

## Seven Things a Privately Retained Attorney Must Know about having a Client Declared Indigent for Costs (IFC):

1. Florida law requires a **written** motion to declare a defendant indigent for costs.

Pursuant to s. 27.52(5)(a), F.S., any motion seeking to have a defendant declared indigent for costs or IFC (eligible for state-funded due process services, such as court reporting, investigation, and expert witnesses) must be in writing. Florida law does not authorize oral motions (*ore tenus*) for this purpose. Additionally, a motion seeking to declare a defendant IFC must be filed with:

- a. A completed Clerk's Application for Indigency, **and**
- b. An affidavit attesting to the estimated amount of attorney fees, specifying the amount paid **and** the source(s) of those fees.

2. JAC has standing to participate in proceedings on an IFC motion.

Under s. 27.52(5)(b), F.S., JAC is entitled to reasonable notice and an opportunity to be heard on a motion seeking to declare a defendant IFC before a court makes that determination. JAC should receive the motion and notice of hearing at least ten (10) business days prior to any hearing on the motion. If a court enters an order declaring a defendant IFC without proper notice to JAC, the order is unenforceable upon JAC.

3. The written motion and attachments must be served on JAC through [MyJAC](#).

A trial court cannot consider a motion seeking to declare a defendant IFC until a written motion **and** the required attachments are filed with the court and served on JAC. The attorney must serve a copy of the written motion and the required attachments upon JAC through [MyJAC](#) (JAC's online contract and billing submission portal) **10 days prior to** the hearing and the court's ruling on the IFC motion. The following documents must be uploaded to [MyJAC](#):

- a. A written Motion to Declare the Defendant/Client IFC;
- b. A completed Clerk's Application for Indigent Status;
- c. A completed Attorney Fee Affidavit (see 1 (a) and (b), above); **and**
- d. A Charging Document.

JAC will respond to the IFC motion typically within five (5) business days. JAC will indicate in its response whether JAC requests a hearing on the matter.

If the court declares a defendant IFC, privately retained counsel must upload the Order Declaring the Defendant IFC through [MyJAC](#) for JAC to process payments to due process service vendors.

4. The privately retained attorney must execute a JAC IFC Contract for JAC to process any due process costs for state payment.

Under ss. 29.007 and 27.52(5)(f), F.S., attorneys representing clients declared IFC must execute JAC's statewide Attorney Contract for Payments Related to Due Process Services Provided to Persons Who Are Indigent for Costs in Criminal and Civil Cases Where There Is a Statutory or Constitutional Right to Appointed Counsel (IFC Contract). A review copy of the IFC Contract is available at:

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

IFC Contracts are available for execution on [MyJAC](#). First time attorneys wanting to submit an IFC Contract must contact JAC's Contracts section via the [secure email form](#) to set up a [MyJAC](#) account. Please include the attorney's name, preferred email address, and Bar ID on the form. It is the attorney's responsibility to maintain their contact/email information up to date with JAC. The attorney will receive an email once added to JAC's system.

The IFC Contract runs with the state fiscal year (July 1 to June 30) and a new contract must be executed each fiscal year. The next fiscal year's IFC Contract is typically available in [MyJAC](#) around mid-June.

**JAC cannot process any due process service invoices for payment until the attorney executes an IFC Contract.** This includes payments made directly to due process providers. If an attorney intends to seek reimbursement for due process costs paid by the attorney or the attorney's firm, a properly completed Substitute Form W-9 must be submitted to the Florida Department of Financial Services. Information and the form are available on the [DFS website](#). Otherwise, the attorney will not be eligible for reimbursement of any cost incurred.

5. The attorney representing a client declared IFC can obtain a printable verification from [MyJAC](#) showing that JAC has the necessary documentation to process due process service invoices for state payment.

The attorney can access [MyJAC](#) for information related to their cases. On [MyJAC](#), the attorney can view/print a screen confirming JAC's receipt of the five documents necessary to process payments:

1. The written Motion to Declare the Defendant IFC;

2. The Clerk's Application for Indigency;
3. The Affidavit Attesting to Attorney Fees;
4. The Order Declaring the Defendant IFC; and
5. The Charging Document(s).

Printing this screen is helpful to attorneys when retaining due process vendors. Some vendors require that attorneys present a copy of the printed screen confirming JAC's receipt of the necessary documents before accepting work on an IFC case.

## 6. The rates and procedures for obtaining due process costs are the same as for private court-appointed cases.

The provision of state-funded due process services in an IFC case must be authorized by a written court order. Pursuant to s. 27.52(5)(g), F.S., the **established rates for services in an IFC case are the same rates applicable to court-appointed cases**. Current due process service rates are posted on JAC's website at:

[https://www.justiceadmin.org/court\\_app\\_counsel/formsandrates.aspx#rates](https://www.justiceadmin.org/court_app_counsel/formsandrates.aspx#rates).

A privately retained attorney whose client has been declared IFC follows the same procedures as private court-appointed counsel to obtain due process costs.

The attorney is required to file a motion seeking specific due process costs with service on JAC prior to the court's consideration of the motion. Moreover, any request for services in excess of the established rates must be clearly explained in the motion. JAC is entitled to reasonable notice of any hearing on a motion for due process costs **at least ten (10) business days prior to the hearing**.

The trial court is responsible for determining whether the requested costs should be authorized. The attorney has the burden to establish that the requested due process service costs are reasonable and necessary for the defense of the case. For experts, the attorney must also establish the particularized need for expert services. Absent exceptional circumstances, court approval must be obtained **prior to** any services being performed by due process vendors such as experts or investigators. **Please know that attorneys may be personally liable for payment of services performed prior to the court's order authorizing state payment for such services.**

## 7. If an IFC defendant in a criminal case is convicted, retained counsel is responsible for providing an accounting of the costs to the trial court.

Upon conviction, an IFC defendant is liable to pay the amount of any due process costs provided by the state as directed by s. 27.52(5)(i), F.S. See also § 938.29, F.S. If an IFC defendant is convicted, the attorney is responsible for providing an accounting to the trial court specifying the costs expended on behalf of the defendant within 90 days after

disposition of the case, notwithstanding any appeals. This accounting, known as a "Certification of Costs," can be obtained from JAC. ***If the attorney fails to provide a complete accounting, such that costs are omitted from the lien, then JAC is not authorized to pay or reimburse any costs that remain unpaid and the attorney may be personally liable to repay the state for any such costs that have already been paid.***

In order to facilitate the provision of an accounting, attorneys must fill out a Request for Certification of Costs form at:

<https://www.justiceadmin.org/IFC/application%20for%20certification%20of%20costs.pdf>.

Once JAC receives the Application for Certification of Costs, JAC will prepare a Certificate of Costs for the case specified. The information contained in the certification is based on JAC's business records as of the date JAC issues the certificate and is subject to change upon receipt of additional invoices, amendments or changes to invoices, withdrawal of invoices, or rejection of invoices.

The attorney is responsible for verifying that all invoices related to a case are included in the Certification of Costs (accounting) provided to the court, including any invoices that JAC may not have received or docketed as of the date JAC issued the Certificate. JAC's Certification of Costs will not include any costs related to the court, clerk of court, or sheriff for which prepayment was waived pursuant to s. 57.081, F.S. Ultimately, it is privately retained counsel's responsibility to provide a full accounting to the trial court of any costs expended by JAC and any other state entities for the defense of the case.

Additional information about IFC motions and cases are available on JAC's website: <https://www.justiceadmin.org/IFC/index.aspx>.