as all other necessary supporting documents, including supporting affidavits.

Counsel shall provide detailed descriptions for each activity listed, including but not limited to, the increment of time associated with the rendered activity, the identification of documents and materials, the number of pages, and the names of deponents and witnesses interviewed, as applicable. Failure to provide such records shall constitute Counsel's waiver of the opportunity to seek compensation.

As with all other intended billings, JAC shall review for completeness and compliance with contractual and statutory requirements. Upon review, JAC will send Counsel an applicable response as discussed in Section II-A.

Evidentiary Hearing

For those billing which are over the caps set forth in s. 27.711, or where there are billing issues that have not been resolved, JAC reserves the right to request appearance at the hearing and to appear telephonically.

Section III – Miscellaneous and Investigative Expenses

A. General Practices and Procedures

Obligation

Counsel billing for miscellaneous and investigative expenses shall follow the requirements of Florida Law, the registry contract, and JAC's Policies and Procedures.

Any forms and documents submitted to JAC should include the Counsel's name and bar license number.

Vendor Contracts

Those vendors who desire direct payment from JAC must enter into a contract with JAC to facilitate direct payment. JAC only makes direct payment to those vendors who have executed a contract with JAC. Although a contract is generally not required for other state entities, a Florida state entity must be willing to bill JAC directly in order for JAC to make direct payment to the vendor.

If a vendor or other entity providing services to the defense does not have a contract with JAC or is unwilling to bill JAC directly, then Counsel pays the vendor or other entity and then seeks reimbursement from JAC. To the extent that Counsel pays in excess of the established rates or in excess of the amounts authorized by the court, JAC shall reimburse the attorney for the amounts reimbursable under Florida law or court order. JAC has established three types of vendor contracts.

- The Type 1 Due Process Contract will be used for those vendors

providing ordinary due process services in private court-appointed cases such as court reporters, interpreters, videographers, private investigators, mitigation specialists, and private process servers. This Contract provides that all services will be provided at the rates established by the legislature or by JAC where the legislature has not established a rate. If a vendor bills in excess of the established rates, JAC will be authorized to correct the billing to the correct rates and then process the billing for payment.

- The Type 2 Due Process Contract is generally used for vendors providing extraordinary services such as psychologists, psychiatrists, medical doctors, and experts. Although these services should be at the established rates, the Contract provides a mechanism to exceed those rates where the expertise of the vendor or other factors warrants compensation at a rate higher than the established rates. Except in exceptional circumstances, the Type 2 Due Process Contract will not be executed with vendors of ordinary due process services such as court reporters and private investigators.
- The Non-Standard Due Process Contract is case specific. It will only authorize due process services in relation to a particular case. It otherwise mirrors the Type 2 Due Process Contract. This Contract is generally used with out-of-state vendors and in other instances where JAC is unwilling to enter a Type 1 or Type 2 Contract with a vendor.

The JAC Due Process Contracts are posted on JAC's website.

Methods of Paying Miscellaneous and Investigative Expenses

JAC will reimburse for miscellaneous and investigative service costs in one of two ways: JAC pays vendor after Counsel certifies the service costs; or Counsel pays and is subsequently reimbursed by JAC.

Invoice/Voucher Cover

The Invoice/Voucher Cover is essential for the satisfactory billing for miscellaneous and investigative services. Counsel must appropriately complete, execute, and submit the applicable Invoice/Voucher Cover, as well as all necessary supporting documents.

Invoice/Voucher Covers for attorney fees and costs and corresponding instructions are available on JAC's website.

An intended billing for miscellaneous and investigative service costs is not considered submitted to JAC until and unless JAC receives an original Invoice/Voucher Cover signed by Counsel and the vendor, along with all necessary supporting documents.

The Voucher Cover may not be signed prior to the receipt of the services requested. For example, Counsel may not sign a Voucher Cover for a transcript until after Counsel has actually received the transcript. Any voucher cover signed prior to the receipt of the service will be returned.

Counsel should keep a copy of any voucher covers that he or she signs in relation to a court-appointed case. Under the JAC Contract, Counsel and the vendor are required to maintain copies of all records and these records are subject to inspection by JAC.

Certification of Miscellaneous and Investigative Expenses

Generally, intended billings for these costs shall be certified by Counsel (and the vendor when the vendor is billing JAC directly). Certification is provided on the applicable Invoice/Voucher Covers available on the JAC website. Additionally, corresponding instructions are also available on the JAC website.

Counsel cannot execute the certification on the JAC Invoice/Voucher cover until the work is actually completed. **If JAC receives an Invoice/Voucher cover that was executed prior to the date the vendor completed the service, then JAC will return the intended billing.**

Original Invoice

All intended billings for miscellaneous and investigative costs must be submitted using the applicable JAC Invoice/Voucher Cover. Vendors may use their own original invoices as support for the intended billing as long as the invoice contains sufficient detail to support the intended billing.

If the original invoice is not available, a photocopy of the invoice may be substituted. However, Counsel must write on the face of the invoice, and certify with signature and bar license number, the following:

“I certify that the original invoice is not available and that this invoice copy is a true and accurate duplicate of the original invoice.”

(Signed by Counsel, Bar License Number recorded underneath signature).

Prompt Review of Invoices

Any direct payment to a vendor is contingent upon Counsel providing any and all necessary documentation in support of a billing to JAC in an expeditious fashion. Counsel shall promptly review any billing for direct payment to a vendor for accuracy and completeness and must certify that the work was satisfactorily performed. In the event JAC issues a deficiency notice regarding any billing, Counsel or the vendor shall promptly resolve the deficiency so that JAC can process the billing for payment. Counsel must comply with all JAC policies and procedures in the submission of billings in order for JAC to make direct payment to a vendor.

Prohibited Practices

Counsel is prohibited from obtaining services for his or her court-appointed clients from a vendor or other business entity of which Counsel or Counsel's spouse or child is an officer, partner, director, or proprietor or in which Counsel or Counsel's spouse or child, or any combination of them, has a material interest in

any form whatsoever.

Counsel is prohibited from soliciting or accepting anything of value to Counsel, including a gift, loan, reward, promise of future employment, favor, or service, from a vendor or other business entity who provides services to Counsel's court-appointed clients other than the services rendered on behalf of the indigent client.

A vendor is prohibited from paying, offering or giving anything of value to Counsel including a gift, loan, reward, promise of future employment, favor, or service, as consideration or other remuneration for providing services in court-appointed cases other than the services rendered on behalf of the indigent client.

Counsel and vendors waive compensation for services in any form whatsoever where either Counsel or the vendor has engaged in these aforementioned prohibited practices.

B. Service and Notice

Standing of JAC

JAC shall only pay for services as set forth in s. 27.711, F. S., reasonably required for the defense of the case. JAC has standing to contest the authorization for any service costs and the amount of said costs. Counsel shall have the burden to establish that the costs are reasonable and necessary to the defense of the case.

If attorney obtains services without prior court approval, then attorney may be personally liable to reimburse the vendors. JAC is not privy to any contract between Counsel and vendors and in no way accepts responsibility or liability for quality of service, terms and conditions, or any other aspects of any contract between Counsel and vendors.

Notice

Counsel must serve JAC with a copy of the motion for miscellaneous or investigative costs prior to a court entering an order regarding service costs. For example, a court order is always required for any services in excess of rates established by law. The existence of an administrative order or local rules authorizing costs without prior court approval does not relieve an attorney from filing a motion seeking prior approval or authorization for costs. Absent express waiver from JAC, all costs must be approved by the court through specific court order.

A written motion for costs must specify the type of 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 (5) business days prior to the date of the hearing on the motion.** Pursuant to the JAC Contract, to be considered served, an electronic copy of the pleading must be submitted via e-mail to

pleadings@justiceadmin.org

JAC's failure to respond to such a motion shall not constitute a waiver of JAC's right to be heard regarding the matter. Unless JAC affirmatively waives the right to a hearing, JAC may seek to vacate any order entered without a hearing or without sufficient notice to JAC.

JAC will not pay for vendors that are obtained in violation of these requirements. Counsel is solely responsible for compensating a vendor obtained in violation of these requirements.

Contents of Motion Seeking Authorization for Costs

A motion seeking authorization for costs must establish the basis for the requested costs. The motion must 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 shall set forth the particularized need for the requested services based on the circumstances of the case.

Counsel has the burden to establish that the requested services are reasonable and necessary for the defense of the case. For experts and mitigation specialists, Counsel also has the burden to establish the particularized need for the services. Miscellaneous and investigative costs are those costs necessary to ensure a defendant's meaningful access to the courts.

C. General Compensation

Rates and Vendors for Services

JAC reviews due process service invoices to verify compliance with the recognized rates and amount authorized as established pursuant to Florida law.

Pursuant to the JAC Contract, the rates applicable in Capital Collateral cases are the same as the rates applicable for other private court appointed cases. These rates are established annually in the General Appropriations Act. The current rates are posted on the JAC's website.

If the rate for a particular service has not been established, JAC may establish a rate. In establishing rates, JAC will rely upon its experience since July 1, 2004, as well as the recommendations of the Article V Indigent Services Advisory Board, in determining the appropriateness of a rate charged and the total amount of compensation.

The Indigent Services Advisory Board's recommendations are as follows:

Expert Witness Categories	Average	Suggested Ranges
Expert Witness Fees - Per Hour	\$154.17	\$150 - \$200

Expert Witness Fees - In Court - Per Hour	\$147.17	\$125 - \$150
Expert Witness Fees - Out of Court- Per Hour	\$111.20	\$50 - \$150
Exp. Wit. Fee - Waiting to Testify - Court - Per	\$71.33	\$50 - \$75
Exp. Wit. Fee - Waiting to Testify - Depo.- Per	\$66.83	\$50 - \$75
Expert Witness Fee - Travel - Per Hour	\$63.50	\$50 - \$75
Expert Witness Fees - Per Case	\$1,580.0	\$1,500-\$2,000
Psychological Exam - Per Exam	\$246.88	\$150 - \$400
Psychologist - In Court/Testify - Per Hour	\$136.60	\$125 - \$150
Psychologist - Waiting to Testify - Per Hour	\$84.80	\$50 - \$75
Medical Doctors - In Court or Depo. - Per Hour	\$156.43	\$150 - \$200
Medical Doctors - Out of Court - Per Hour	\$128.33	\$100 - \$125
Other Pre-Trial Expert - In Court - Per Hour	\$102.67	\$75 - \$100
Other Pre-Trial Expert - Out of Court - Per Hour	\$77.00	\$50 -\$75

Investigators

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.

The role of a private investigator is limited to providing investigative services 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. Where private service of process is authorized, 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 is not a substitute for a paralegal or secretary and cannot be used to perform administrative tasks including, but not limited to, retrieving discovery from the state attorney; copying documents from a court file; delivering materials to the defendant; or any other tasks of a paralegal or secretarial nature.

When multiple investigators are assigned to the same case, only one investigator will be compensated for completing a single task. If multiple investigators attend the same meeting, only one investigator will be compensated for that time. If an investigation firm decides to divide up the work, any extra time spent as a result of using multiple investigators will be non-billable. Also, JAC will not pay for time associated with training investigators or investigator interns.

Service of Process

Service of process upon witnesses should be through the sheriff unless the sheriff is unable or unavailable to provide service of process. Under s. 57.081, F.S., the sheriff is available to provide service of process without prepayment in cases

involving indigent persons. The sheriff must be used to serve in-county law enforcement absent exceptional circumstances. In order to use a private process server to serve in-county law enforcement officers, Counsel must file with service upon JAC a motion setting forth the exceptional circumstances requiring use of a private process server.

If there is adequate time for the sheriff to perfect service on non-law enforcement, the sheriff should be used absent exceptional circumstances. JAC may object to reimbursement of private process server fees on non-law enforcement if there appears to have been adequate time for the sheriff to handle service.

Mitigation Specialists

In capital death cases, the legislature has authorized a higher maximum rate 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, Counsel 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 will need to 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.

Diligent Efforts

If Counsel intends to procure services at a rate higher than the established rates, Counsel must make a showing that the particular service is necessary to the defense of the case and that Counsel has made a diligent effort to find the service within the established rates. Diligent effort includes, but is not limited to, evidence that Counsel sought the services of at least three vendors willing to work on the case but none were willing to work at the established rates. If a court authorizes services in excess of the established rates, the order should contain findings as to the diligent efforts Counsel made to obtain services within the rates established by law.

Out-of-State Due Process Vendors

Counsel shall not seek authorization from the court for out-of-state experts or mitigation specialists, absent a showing that there are no such vendors 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 Counsel obtains an out-of-state vendor without making such a showing, Counsel agrees not to request reimbursement for any travel expenses, including compensation for travel time, on behalf of the vendor. 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. Counsel shall submit a copy of the order to JAC.

Transcripts

JAC may pay for the cost of preparing a transcript of a deposition only if Counsel secures an order from the court finding that preparation of the transcript is necessary, in which case JAC may pay for one original and one copy only. The order should reflect the name of the witness and the date of the deposition to be transcribed.

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 Counsel to order “necessary” transcripts does not suffice for payment purposes.

JAC may pay for the cost of one original transcript of any deposition, hearing, or other proceeding. Any other payment for a transcript of that same deposition, hearing, or other proceeding, regardless of whether the transcript is an additional original transcript or a copy, shall be at the rate paid for a copy of a transcript. This applies regardless of which state agency pays for the first original transcript.

The court order authorizing transcripts must be attached to the intended billing for the transcripts. Counsel must provide the court reporter with a copy of the order of appointment and the order authorizing the transcript. For any intended billing in which JAC will directly pay the court reporter, upon receipt of a completed invoice from a court reporter, Counsel shall promptly review and sign the invoice.

In determining the number of pages to be billed, JAC pays for the following: 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 does not pay for pages containing word indexes, summaries, or similar information unless specifically required by court rule. All transcripts must meet the formatting requirements set forth in Fla. R. Jud. Admin. 2.535(f).

Appearance Fees

Once JAC pays an appearance fee for a deposition, Counsel is entitled to a copy of any recordings, stenographic notes, computer files, or other documents related to transcribing the deposition in the event a court reporter or court reporting firm is unable or unwilling to prepare a transcript of the deposition. The costs of providing a copy of any recordings, stenographic notes, computer files, or other documents related to transcribing the deposition is incorporated into the appearance fees paid to the court reporter or court reporting firm. No additional fees will be paid to provide these records.

If a court reporter or court reporting firm is unable or unwilling to prepare a transcript for a deposition for which JAC has paid an appearance fee, then the

court reporter shall turn over a copy of any and all recordings, stenographic notes, computer files, or other documents related to transcribing the deposition to the attorney representing the indigent client or another court reporter or court reporting firm able and willing to perform the work as designated by the attorney. In particular, if a court reporter or court reporting firm is unwilling to transcribe or prepare a transcript within the established rates under Florida law and any applicable JAC Contract and there is another approved or qualified court reporter or court reporting firm within the State of Florida willing to transcribe the deposition within the aforementioned established rates, then the transcript must be prepared by a firm willing to work within the established rates.

For purposes of calculating the amount of an appearance fee for depositions involving multiple witnesses conducted by a court reporter, the amount is calculated per session, not per witness. The first hour is compensated at a rate of \$50.00 per hour and each hour thereafter is compensated at a rate of \$25.00 per hour. Unless there is a break exceeding an hour, the \$25.00 per hour rate continues to apply to any depositions taken in a case.

For example, the defense has depositions for a case from 8:00 a.m. to 12:00 p.m. The court reporter would bill a total of \$125.00 for this session (\$50.00 for the first hour and \$75.00 for the second, third, and fourth hours).

If there is a break of one hour or more, and the same court reporter returns following the break, the court reporter may bill the \$50.00 per hour for the first hour following the break. For example, if the defense has depositions from 8:00 a.m. to 11:00 a.m. and then from 1:30 p.m. to 4:30 p.m., then the court reporter could bill \$100.00 for the first session and \$100.00 for the second session.

When a break is less than an hour, then the session is considered ongoing. It is important to note that break time must be unbilled to be considered break time. Any wait time billed to JAC is not considered break time. For example, if one hour depositions are scheduled for 8:00 a.m., 9:00 a.m., 10:00 a.m., and 11:00 a.m., and the witnesses for 9:00 a.m. and 11:00 a.m. do not show but the court reporter remains onsite during the deposition session, then the court reporter would bill \$125.00 for the session (\$50.00 for the first hour and \$75.00 for the second, third, and fourth hours.) Because the court reporter is being paid for the wait time, the court reporter cannot bill \$50.00 for the fourth hour even though there was a break of 2 hours.

Certificates of Non-Appearance

The appearance fee paid by JAC includes payment for any certificates of non-appearance issued for witnesses that failed to appear during the deposition session. No additional fees beyond the appearance fee for a deposition session will be paid for a court reporter to prepare any certificate of non-appearance in relation to a witness's failure to appear during a deposition session.

Interpreters

JAC's role is to provide costs for foreign language interpreting services **outside** of the courtroom (or other judicial proceedings) such as deposition or witness interviews. Insofar as the Type 1 Due Process contract, JAC has included language authorizing an attorney to seek rates of up to **\$50 per hour for Spanish and Creole interpreting services** and **\$65 per hour for other languages** for certified and language-skilled interpreters. Normally, a vendor who signs a Type 1 Due Process contract is limited to payment at the established rates. This provision addresses recent changes adopted by the Florida Supreme Court in relation to foreign language interpreting services.

Prepayment/Retainers

JAC does not prepay or provide a retainer for miscellaneous or investigative expenses. Counsel shall not seek to have JAC prepay or provide a retainer for such services. If a vendor requires prepayment or a retainer, Counsel shall pay the amount and seek reimbursement only after the vendor has completed the services for which the prepayment or retainer was paid. Counsel shall only be reimbursed the amount necessary to compensate the vendor at the appropriate hourly rate, irrespective of the amount of the retainer.

Deposition of State Attorney's Expert

If Counsel seeks to depose the State Attorney's expert witness, Counsel must obtain a court order authorizing any compensation for the expert. The expert will bill Counsel just like any other expert. Counsel will then appropriately complete and execute the applicable forms for service costs, as well as submit all necessary supporting documents, for payment of the expert. The expert cannot be paid rates beyond those established by law without a court order which details the reason for deviating from rate established by law. If there is no rate set, then a court order must contain detailed justification for the rate. JAC will not pay any more than the compensation rate paid by the State Attorney for the expert.

Travel Time for Vendors

Other than investigators, vendors that bill at hourly rates may not bill for time spent traveling on a case unless a rate has been established by law or court order for travel time.

Statutory Exemption/Waiver of Prepayment

Pursuant to s. 28.345, F.S., private court-appointed counsel are exempt from all court-related fees and charges assessed by the clerks of the circuit courts. As delineated in s. 57.081, F.S., an indigent shall receive the services of the courts, sheriffs, and clerks, with respect to pending proceedings, despite his or her present inability to pay for these services including filing fees; service of process; certified copies of orders or final judgments; a single photocopy of any court pleading, record, or instrument filed with the clerk; examining fees; mediation services and fees; subpoena fees and services; service charges for collecting and disbursing funds; and any other cost or service arising out of pending litigation. Counsel is responsible for ensuring compliance with the terms of ss.

28.345 and 57.081, F.S. including but not limited to (1) providing necessary documentation to the clerk of court or sheriff and (2) filing appropriate motions with the trial court to obtain such services pursuant to the exemption or without prepayment. JAC shall not reimburse Counsel, either directly or indirectly through a due process vendor, for charges paid to the court, the sheriff or the clerk or court, in relation to services for which Counsel was statutorily exempt pursuant to s. 28.345, F.S., or the indigent client was entitled to receive without prepayment pursuant to s. 57.081, F.S.

Non-reimbursable Expenses

Counsel shall not bill for any purchase of purchase of computer equipment including portable flash and hard drives, office equipment, electronic equipment, office supplies, legal materials, books, clothing, personal items, haircuts, manicures, dry cleaning, or other such personal services for Counsel, the client, or a vendor.

D. Methods of Paying Miscellaneous and Investigative Expenses

JAC Pays Vendor after Counsel Certifies

Upon receiving a bill or invoice from the vendor, after completion of the service, Counsel must certify the bill or invoice. Both the attorney and the vendor must sign the applicable JAC Invoice/Voucher cover. The attorney or the vendor can then submit the completed Invoice/Voucher Cover and the supporting documentation. Counsel must have submitted the case opening documents before a vendor may be paid. JAC may then pay the vendor directly. Copies of court orders authorizing such costs must be provided with the intended billing except when no court order is required. Counsel may not certify the work is completed until the work has actually been completed.

If all procedures are not followed, or appropriate documentation is not provided, Counsel remains personally liable to pay the service vendor. **Any Voucher Cover received by JAC that certifies the work was done prior to completion of the work will be returned.**

Counsel Pays and is subsequently Reimbursed

Counsel may pay the vendor directly and then seek reimbursement from JAC. Reimbursement for service costs may be at the time Counsel seeks attorney fees, or after Counsel has accrued at least \$500 in out-of-pocket costs. After certifying the bill or invoice, Counsel must submit the original bill or invoice with a completed applicable Invoice/Voucher Cover. Counsel must also provide proof of payment. Copies of court orders authorizing such costs must be provided with the billing except when no court order is required. Counsel is entitled to reimbursement only if all procedures have been followed and appropriate documentation has been provided to JAC. Absent express court approval, Counsel may not be reimbursed to the extent the costs exceed the rates or limitations established by law or court order.

Online Billing Submission System

Due process billings may be submitted online through *My Access* (JAC's secure website). Vendors and attorneys who have registered an account with *My Access* may submit invoices only to cases already open in the JAC system. (To open a new court-appointed case, an attorney may use the Online Case Opening system in *My Access* to submit the order of appointment and required documentation.). The system allows either the due process vendor or the attorney to submit the billing through *My Access*. Prior to beginning an online invoice submission, please have the JAC Invoice/Voucher cover completed and signed by both the attorney and due process vendor, and scanned to an electronic file. Supporting documentation files must also be scanned to electronic files. All files must be in PDF or TIFF format only. During the online billing process, the attorney or vendor will be prompted to upload these files. The appropriate voucher cover can be obtained from the "Forms and Rates" section of JAC's public website. Vendor invoices should be scanned together with the corresponding JAC Invoice/Voucher cover. Please make sure the scans of all documents are legible.

Once the billing packet has been submitted, a confirmation message will appear and the attorney or due process vendor will receive a confirmation e-mail with a Tracking Number. To assist in submitting billings through this new system, additional instructions and tutorials will be available on *My Access*.

E. Signing the JAC Invoice/Voucher Cover

When Counsel signs the JAC Invoice/Voucher cover, Counsel is certifying the validity of the services listed on the voucher cover. Signing a JAC Invoice/Voucher Cover prepared by a due process vendor is much more than a ministerial task. Counsel signing the voucher cover is certifying that the services were satisfactorily performed and necessary for the representation. For transcripts, Counsel is further certifying the number of pages billed. If Counsel has any concerns regarding the accuracy of a billing, Counsel should resolve those concerns prior to signing the voucher cover.

Pursuant to the registry contract, Counsel may be liable for overpayments made to a due process vendor when **Counsel knew, or should have known, that the Voucher Cover was inaccurate at the time Counsel executed it.**

Section IV – Miscellaneous Expenses

A. General Practices and Procedures

Miscellaneous Expenses

When authorized, miscellaneous expenses must be directly related to the representation of the client in the case for which Counsel is court-appointed. Expenses which are incidental to Counsel's business operations are not reimbursable. For example, "photocopies of JAC intended billings" are not permitted expenses.

When authorized, miscellaneous expenses may only be billed at the same time Counsel bills for attorney fees and costs. Intended billings which include miscellaneous expenses that are not authorized will be reduced accordingly.

JAC will not pay for ordinary miscellaneous expenses including, but not limited to, postage, telephone calls, ordinary photocopying, and online research costs. Those costs are incorporated into attorney fees paid pursuant to Florida law and are not compensated separately from the applicable fee.

JAC does pay for copying costs associated with obtaining documents including public record requests and similar copying charges. When miscellaneous expenses are authorized, Counsel must use the applicable Invoice/Voucher Cover available on the JAC website. Additionally, corresponding instructions are also available on the JAC website.

Counsel seeking any miscellaneous expense reimbursement must submit detailed logs for any such reimbursement (i.e. mileage, telephone calls, postage, courier service, photocopies, etc.).

B. General Compensation

Mileage

Where authorized, mileage reimbursement will be at the established rate of \$0.445 per mile for travel. Counsel seeking reimbursement for mileage must submit a properly completed travel voucher issued by the Florida Department of Financial Services. Any request for mileage must be supported by documentation. Counsel may only bill for mileage when the destination is in excess of 50 miles (one-way) from Counsel's office.

In-state, city-to-city mileage calculations can be found at <http://www.dot.state.fl.us/planning/statistics/hwydata/intercity.shtm>

If an in-state travel destination is not included or available on this website, or if the travel is out-of-state, mileage may be calculated using an internet map

website (i.e. www.mapquest.com). Alternative sources may only be used when there is no entry on the DOT website.

Photocopies

With prior court approval, bills or invoices for out-sourced photocopy services may be reimbursed for the reasonable amount of the bill or invoice as a due process services cost. Copies made for administrative purposes are not reimbursable for services rendered on or after July 1, 2013. Additionally, photocopies pertaining to the court-appointed case obtained from Clerks of the Courts' offices are free to Counsel, and thus, are not reimbursable. See §§ 28.24 & 28.345, F.S.

Legal Research

On-line legal research constitutes an office expense and is not reimbursable for services rendered on or after July 1, 2013. It is considered part of office overhead similar to subscriptions to legal periodicals.

Conference Rooms

Generally, reimbursement for conference rooms is not permitted. In those circumstances where depositions or interviews are conducted outside the county, Counsel should check with the local court or public defender's office for that county, or other appropriate entity, for available free space. If no other free space is available, Counsel is required to obtain court approval prior to renting such space.

Section V –Procedural Requirements

Submission of Documents

Unless an original is required or requested by JAC, documents such as motions or court orders should be submitted through e-mail to:

pleadings@justiceadmin.org

Responses to Audit Deficiencies should be submitted through e-mail to:

compliancereview@justiceadmin.org

Forms or documents requiring an original signature such as Invoice/Voucher Covers, invoices, and travel reimbursement forms, **may not be faxed or e-mailed**. Accordingly, such documents should either be submitted through *My Access* (JAC's secure website) the Case Opening or Online Billing Submission systems or be mailed to JAC at:

P.O. Box 1654
Tallahassee, Florida 32302

To distinguish originals from photocopies, all original voucher covers must be signed in blue ink.

Legibility & Intelligibility

Any documentation submitted to JAC must be legible and intelligible. Any documentation submitted to JAC which is illegible or unintelligible will be returned and will not be considered satisfactorily submitted with JAC.

Sufficient Postage

Proper postage for letters and other packages sent to the Justice Administrative Commission (JAC) is the responsibility of the sender. JAC will not accept delivery of letters and other packages with insufficient postage or postage due.

Careful attention has to be paid to the size and dimensions of the package to insure proper postage is applied. Information regarding the US Postal Service's postage requirements and postage rate structure may be found on their website: <http://www.usps.gov>. Once again, it is each sender's responsibility to ensure proper postage is applied to letters and other packages being sent to JAC. Information describing the additional shape-based method for calculating proper postage is available on the website of the US Postal Service:

<http://pe.usps.com/text/dmm100/intro.htm>

Late Fees/Interest/Cancellation Fees

Counsel shall reimburse JAC for any due process service costs, such as an interest charge, loss of prompt payment discount, or other cost or expense incurred by JAC due to delay in payment of a due process service bill or invoice attributable to Counsel's error, omission, or untimely submission. JAC has no responsibility for and will not pay for any cancellation fees or loss of business charges. Counsel shall attempt to resolve any dispute between Counsel and vendor without JAC intervention.

Section VI – Necessary and Applicable Forms

Online Case Opening

Counsel may open new court appointments through the Case Opening system *My Access* (JAC's secure web site).

Online Billing Submission

Counsel and due process vendors should submit billings through the Online Billing Submission systems available through *My Access* (JAC's secure website).

Guidelines and Tips for Submitting Files Through *My Access*

- JavaScript should be enabled in your web browser.
- Disable pop-up blockers in your web browser for invoice billing submission.
- Prepare all invoice billing packet document files for invoice billing submission. Billing packet documents must be either PDF or TIFF file format. For Apple/Mac users, TIFF format is preferable.
- Total size for invoice billing submission packets must be less than 20 MB for all electronic files combined.
- When submitting documents online, please submit them as separate files, i.e., the travel voucher document should be submitted separately from the charging document. Do not create separate files for each page of the document. Please submit each document file in the appropriately named upload field textbox, or payment may be delayed.
- All documents submitted online should be legible and scanned right side up. Each page should consist of a full-sized single page of the original document. Documents should be scanned in black and white, with a resolution no greater than 300 DPI.
- For online billings, save your Invoice Billing Submission Tracking Number for future reference. This will allow you to amend or add to an electronic billing submission or submit a response to an audit deficiency through the online billing system.
- Once documents are submitted online, please do not mail, fax, or e-mail paper backups or courtesy copies to JAC. This will help avoid duplication, confusion, and delay in payment.
- Please retain original signed copies of all documentation for your records.

Attorney Fees & Costs

All necessary and applicable Invoices/Voucher Covers for attorney fees and costs are available on the JAC website. Corresponding instructions for each form are also available on the JAC website.

Direct Pay of Miscellaneous and Investigative Costs

All necessary and applicable Invoices/Voucher Covers for direct pay of miscellaneous and investigative costs are available on the JAC website. Corresponding instructions for each form are also available on the JAC website.

Counsel Reimbursement of Miscellaneous and Investigative Costs

All necessary and applicable Invoices/Voucher Covers for reimbursement of miscellaneous and investigative costs are available on the JAC website. Corresponding instructions for each form are also available on the JAC website.

Travel Prepayment / Reimbursement

All necessary and applicable Invoices/Voucher Covers for travel prepayment or reimbursement are available on the JAC website. Corresponding instructions for each form and a State of Florida Travel Tips guide are also available on the JAC website.

Witness Reimbursement

All necessary and applicable Invoices/Voucher Covers for witness payment are available on the JAC website. Corresponding instructions for each form are also available on the JAC website.

Section VII – Confidentiality and Public Records

Public Records

Forms, bills, invoices, documents, correspondence and contracts submitted to JAC are public records. In limited circumstances, the court can order records to be kept confidential and under seal at JAC.

In considering any issue of access to government records, it must be recognized that in Florida reports generated by a public agency are public records subject to disclosure, unless specifically made confidential or exempt by the Legislature.[1] Any exemptions to the Florida Public Records Law are to be narrowly construed.[2] Where a public record contains information that is exempt or confidential, that portion of the record which falls within the exemption may be redacted, while the remainder of the record must be produced for examination.

Fla. Att’y Gen. Op. 2001-54. The procedures for seeking sealing of court pleadings are available at Florida Rule of Judicial Administration 2.420. Absent an order in conformance with the rule, any documents provided to JAC will be subject to public records requests.

Confidential Information Should be Redacted

JAC does not require confidential information in order to process payment of submittals. To assist with auditing, JAC has been given the statutory authority to inspect court dockets under Ch. 39, F.S., and the authority to inspect and copy records under Ch. 985, F.S. Accordingly, Counsel does not have to reveal confidential information when providing a submittal to JAC. The case number and initials of the person represented by Counsel are usually enough to allow JAC to set the case up in the JAC database and process payment of the submittal. Counsel should redact any confidential information from documents submitted to JAC. However, documents must not be redacted to the point where the document is meaningless.

Section VIII – Counsel and Witness Travel

A. General Practices and Procedures

Travel

All travel must be pursuant to Florida law, particularly the requirements of s. 112.061, F.S. Travel reimbursement is limited to witnesses or Counsel for which reimbursement will be claimed on a uniform travel voucher as promulgated by the Department of Financial Services. Travel expenses are compensable to the extent authorized by law.

Traveler's Requirements:

- Include a valid court order identifying approved traveler with each travel request.
- Adhere to guidelines set forth in s. 112.061, F.S., Department of Financial Services Regulations, and the policies and procedures of the JAC.
- Review information regarding travel at <http://www.justiceadmin.org>.
- All travelers should maintain all original receipts (exception is where state standards for breakfast, lunch and dinner allowances apply).
- Bill only for authorized travel costs. Time spent making travel arrangements is considered clerical and is not reimbursable.

Court Order Required

For Counsel, JAC requires a court order approving travel. This order must be obtained prior to the travel. No commitment of state funds for such travel pursuant to s. 112.061, F. S. will be made without a court order.

B. Travel Reimbursement

Travel Voucher

Any request for reimbursement of travel expenses, including mileage, must be submitted using the travel voucher form issued by the Florida Department of Financial Services. JAC will not accept or consider any request for travel expenses except through the DFS travel voucher. Failure to submit a properly completed travel voucher constitutes a waiver of any right to obtain travel expenses.

Mileage

When authorized, mileage reimbursement will only be authorized for trips in excess of 50 miles one way. Effective July 1, 2011, JAC will no longer be accepting mileage logs. Instead, any request for mileage 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 the 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.

Travel must be via a usually traveled route from point-of-origin to point-of-destination. In state, city-to-city mileage calculations can be found at <http://www.dot.state.fl.us/planning/statistics/hwydata/intercity.shtm>. If an in-state travel destination is not included or available on this website, or if your travel is out-of- state, calculate your mileage using an internet map website that shows such mileage (i.e. www.mapquest.com).

Reimbursement

All original receipts are required. In most circumstances for court-appointed cases, when travel is necessary and court-ordered, the individual (i.e. Counsel, investigator, mitigation specialist, expert witness, etc.) should arrange the travel, pay for any related travel expenses, and upon completion of the travel, submit to JAC for processing of reimbursement payment.

All necessary and applicable Invoice/Voucher covers for travel reimbursement are available on the JAC website. Additionally, corresponding instructions for each form and a State of Florida Travel Tips guide are also available on the JAC website.

Hotels

Hotel accommodations exceeding \$150 per night require written justification. JAC requires Counsel to include three (3) internet or travel agency quotes for prices of nearby hotels if billing for more than \$150 per night. For additional information, please refer to the JAC website.

Competitive Carriers

Counsel is responsible for researching flight, lodging, and/or rental car rates, to obtain the most economical method of travel for each trip. When competitive carriers do not exist, documentation indicating that the reserved carrier is the sole vendor for the area must be provided.

C. Travel Prepayment

Prepayment of Limited Travel Expenses

JAC receives numerous inquiries and requests related to travel for Counsel, investigators, expert witnesses, and mitigation witnesses. In an effort to assist Counsel with travel cost for multiple witnesses, particularly in capital cases, JAC has paid in advance for such costs, such as air fare and lodging for ordinary witnesses. Counsel wishing to have JAC pay for travel is solely responsible for coordinating any necessary travel itinerary for witnesses and themselves. JAC will not act as an intermediary between witnesses and Counsel.

All necessary information required by JAC, such as the hotel and flight information, is required to be provided in writing and submitted by Counsel. Because airline policy requires third-party purchase of tickets at a minimum of five (5) days prior to the flight, JAC requires that all necessary information required to buy the ticket be provided in writing and submitted by Counsel at least ten (10) business days in advance of the flight.

Any attorney or due process vendor who fails to complete timely the DFS travel voucher and supply all necessary documentation will be barred from having JAC prepay travel expenses including hotel or airline bills. All subsequent travel will need to be paid by the attorney or the vendor and processed for reimbursement only after the travel has occurred

Applicable Procedure for Any Travel Prepayment Request:

- Obtain a valid court order authorizing travel and submit a copy to JAC. Research flight, lodging, and/or rental car rates, as necessary (When competitive carriers do not exist, please provide documentation indicating that the reserved carrier is the sole vendor for the area. Hotel accommodations exceeding \$150 per night require written justification. JAC requires Counsel to include three (3) internet or travel agency quotes for prices of nearby hotels if billing for more than \$150 per night.).
- When possible, request that each vendor hold the intended travel arrangements until JAC processes the travel request and formally reserves the arrangements via payment. (JAC requires at least 24 hours from receipt of all necessary information and documentation to provide payment).
- Promptly submit to JAC, via e-mail, all intended reservations and at least two additional comparative rate quotes for each type of reservation (i.e., common air carriers, lodging facilities, car rental companies, etc.).
- Appropriately complete, execute, and submit the necessary and applicable Invoice/Voucher Cover for travel prepayment (i.e. Travel Expense Request Form; Court-Appointed Attorney Program Travel Related Purchasing Request Form; Counsel Authorization for Agent to Arrange Travel), as well as all necessary supporting documentation. All necessary and applicable Invoice/Voucher Covers for travel prepayment are available on the JAC website.
- Upon satisfactory submission, JAC shall review for completeness and compliance with contractual and statutory requirement, whereby JAC will contact and process payment to the designated vendor.

JAC realizes that some travel vendors will not hold travel arrangements without prepayment or credit card. Please do not use your own credit card to hold a reservation in which you will seek prepayment. Instead, please help us better assist you in arranging your travel plans by providing JAC with detailed information as expediently as possible. As time is an essential element, JAC cannot guarantee

specific accommodations.

If, after a reservation has been acquired, an intended traveler does not travel, Counsel who requested the travel should provide JAC with an explanation for the cancellation including, but not limited to:

- The full name of the intended traveler and whether a subpoena was issued to this person.
- Facts related to the nonappearance (i.e. Did traveler fail to appear? Was traveler's testimony no longer required? Was there a sudden travel inability due to weather, illness, death? etc.).

Upon Completion of Travel:

- Counsel should submit all receipts for any incidental expenses to JAC (i.e. cab fares, parking, tolls, etc.)
- JAC staff will prepare a State of Florida travel voucher.
- If the travel voucher is for a vendor of services (i.e. investigator, mitigation specialist, expert witness, etc.), the completed voucher will first be mailed to the vendor for signature. It is then the responsibility of the vendor to forward the signed travel voucher to Counsel for his or her signature, thereby certifying the travel expenditures.
- If the travel voucher is for Counsel, the completed voucher will be mailed directly to Counsel for signature as both traveler and supervisor, thereby certifying the travel expenditures.
- Counsel is responsible for mailing the signed/executed voucher back to the appropriate JAC staff.
- JAC staff will submit the signed/executed travel voucher for process of payment to the traveler of any expenses not prepaid (i.e. incidental expenses).