



JUSTICE ADMINISTRATIVE COMMISSION



Expert Billing

July 2011

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Introduction:

- This training module is intended to be an aid for the billing process. For additional information, please review the JAC Agreements, JAC Policies & Procedures, and the Frequently Asked Questions.
- This module delineates the requirements:
 - to have an expert appointed,
 - for an expert to enter into a contract with JAC, and
 - related to the billing process to be followed.

Rates for Expert Services Compensated through JAC:

- Pursuant to section 27.425, F.S., the rates for experts are set each year by the legislature. JAC posts the current rates for each circuit on its website.
- If there is no rate set for the type of expert requested, then the court will need to set a rate when it authorizes the expert's services.



Rates for Expert Services Compensated through JAC Continued:

- When there is no rate, JAC generally relies on the rates recommended by the Indigent Services Advisory Board to assess the reasonableness of any requested rate.
- All expert services must be authorized through a court order. The order should indicate the rate for the expert and the maximum amount authorized for the expert's services.

Indigent Services Advisory Board Recommendations:

| 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 |
| Expert Witness Fee – Waiting to Testify – Court – Per Hour | \$71.33 | \$50 - \$75 |
| Expert Witness Fee – Waiting to Testify – Depo – Per Hour | \$66.83 | \$50 - \$75 |
| Expert Witness Fee – Travel – Per Hour | \$63.50 | \$50 - \$75 |
| Expert Witness Fee – Per Case | \$1,580.00 | \$1,500 - \$2,000 |
| Psychological Exam – Per Exam | \$246.88 | \$150 - \$400 |
| Psychologist – In Court/Testify Per Hour | \$136.60 | \$125 - \$150 |
| Psychologist – Waiting to Testify – Per Hour | \$84.80 | \$50 - \$75 |
| Medical Doctors – In Court or Depo - Per Hour | \$156.43 | \$150 - \$200 |
| Medical Doctors – Out of Court – Per Hour | \$128.33 | \$100 - \$125 |
| Other Pre Trial Expert – In Court – Per Hour | \$102.67 | \$75 - \$100 |
| Other Pre Trial Expert – Out of Court – Per Hour | \$77.00 | \$50 - \$75 |



Motion for Expert Services:

- Prior to retaining an expert, defense counsel must file a written motion seeking authorization to incur the expert services. The motion needs to establish the basis for the expert services by setting forth the reason why the expert's services are necessary for the defense of the case. The defense has the burden to show the particularized need for the expert's services.
- JAC is entitled to participate in any proceedings to authorize the services of an expert. The motion for an expert's services must be provided to JAC prior to a court entering an order authorizing those services. JAC is entitled to reasonable notice of any hearing related to a motion to authorize an expert's service. If the attorney obtains an order authorizing an expert's services without proper notice, then the order may be invalid.



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Motion for Expert Services Continued:

- Generally, experts are compensated on an hourly basis. In limited circumstances, a court may authorize compensation in a different manner such as a flat fee for a competency evaluation; a set rate for a type of DNA test; or a fee for medical procedures like MRIs, CAT scans, or PET scans.
- In those situations, the motion must indicate the set rate or fee for those services.

Order Authorizing Expert Services:

- Any order authorizing an expert's services should contain the services to be provided, the compensation rates for those services, and a maximum amount authorized for the expert's services. As long as the order contains this information, JAC can pay a billing from the expert without the need for further court order as long as the billing is within the amounts authorized by the court order and JAC has no objections to compensation.
- The attorney should obtain a good faith estimate from the expert regarding how much will be needed to perform the services in the case. The maximum amount authorized for the expert's services should be based upon this amount.

For example, if an attorney is seeking a comprehensive forensic psychological examination of the defendant, the attorney should ask the expert the number of hours the expert anticipates will be necessary to complete the evaluation.

Rates in Excess of the Established Rates:

- When an attorney seeks to procure expert services in excess of the established rates, or in excess of the rates recommended by the Indigent Services Advisory Board, the motion filed with the trial court will need to justify services in excess of the established rates. The attorney has the burden to establish that the expert's services are necessary to the defense of the case and that the attorney made diligent efforts to obtain the services within the established rates.
- Absent an order expressly authorizing a rate in excess of the established rates, JAC will only pay or reimburse for expert services at the established rates. If the attorney procures services at a higher rate, the attorney may be responsible for paying the difference.

Out-of-State Experts:

- The use of out-of-state experts is not authorized when there are competent experts available within Florida. An attorney should not seek authorization from the court for out-of-state experts absent a showing that there are no providers with appropriate skills or expertise available, first, in the county in which the case was filed, and second, in any other county in Florida.
- If an attorney retains an out-of-state expert without such a showing, then the attorney or expert cannot obtain reimbursement through JAC for travel expenses, including compensation for travel time.
- Any order authorizing the employment of out-of-state experts must be in writing and contain specific findings regarding the unavailability of a qualified in-state expert.

Travel Time for Experts:

- Experts may not bill for time spent traveling on a case unless an hourly rate has been established by law or court order for the travel time. Generally, travel time is not reimbursable.



Retainers:

- JAC does not prepay a retainer for expert services.
- If an expert requires a retainer, the retaining attorney is responsible for paying the retainer and then seeking reimbursement after the expert has completed the services.
- The retaining attorney shall only be reimbursed the amount necessary to compensate the expert at the authorized hourly rate irrespective of the amount of the retainer. If the expert services do not exhaust the retainer, JAC will not reimburse the attorney for the difference.

Exhaustion of Amount Authorized:

- If an expert exhausts the amount previously authorized by court order, then the attorney should file a motion to authorize additional services prior to the expert providing additional services in the matter.
- It is important that the attorney inform the expert of the amount authorized for the case. When the amount is exhausted, the expert must notify the attorney if additional services are required so that the attorney can file the appropriate motion with the trial court.

Multiple Defense Experts:

- Generally, the defense is only entitled to one expert in an area (such as mental health).

For example, if the defense needs the assistance of a mental health expert, the court is generally authorized to appoint a single expert to assist the defense.

- If the defense desires multiple experts in similar categories, the defense needs to establish a basis for the appointment of multiple experts in the same general area.

For example, the motion could allege that the examining psychologist recommended that a defendant be examined by a neuropsychologist.

Sealing of Motion and Orders:

- In some instances, an attorney may wish to have a motion and order sealed because disclosure to the state attorney's office could adversely impact the defense.

For example, the motion may disclose confidential information or reveal defense strategy.

- Florida Rule of Judicial Administration 2.420 contains specific requirements to place an order under seal.
- This rule became applicable to criminal cases on March 18, 2010, with the exception of Rule 2.420(d). Rule 2.420(d) is applicable as of October 1, 2010.
- Because JAC does not maintain an electronic copy of a sealed order, the vendor must submit a copy of the order with each invoice.

Mileage:

- When travel is more than 50 miles one way, a due process provider may bill for mileage pursuant to section 112.061, F.S. A request for reimbursement of mileage must be through the travel voucher issued by the Department of Financial Services.
- In certain circumstances, JAC may object to mileage reimbursement. One such circumstance is where the attorney retained an out-of-county expert when there were competent experts available in the county.

For example, JAC may object to mileage (and travel time if authorized) if an attorney retains a psychologist from Dade County to work on a Broward County case.

Entering into Contract with JAC:

Type 1 Due Process Agreement

- This Agreement is a term agreement covering all services rendered by the expert between July 1 and June 30. This Agreement 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 an expert 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.

Type 2 Due Process Agreement

- This Agreement is a term agreement covering all services rendered by the expert between July 1 and June 30. This Agreement 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) unless a court order authorizes a higher rate. JAC retains the authority to correct the billing to the correct rates if the attorney or expert does not provide JAC with an order authorizing higher rates.



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Entering into Contract with JAC Continued:

Non-Standard Agreement

- This Agreement is a case specific agreement that will cover services performed in the case indicated in the Agreement. It allows for compensation in excess of the established rates under appropriate circumstances. The Agreement would be used for out-of-state experts and for those experts that only desire to enter into a one time contract covering a single case. JAC generally does not execute Type 1 and Type 2 Agreements with out-of-state experts.

Which Agreement Should an Expert Execute:

- If an expert is willing to provide services at the established rates, then the expert should execute the Type 1 Due Process Agreement. This agreement binds the expert to provide services at those rates. An expert executing this Agreement will be eligible to provide services in any court appointed and indigent for costs case in those circuits for which the expert has indicated a willingness to provide services.
- If the expert intends to seek compensation in excess of the established rates, the expert should execute the Type 2 Due Process Agreement. This Agreement allows for the court to authorize higher rates upon an appropriate showing. The execution of this Agreement, by itself, will not allow for compensation in excess of the established rates. Any authorization for services in excess of the established rates must be through a specific court order.



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Which Agreement Should an Expert Execute Continued:

- The execution of a Type 1 or Type 2 Agreement indicates a general willingness to provide service in court-appointed and indigent for costs cases.
- Execution of a Non-Standard Agreement will generally occur when use of an out-of-state expert is authorized by the court or where an expert only desires to provide services in a specific case.

JAC's Online Vendor Database:

- JAC maintains a searchable database listing those experts who have executed Type 1 and Type 2 Due Process Agreements. If an expert does not want to have the expert's information available in the database, the expert needs to check the appropriate box in the addendum to the JAC Agreement.
- JAC does not endorse or verify the professional qualifications of the persons listed in the database. For those experts who wish to have their information posted, it is the expert's responsibility to provide accurate and current information. The information is offered as a courtesy to attorneys to help them locate competent experts for their court-appointed and indigent for cost cases.

Submission of Billings – Correct Voucher Cover:

- 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.
 - Because of changes in the law effective July 1, 2010, substantial adjustments were made to many of the voucher covers.
- The current voucher covers are posted on JAC's website.



Submission of Billings – Correct Voucher Cover Continued:

- The JAC Voucher Covers require the submission of information necessary for JAC to review a billing for compliance with statutory and contractual requirements.
- 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 as well as other billings because JAC staff has to spend substantial time obtaining the information that would have been included if the attorney or vendor had used the appropriate voucher cover.

Completion of Voucher Cover:

- The JAC Voucher Cover must be fully completed including all essential information requested.
- When experts attach their own invoice in lieu of completing the billing portion of the voucher cover, the information requested in the other portions of the voucher cover must still be completed.
- The attachment of a vendor's invoice only impacts the section in which the vendor checks the box indicating the invoice is attached. All other sections must be fully completed.
- The amount billed must always be provided in the JAC Voucher Cover.
- Detailed instructions on how to complete the voucher covers are available on JAC's website. Instructions are provided for each type of voucher cover.

Submission of Billings (Detailed Invoice):

- An expert must submit an itemized billing invoice. The invoice must include the date of service, type of service(s) provided, and amount of time worked for each service. The billing must be sufficiently detailed so that JAC can assess the reasonableness of the work done in the matter.
- Services should be billed in hours and tenths of hours. ***An expert may not bill in quarter hour increments.***
- An expert may not bill for services across multiple dates with a single entry. The billing must provide each date of service and the time worked on that date.



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Submission of Billings (Detailed Invoice) Continued:

- If more than one expert works on the case, this must be specifically authorized in the court order and should include the rates authorized for each expert. Similarly, if the expert intends to bill for time for assistants or other professionals, this must be specifically authorized by court order. The billing must accurately reflect who performed the work being billed.

For example, if an expert utilized another qualified professional to administer an intelligence test, this should be clearly indicated in the billing.

- If the services are being provided on a per service basis, the billing must reflect the date the service was provided.

For example, the billing should indicate the date that an MRI was performed on the defendant.

Secure Website:

- JAC has created a secure website through which an expert can obtain information regarding both unpaid and paid bills submitted to JAC. Through this website a vendor can determine whether JAC has received a billing and whether JAC has approved the billing for payment. A vendor 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 the secure website is available at:
 - <http://www.justiceadmin.org/login/Quick%20Reference%20Guide-Vendor%20Login.pdf>
- The JAC Help Desk can assist an expert in setting up secure access and in using the vendor website.

Indigent for Costs Cases:

- In some instances, a privately retained attorney may have their client declared indigent for costs. When this occurs, the attorney needs to provide JAC with specific documentation related to this determination. The attorney must provide JAC with:
 - The motion to declare the defendant indigent for costs;
 - The completed clerk's application for indigency;
 - An affidavit as to the estimated amount of attorney's fees;
 - The order declaring the defendant indigent for costs;
 - The charging document; and
 - The JAC Agreement signed by the attorney.
- Until JAC receives these documents, JAC cannot process any billing for payment related to that case.

Indigent for Costs Cases Screenshot:

- Similar to the vendor secure website, a private attorney can access a secure website related to his or her cases. One of the items the attorney can access is a screen showing whether JAC has received the six documents listed above. The attorney can print this screen. Before commencing work on an indigent for costs case, an expert or other due process vendor may wish to ask the attorney for a copy of this screen to verify that the attorney has provided JAC with the necessary documentation.

The Justice Administrative Commission

| | |
|-----------------|--|
| Case Number | |
| Description | |
| Defendant Last | |
| Defendant First | |

IFC Attorney Contract Received
Motion for Indigence Received
Order of Indigence Received
Application for Indigence Received
Affidavit for Attorney Fees Received
Charging Document Received

Chapter 39 cases including Dependency and TPR do not require a Charging Document for Due Process vendors to be paid.

| Invoice | Type | Warrant # | Total | Status |
|----------|------------------------|-----------|----------|---------------------------------|
| 20074866 | FREIGHT | | \$4.95 | Waiting on Response from Vendor |
| 20074866 | DEPOSITION TRANSCRIPTS | | \$30.00 | Waiting on Response from Vendor |
| 20074866 | DEPOSITION TRANSCRIPTS | | \$65.00 | Waiting on Response from Vendor |
| 20074866 | DEPOSITION TRANSCRIPTS | | \$103.95 | Waiting on Response from Vendor |
| 20076062 | APPEARANCE FEES | 1001555 | \$45.00 | Paid |
| 20076062 | APPEARANCE FEES | 1001555 | \$65.00 | Paid |
| 20076869 | DEPOSITION TRANSCRIPTS | 1360736 | \$103.95 | Paid |
| 20076869 | POSTAGE | 1360736 | \$4.90 | Paid |



Billing Audit Deficiencies:

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



Billing Audit Deficiency Continued:

- When responding to a Billing Audit Deficiency, the expert or attorney must use the Audit Deficiency as the cover page for any submission. This will allow JAC staff to identify the appropriate case for which the submission was provided.
- 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 further delay in payment.

Direct Deposit:

- By January 1, 2011, due process providers including experts must participate in a direct deposit program which allows for transfer of funds electronically to an account at a federal-chartered or state-chartered financial institution. If a provider seeks an exemption from this provision, the provider must submit in writing a request for exemption specifically delineating why he or she cannot comply with this provision.
- JAC does not review or process the application to set up electronic funds transfer. ***The application must be submitted directly to the Department of Financial Services (DFS).*** Information and the forms necessary are available on DFS's website:
 - http://www.myfloridacfo.com/aadir/direct_deposit_web/index.htm



Direct Deposit Continued:

- Once completed, the form should be sent to:
Direct Deposit Section
Department of Financial Services
200 E. Gaines Street
Tallahassee, Florida 32300-0359
- Please do not send these forms to JAC. JAC cannot process or review these forms.
- After setting up an EFT with DFS, if there are any changes to the payee name submitted to DFS, please submit the updated information to JAC's contract section.
- The payee name in JAC's database must match exactly with the EFT information in order for payment to be received.