

**IN THE COURTS OF THE FIRST JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA**

Administrative Order No. 2005-18

**Supersedes Administrative Orders 2004-31, 2004-50, 2004-62, 2004-66 and 2005-05 except
as specifically provided herein.**

**IN RE: DUE PROCESS COSTS - INDIGENT SERVICES
COURT APPOINTED COUNSEL**

**PROCEDURES FOR COURT APPOINTED PRIVATE ATTORNEYS
AND DUE PROCESS COSTS**

WHEREAS, the First Judicial Circuit Indigent Services Committee (ISC) has been established pursuant to §27.42, *Florida Statutes* to establish procedures for court-appointed counsel and due process costs; and

WHEREAS, the First Judicial Circuit Indigent Services Committee (ISC) has determined that it is appropriate to modify the existing procedures for the benefit of the criminal justice system, it is

ORDERED AND ADJUDGED that

GENERAL PROVISIONS

1. All court appointed counsel and private attorneys with clients found indigent for costs shall familiarize themselves with the policies, procedures, and proposed contracts of the Justice Administrative Commission (JAC). All of this information is available at www.justiceadmin.com.
2. All court appointed counsel and private attorneys with clients found indigent for costs shall familiarize themselves with the terms of this Administrative Order and any subsequent amendments, revisions or relevant memoranda as are placed on the official website for the First Judicial Circuit at www.firstjudicialcircuit.org or made available in the Office of the Chief Judge.
3. Attorneys accepting court appointments must sign a contract with the JAC to receive compensation for court appointed work performed in the First Judicial Circuit.
4. This Administrative Order shall be an attachment to any contract executed between the JAC and a court appointed private attorney for court appointed work performed in the First Judicial Circuit.

5. Attorneys who enter into contracts with the JAC shall provide the First Judicial Circuit's Court Administration office with a copy of the contract between the attorney and the JAC.
6. Court appointed attorneys may bill and shall be compensated for payment of attorney's fees. Attorneys shall bill in tenth of an hour increments (e.g. 0.1, 0.2, etc.).
7. The Justice Administrative Commission may pay miscellaneous costs (e.g. postage and photocopying expenses) up to \$100 without court approval.
8. Due process costs exclusive of court appointed attorney fees shall be compensated pursuant to the attached *Article V Indigent Services Committee First Judicial Circuit Approved Rates for Due Process Costs Effective July 1, 2005 through June 30, 2006* (Attachment 1 hereto). This schedule of rates supersedes those rates established under any and all previous Administrative Orders.
9. Private court-appointed counsel or an attorney for a defendant indigent for costs must make a motion to the trial court and obtain court approval prior to incurring expert witness expenses for which the State will be responsible except that counsel may retain a confidential expert for the purpose of conducting a competency evaluation without pre-approval. The reference to any "cap" in Attachment 1 shall not preclude the trial court from authorizing payment in excess of such "cap" if it determines the payment justified.
10. A list of Court Reporters who have agreed to the approved rates as outlined in Attachment 1 is attached hereto as Attachment 2. This list does not preclude utilization of the services of Court Reporters not listed in Attachment 2. However, no Court Reporter will be compensated in excess of the approved rates outlined in Attachment 1 hereto.
11. Court appointed counsel must make a motion to the trial court and obtain a court order to obtain compensation for private investigation costs. Private investigation compensation shall not exceed \$50.00 per hour. A cap of \$500.00 is established which may not be exceeded unless approved in advance by motion to and order by the trial court.
12. Court appointed counsel may arrange for direct payment from the JAC to the provider of due process services by following the procedure detailed in the attorney's contract with the JAC, and currently available for review at www.justiceadmin.com.
13. All travel expenses are governed by §112.061, *Florida Statutes*, Rules 69I-42, F.A.C. *Rules of the Bureau of Auditing* and the policies and procedures of the Justice Administrative Commission. Information and forms are available on the JAC website: www.justiceadmin.com and the website for the Department of Financial Services: www.fldfs.com, (Division of Accounting and Auditing, see Reference Guide for State

Expenditures). Prior to making travel arrangements, attorneys must access the JAC website for necessary pre-travel documentation and other pertinent travel information.

14. Court appointed counsel shall not be reimbursed for the following costs:
 - a. General office overhead including, but not limited to paralegal services, telephone calls (with the exception of long distance calls reasonably related to the representation), mileage, parking, office supplies, rent, and office equipment.
 - b. Travel time within each county.
 - c. Personal items purchased for or on behalf of the client.
 - d. Filing fees or other charges waived by law.
 - e. Payments to witnesses or for other services normally paid by the State or county.
 - f. Fees for private process servers. Process must be served by the Sheriff unless the court, for extraordinary and unusual circumstances, enters an order permitting employment of a certified process server.
 - g. Photocopying costs will be covered at the rate of 15 cents per copy. The photocopying log (Attachment 3 hereto) must be completed for each copy made and the log submitted to JAC with a request for payment.
15. Pursuant to §27.5304, *Florida Statutes*, the legislature has established caps on attorney fees for court appointed counsel in criminal cases. In order to obtain payment in excess of said caps, court appointed counsel must comply with the procedures established by the JAC and the Chief Financial Officer of the State of Florida as set forth in the Chief Financial Officer Memorandum No. 04 (attached hereto as Attachment 4 and incorporated by reference).
16. Any request to withdraw from a case or requests for substitution of counsel on a case will require the filing of a formal motion and a signed order from the trial court.

CRIMINAL CASES

17. Pursuant to §27.42, *Florida Statutes*, the First Judicial Circuit ISC is authorized to procure counsel to handle specific criminal division assignments instead of utilizing the Attorney Registry List (ARL) rotation procedure. The ISC has approved certain division assignments. Division assignments are memorialized in writing in memoranda form by the Chairman of the Indigent Services Committee. Any modification to the division assignments or additions or deletions to the respective Attorney Registry Lists may be accomplished by memoranda by the Chief Judge instead of by administrative order. The division assignments memoranda and any subsequent amendments thereto will be posted on the First Judicial Circuit's website at www.firstjudicialcircuit.org and copies are available through the Office of the Chief Judge.

Attorneys approved by the Committee to serve in a division assignment are authorized to enter into contracts with the JAC for the respective division assignments and the memoranda or any subsequent amendments shall be made a part of any such contract.

ATTORNEY REGISTRY LIST

18. Pursuant to §27.42, *Florida Statutes*, the First Judicial Circuit ISC has the responsibility for establishing attorney registry lists [hereinafter referred to as “ARL”] for conflict counsel to handle cases on which the public defender must withdraw as a result of ethical conflict. Assignment of cases to attorneys on the ARL will be in rotating order pursuant to Section 27.40(3)(b), *Florida Statutes*. The Attorney Registry Lists for Escambia, Okaloosa, Santa Rosa and Walton Counties have been established in separate documents. Utilization of the ARL shall occur when the division conflict attorney cannot accept a case because of ethical conflict or other good cause, including case overload. The list shall be utilized in the event that a particular division does not have a division conflict attorney.

Any modification to the Attorney Registry Lists may be accomplished by memoranda by the Chief Judge. Judges shall not assign a case to an attorney who is not on an Attorney Registry List established by the Chief Judge.

COMPENSATION FOR COUNSEL WITH DIVISION ASSIGNMENTS

19. The ISC has established reasonable compensation rates for counsel with a division assignment as follows:
- A. **FELONY DIVISIONS.**
A division conflict attorney will be paid a flat fee of \$600.00 per defendant for all cases other than capital cases (as statutorily defined). The rate of \$600.00 is per defendant; however, if a defendant has multiple cases within a division, there will be an additional \$300.00 flat fee per case for that defendant. Capital cases (as statutorily defined) and RICO cases (§895.04, *Florida Statutes*) will be paid at the hourly rate of \$60.00 per hour out of court and \$80.00 per hour in court. Capital cases for which the State is seeking the death penalty are not included within the division assignment but will be assigned from the ARL established for death penalty cases.
- B. A division conflict attorney may apply to the Chief Judge of the First Judicial Circuit as Chairman of the ISC, for an order authorizing a specific case to be compensated at the established hourly rate instead of a flat fee. Counsel may file a motion seeking such relief if a case involves exceptional circumstances based upon the multitude of State listed witnesses, voluminous documentary evidence or extensive out of State travel requirements. The motion must be specific in stating the basis for the Court to find exceptional circumstances and be accompanied by a proposed order that sufficiently identifies the case for the JAC. A copy of the motion shall be provided to the presiding judge and the office of the State Attorney and sufficient copies of the proposed order with pre-addressed, stamped envelopes shall be provided for the distribution of the order. Unless authorized by the Chief Judge, these motions will be addressed without oral argument.

- C. **MISDEMEANOR DIVISIONS.** Compensation for misdemeanor cases will be at a flat rate of \$350/per defendant. If a defendant has multiple cases within a division, there will be a flat fee of an additional \$150.00 per case.
- D. **JUVENILE DIVISIONS.** Juvenile cases will be compensated at a flat rate of \$350/per defendant. If a defendant has multiple cases within a division, there will be a flat fee of an additional \$150.00 per case.
- E. **VOP/VOCC.** In the event that a violation of probation or community control is brought against a defendant, the division conflict attorney for the specific division will be compensated at the rate of \$350.00 for felony VOPs/VOCCs and \$250.00 for misdemeanor and juvenile VOPs/VOCCs. There will be no additional compensation on a case if a defendant is referred to pre-trial diversion, or in the case of juveniles, alternative sanctions, and the defendant fails to complete the program and is returned for prosecution.

The specified flat fee includes both in-court and out-of-court work with no consideration of travel time.

- F. In the event an attorney with a division assignment is also on an attorney registry list and is appointed to a case outside the parameters of their division assignment, the attorney may elect to be compensated at a flat fee instead of at the hourly rate. It will be the responsibility of the attorney to provide the JAC with the necessary information identifying any case that falls outside of the attorney's division assignment. The attorney may elect the form of compensation at the time of application for payment.
- G. **Transition Payments.** Transition payments will be governed by *Paragraph 16. G. of Administrative Order No. 2005-05.*
- H. In the event an attorney is court appointed and subsequently the defendant retains private counsel, the appointed attorney will be entitled to compensation as follows. If the attorney is entitled to compensation at an hourly rate then the attorney is entitled to compensation for the time invested up to withdrawal subject to the statutory caps. If the attorney is on a flat fee basis, the attorney is entitled to the full flat fee if the attorney has filed a "Notice of Discovery" and the attorney received the discovery response from the State. If the attorney's representation has not reached that point then the attorney will not be entitled to any compensation for that case. If a court appointed attorney is discharged from representation of a client based upon a court determination of ineffective or incompetent representation, the attorney will not be entitled to compensation.
- I. In the event an attorney is court appointed prior to formal charges being brought against the defendant and the State of Florida files a dismissal then the court appointed attorney may seek compensation if the attorney engaged in

meaningful activity resulting in the decision of the State not to bring formal charges. If the JAC files an objection to the Notice of intended billing then the attorney may file a motion before the trial court and obtain compensation on the court's finding that the dismissal was a result of the meaningful activity of court appointed counsel.

- J. In the event a defendant fails to appear and a capias or warrant is issued by the trial court, the attorney may file a motion to withdraw thirty (30) days after the failure to appear and upon entry of the order may seek compensation from the JAC in accordance with standard procedure. An attorney who is compensated at an hourly rate shall be entitled to bill for the time the lawyer has in the case at the time of withdrawal pursuant to the provisions of this subsection. If and when the defendant is apprehended, the original attorney shall be reappointed, if available, and the attorney may be compensated for further time put into the case subject to the statutory cap and the established procedures for compensation exceeding said cap.

If the attorney is the assigned division conflict attorney and has received the full flat fee compensation the attorney will complete representation without any further compensation.

The provisions of Paragraphs 16. H., 16. I., and 16. J. are applicable to both division assignment attorneys and conflict counsel appointed from the Attorney Registry Lists.

- K. For division attorneys working outside the parameters of their division assignment on non-capital felonies, misdemeanors, VOPs, Juvenile or Rule 3.850 cases in any courts in the First Judicial Circuit, compensation will be at the rate of \$60/hour for out-of-court time and \$80/hour for in-court time.
- L. Private attorneys who are court appointed on death penalty cases will be compensated at the rate of \$115/hour for first chair counsel. If the trial court authorizes a court appointed second chair attorney, the second chair attorney will be compensated at the rate of \$100.00 per hour.

CIVIL CASES

**DEPENDENCY CASES/TERMINATION OF PARENTAL RIGHTS CASES/
PARENTAL NOTICE OF ABORTION ACT CASES and OTHER CIVIL CASES**

20. Private court appointed counsel in dependency cases shall be compensated at the rate of \$700/case and \$50/post-disposition hearing.
- A. Billing for the \$700/case may be submitted in accordance with the policies and procedures of the JAC, which are available on its website:
www.justiceadmin.com

- B. In the event a case is closed by an order terminating protective services and is reopened, the case will be treated as a new action with compensation at the rate of \$700/case and \$50/post-disposition hearing. Billing shall be as provided in subparagraph A. above.
- C. The ISC recognizes that there are occasions when a Juvenile Court Judge may be compelled to appoint an attorney after the initial disposition of a dependency case has occurred. Therefore, if an attorney is appointed after the disposition of the dependency case, the judge appointing may authorize compensation at the rate of \$700 if the court determines that the attorney will be required to engage in sufficient labor to justify the award the full compensation of \$700. The appointed attorney shall file a motion before the Court and obtain an order authorizing the full compensation, otherwise the attorney will be entitled only to the amount of \$50 for each post-disposition hearing. The attorney will be entitled to submit an application for compensation to the JAC on obtaining the aforementioned order and after at least one Judicial Review has occurred. In cases controlled under this subsection the attorney will not be entitled to bill \$50 for the Judicial Review that triggers the compensation of \$700.
- D. Private court appointed counsel in *Parental Notice of Abortion Act* cases shall be compensated at the rate of \$500/case.
- E. Compensation for other civil cases shall be at the rate of \$60/hour for out-of-court time and \$80/hour for in-court time.

APPEALS CASES

- 21. Private attorneys who accept court appointments on appeals cases of any type in the First Judicial Circuit shall be compensated at the rate of \$60/hour.

PROCEDURES FOR DEFENDANTS WITH PRIVATE COUNSEL WHO HAVE BEEN FOUND INDIGENT FOR COSTS PURPOSES

- 22. The following procedures are established for the court's consideration and disposition of request from privately retained counsel for a declaration that their clients are indigent for costs:
 - A. Privately retained counsel must submit a written motion to be heard on calendar (not *ex parte*) that includes the following information:
 - (1) Clarification as to whether the legal services are being provided *pro-bono* or being paid for by the client or a third party (without disclosing the identity of the third party).
 - (2) If the legal services are being paid for by the client or a third party, the amount of attorney's fees.
 - (3) The justification for such fee.
 - (4) Specific due process services to be obtained.

- (5) The costs for such services, if that information is available at the time of the motion.
 - (6) The justification for the cost for these services.
 - (7) An indigency affidavit utilizing the form approved by the Florida Supreme Court must be attached to the motion.
 - (8) Certification that copies of motion were provided to all attorneys of record, including State Attorney, and the Justice Administrative Commission.
- B. Upon hearing argument of counsel, the Court's order must include:
- (1) Whether or not the defendant is indigent for due process costs only.
 - (2) That the privately retained counsel is providing legal services *pro-bono* or that the legal fees are being paid for by the defendant or a third party (without disclosing the identity of the third party).
 - (3) Specific amount of due process costs approved, if that amount can be determined at the time of the entry of the order.
 - (4) That counsel must adhere to all fee schedules for due process providers approved by the First Judicial Circuit's Indigent Services Committee.
 - (5) Copies furnished to all attorneys of record, including State Attorney, the Justice Administrative Commission, and the office of the Public Defender.
- C. Once the Court finds the client of the privately retained counsel indigent for costs, counsel must comply with any and all requirements as delineated in the applicable *Florida Statutes*, Memoranda issued by the State of Florida, Chief Financial Officer, the Justice Administrative Commission's (JAC) policies and procedures set forth in the standard contracts prepared and published by the JAC, Office of the State Court Administrator's policies and procedures, and the applicable First Judicial Circuit Administrative Orders.

This order shall take effect immediately and shall remain in effect until further order of the Court.

DONE AND ORDERED at Pensacola, Escambia County, Florida this 15th day of July, 2005,
nunc pro tunc to July 1, 2005.

Signed by: Kim A. Skievaski, Chief Judge

Copies furnished to:

All Judges, First Judicial Circuit
 Honorable William Eddins, State Attorney, First Judicial Circuit
 Honorable Ernie Magaha, Clerk of Court, Escambia County
 Honorable Mary Johnson, Clerk of Court, Santa Rosa County
 Honorable Don Howard Clerk of Court, Okaloosa County
 Honorable Martha Ingle, Clerk of Court, Walton County
 Escambia/Santa Rosa Bar Association
 Okaloosa/Walton County Bar Association
 Justice Administrative Commission
 Indigent Services Advisory Committee Members
 - Alison Perdue Rogers, Esquire
 - Barry Beroset, Esquire
 - Honorable Jack Behr, Public Defender