

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO. 08 CF 15606

v.

CASEY MARIE ANTHONY,  
Defendant.

JUDGE: PERRY

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**JUSTICE ADMINISTRATIVE COMMISSION'S  
RESPONSE TO MOTION TO DETERMINE A REASONABLE BUDGET FOR  
DUE PROCESS COSTS IN A CAPITAL CASE AND MOTION TO INCUR  
CERTAIN SPECIFIED COSTS**

COMES NOW the Justice Administrative Commission (JAC), by and through undersigned counsel, and respectfully submits the instant Response to the Defendant's Motion to Determine Reasonable Budget for Due Process Costs in a Capital Case and Motion to Incur Certain Specified Costs dated September 30, 2010, and states:

1. Jose Baez (Counsel) and Ann E. Finnell (Co-Counsel) have filed a motion to set a budget for the penalty phase of the instant case. Co-Counsel is requesting authorization to incur the costs of a private investigator at the established rate not to exceed \$5,000.00; a psychiatrist or psychologist at "a reasonable hourly rate" not to exceed \$7,500.00; copying costs for medical and school records, etc. not to exceed \$1,000.00, an additional 100 hours for the mitigation specialist at the "previously approved rate"; travel expenses including lodging for Attorney Finnell not to exceed \$4,000.00; travel expenses for an investigator or mitigation specialist to travel to Ohio with lodging and per diem

expenses at approved rates not to exceed \$1,500.00, and travel expenses and lodging for Attorney Finnell from Jacksonville to Orlando at approved rates if the instant case goes to trial.

2. The Court found the Defendant indigent for costs on March 19, 2010, and issued its Order regarding *inter alia* the estimated budget for the case on May 12, 2010, *nunc pro tunc* to May 6, 2010. .

3. The JAC is only authorized to pay due process costs pursuant to section 29.007 and section 27.5304, Florida Statutes

4. As directed by section 27.425, Florida Statutes (2010) and the General Appropriations Act, all due process services should be subject to the Florida Statutes and the JAC contract, policies and procedures. .

5. Regarding Co-Counsel's request for \$5,000.00 in investigative services, Co-Counsel has the burden to show how the requested investigator is necessary to the defense of the case and how the failure to provide such service would prejudice the defense. Pursuant to the uniform statewide rates, the rates for investigators cannot exceed \$40.00 per hour. As required by Florida law, any private investigator providing services in Florida must have a Class C license from the Department of Agriculture and Consumer Services and be employed by an investigation agency with a Class A license.

6. Regarding Co-Counsel's request for a psychiatrist or psychologist at "a reasonable hourly rate" not to exceed \$7,500.00, before the Court authorizes any experts, Counsel needs to file a separate motion delineating the particularized need for the expert. JAC is entitled to notice and an opportunity to

be heard before the Court authorizes any experts. Further, JAC objects to the use of any out of state psychiatrist or psychologist. While an indigent defendant has a due process right to the assistance of experts in his or her defense, that right is not unfettered. See Lavender v. State, 889 So.2d 882, 885 (5th DCA 2004). The right is limited to experts that are relevant and necessary to the defense of the case. See id. The defendant is not entitled to a specific expert or one of his or her "personal liking", but is only entitled to the services of a competent expert. See Walls v. State, 926 So.2d 1156, 1177 (Fla. 2006). The use of out of state providers is unnecessary and unreasonable where there are competent experts in the field available within the state.

JAC objects to any rate for experts outside of the established rates.

Those rates are as follows:

**Psychological Evaluations Established ISC rates**

*Notes pertaining to all services:*

Flat rate-per exam maximum \$350.00

**Medical Doctors and Psychologists Established ISC rates**

*Notes pertaining to all services:*

*Out-of-court services (includes initial review of records, testing, writing reports, depositions & other services):*

First hour or less \$160.00

Per quarter hour thereafter \$40.00

*In-court testimony:*

First hour or less \$170.00

Per quarter hour thereafter \$42.50

*Waiting to testify:*

At court appearance-per hour \$85.00

At deposition-per hour \$72.50

*Travel time:* Per hour \$72.50.

7. Regarding Co-Counsel's request for copying costs for medical and school records, etc. not to exceed \$1,000.00, to the extent that any costs are

incurred, JAC does not object to paying the reasonable costs related to obtaining these documents as may be necessary to the defense of the case. Co-Counsel will need to provide JAC with proof of payment of those costs before JAC can reimburse Counsel.

If the due process provider requires prepayment, Co-Counsel will need to pay the amount and seek reimbursement only after the due process service provider has completed the services for which the prepayment or retainer was paid. Co-Counsel shall only be reimbursed the amount necessary to compensate the due process service provider, however, Co-Counsel will need to provide JAC with proof of payment of those costs before JAC can reimburse Co-Counsel.

8. Regarding Co-Counsel's request for an additional 100 hours for the mitigation specialist at the "previously approved rate", JAC would point out that the Court previously approved a cap of 384 hours for Mitigation Specialist Jeanene Barrett at ISC rates. It is unclear whether that cap has been reached at this time. The JAC IFC contract, which Counsel Baez has executed, states:

**Mitigation Specialists**

Unless otherwise established by law or court order, the rate for a mitigation specialist or mitigation expert is presumed to be the rate established for investigators. Absent a court order authorizing a higher rate, the rate for mitigation specialist services shall not exceed the uniform statewide rate authorized for private investigator services.

That rate is \$40.00 per hour. JAC objects to any rate above the rate previously approved by the Court. The Court must determine that the additional hours sought are reasonable and necessary for the defense of the case. Co-

Counsel has the burden to show that she made diligent efforts to obtain a mitigation specialist at ISC established rates.

9. Regarding Co-Counsel's request for travel expenses including lodging for herself not to exceed \$4,000.00, JAC objects to reimbursement of travel expenses for any attorney in this case inasmuch as lead counsel is privately retained. Such travel expenses are overhead expenses that should be paid for through Counsel's fee. The state should not bear the responsibility to cover travel expenses for a privately retained attorney who chooses to use the services of yet another attorney. Although Attorney Finnell may not be charging the Defendant for her services, this is not a *pro bono* case; it is an Indigent for Costs case, where Lead Counsel has received a fee of \$89,454.83. Pursuant to JAC policies and Procedures, JAC would pay for attorney travel if a defendant was represented by one *pro bono* attorney, however JAC objects to paying for attorney travel where the Defendant has retained privately paid counsel.

Paragraph XIV(4) of the JAC Agreement for Indigent for Costs cases specifically addresses this issue:

Travel expenses of a privately retained attorney are considered part of overhead and are not an expense for which Attorney can seek reimbursement.

Counsel has executed this Agreement. The cost of travel of associate attorneys is an attorney expense that should be factored into the fee charged by the attorney. Although not binding in criminal cases, JAC would note that the Uniform Guidelines for Taxable Costs in Civil Cases specifically indicates that an attorney's travel expenses are not a taxable cost.

Although JAC pays travel expenses for court-appointed counsel, this is done because JAC is the source of funds for a court-appointed attorney's fees and expenses. Here, lead counsel has received compensation from a source other than JAC. Those funds should be used to cover overhead expenses including any attorney travel.

Assuming the travel is reimbursable, Co-Counsel has the burden to show that any travel is necessary for the defense of the case.

Section 29.007 requires that all travel expenses comport with the requirements of section 112.061, Florida Statutes. Any travel expenses should be pursuant to the requirements of Section 112.061. Any travel reimbursement requests will be subject to the requirements contained in that section, as well as the JAC's contract, policies and procedures. In order to receive reimbursement for travel expenses, Co-Counsel will need to submit a properly completed DFS travel voucher along with all required supporting documentation.

10. Regarding Co-Counsel's request for travel expenses for an investigator or mitigation specialist to travel to Ohio with lodging and per diem expenses at approved rates not to exceed \$1,500.00, Co-Counsel has the burden to show how the requested travel is necessary to the defense of the case and how the failure to provide such travel would prejudice the defense. As set forth in the Court's May 12, 2010 Order, out-of-state interviews and depositions shall be done through the use of video conferencing equipment available at the Orange County Courthouse. If such travel is authorized, JAC objects to more than one person travelling.

11. Finally, regarding Co-Counsel's request for travel expenses for Attorney Finnell from Jacksonville to Orlando and lodging in Orlando at approved rates if the instant case goes to trial, JAC objects for the reasons set forth in Paragraph 9, *supra*.

12. If any due process providers will require direct payment, the JAC's Policies and Procedures require the vendor to execute the appropriate contract and follow JAC's billing and audit procedures to obtain payment.

13. Pursuant to the JAC Agreement, any direct payment to a due process vendor is contingent upon Counsel or Co-Counsel providing any and all necessary documentation in support of a billing to JAC in an expeditious fashion. Counsel or Co-Counsel shall promptly review any billing for direct payment to a due process 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 Co-Counsel or the due process provider shall promptly resolve the deficiency so that JAC can process the billing for payment. The order should reflect that Counsel must comply with all JAC policies and procedures in the submission of billings to JAC for direct payment to a due process vendor.

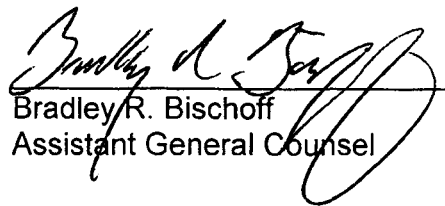
14. The Defendant is liable to pay the amount of any due process costs provided by the state and the clerk of court as directed by section 938.29, Florida Statutes. If the Defendant is convicted, the Court is responsible for determining the amount of the obligation to be imposed as a lien against the Defendant. These costs include, but are not limited to, the cost of depositions; cost of

transcripts of depositions; investigative costs; witness fees; the cost of psychiatric examinations; or other reasonable costs specially incurred by the state and the clerk of court for the defense of the defendant in criminal prosecutions.

15. JAC requests this matter be set for hearing. JAC respectfully requests to participate telephonically and may be reached toll-free at (866) 355-7902.

WHEREFORE, the JAC requests this Court, should it grant any or all of the Defendant's motion, also include in its order the specific due process services authorized, as well as hourly or per unit rates and maximum fees approved, and that the provider be paid in accordance with rates, terms and conditions set forth by Florida Statutes, and the JAC contract, policies and procedures.

Respectfully Submitted,

  
Bradley R. Bischoff  
Assistant General Counsel

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent  
by electronic means where indicated and by U.S. Mail on this 12<sup>th</sup> day of

October, 2010 to:

Honorable Belvin Perry, Jr.  
Chief Judge  
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