



STATE OF FLORIDA
JUSTICE ADMINISTRATIVE COMMISSION

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Victoria A. Montanaro
Executive Director

September 23, 2009

Sent via email

Chief Judges
Trial Court Administrators

RE: Court-Appointed Counsel and Indigent for Costs Cases
Rates for Due Process Services

Dear Chief Judge:

Recently, The Justice Administrative Commission (JAC) has become aware there may be some confusion regarding the rates to be paid for due process services in court-appointed and indigent for costs cases. We wanted to bring this to your attention as we recognize the courts and other agencies, including JAC, have fewer resources to perform their vital state functions. This confusion could contribute to additional hearings, increasing the burden on counsel, the courts, and JAC.

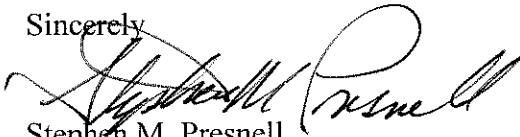
As you are aware, as directed by section 27.425, Florida Statutes, the Court no longer appears to have the authority to set due process rates in court-appointed and indigent for costs cases. Section 27.425 provides as follows:

- (1) The chief judge of each circuit shall recommend compensation rates for state-funded due process service providers in cases in which the court has appointed private counsel or declared a person indigent for costs. For purposes of this section, due process compensation rates do not include attorney's fees for legal representation of the client.
- (2) Annually, the chief judge shall submit proposed due process compensation rates to the Office of the State Courts Administrator for inclusion in the legislative budget request for the state courts system.
- (3) The maximum rates shall be specified annually in the General Appropriations Act. For the 2007-2008 fiscal year, the maximum rates shall be the rates in effect on June 30, 2007.
- (4) The total amount expended for providers of due process services in eligible cases may not exceed the amount budgeted in the General Appropriations Act for the particular due process service.

(Emphasis supplied). Under this provision, a Chief Judge has the authority to recommended rates but the legislature is the entity that determines the applicable rates. The current General Appropriations Act provides as follows: “The maximum amount to be paid by the Justice Administrative Commission for non-attorney due process services shall not exceed the rates in effect for the 2007-2008 fiscal year.” Ch. 2008-152, § 4, Line 821, Laws of Fla. The rates in effect during 2007-2008, were the rates in effect as of June 30, 2007. See § 27.425(3), Fla. Stat. (2007). These are the rates that had been established by each judicial circuit’s Indigent Services Committee. In the General Appropriations Act for 2006-2007, the legislature further limited increases to due process rates. See Ch. 2006-025, § 4, Line 876, Laws of Fla. (directing that JAC shall pay “due process costs for the 2006-2007 fiscal year at the rate not to exceed the amount set by the circuit Article V indigent services committee for the 2005-2006 fiscal year”). This proviso language essentially barred any increases for due process rates during Fiscal Year 2006-2007. When read in conjunction, these provisions direct that the rates applicable currently cannot exceed the rates approved by the Indigent Services Committees in effect at the end of Fiscal Year 2005-2006. For the reasons discussed above, JAC is bound to pay the rates in effect as of June 30, 2006

If you have any questions or concerns, please feel free to contact me via e-mail, stephenp@jac.state.fl.us, or by telephone, toll-free at (866) 355-7902.

Sincerely

A handwritten signature in black ink, appearing to read "Stephen M. Presnell", written in a cursive style.

Stephen M. Presnell
General Counsel