

Terry Lenamon on the Death Penalty

Sidebar with a Board Certified Expert Criminal Trial Attorney



Terence M. Lenamon is a Florida Bar certified expert in the area of criminal trial law. With over 17 years experience he has built a reputation as one of Florida's most respected criminal defense lawyers. His defense has been sought by many high-profile clients and has led him through 20 first-degree murder trials and eight death penalty cases. That experience has brought him national recognition as a go-to commentator on death penalty issues. He is the force behind both deathpenaltyblog.com and Florida Capital Resource Center (floridacapitalresourcecenter.org), and can be reached at terry@lenamonlaw.com.

Who is the JAC? What Happened When One Experienced Capital Lawyer Went Up Against Them: *JAC vs. Lenamon (2009)*

Florida's Justice Administrative Commission received a significant amount of media coverage recently when it became involved in the Casey Anthony case, providing the trial court judge with the official JAC position on whether or not Casey Anthony should be confirmed as "indigent" under the law. (She was.)

Who is the JAC?

In 1965, the Judicial Administrative Commission was formed by the Florida Legislature with representatives from the state judicial branch acting as commissioners, *i.e.*, offices of the state attorney and the public defender; the district, circuit, and appellate courts; and of course, the Florida Supreme Court, acting through its Chief Justice (or his designee). Its goal? Providing administrative services to the judicial branch of the State of Florida, defined in the statute as the state courts, the offices of the state attorneys and public defenders, and court reporters (Section 5, ch. 65-328, L.O.F.).

Over the years, the commission evolved. There has been a name change: it is now the *Justice* Administrative Commission. Today, it is comprised of four members, none of whom are judges: two state attorneys and two public defenders. The state attorney commissioners are appointed by the president of the Florida Prosecuting Attorneys' Association; the public defender commissioners, by the president of the Florida Public Defenders' Association.

The JAC's responsibilities have also expanded over the years. Now, according to the Florida Legislature, the JAC duties include the "...maintenance of a central state office for administrative services and assistance when possible to and on behalf of the state attorneys and public defenders of Florida, the capital collateral regional counsel of Florida, the criminal conflict and civil regional counsel, and the Guardian Ad Litem Program." ([Section 43.16\(5\)\(a\), F.S.](#)).

Today, the JAC reviews budgets and vouchers, among other things, that are submitted to it by these agencies, records them all, and submits them to the proper state authority. The JAC sometimes assists in these tasks upon request from a particular state attorney, etc.

In 2003-2004, legislation was passed that allowed the JAC more power. Along with requiring the State of Florida to directly cover judicial expenses previously paid for by individual counties, the Florida Legislature mandated that the JAC was to enter into agreements with court-appointed attorneys.

As part of the new JAC contracts, the Commission would have the power to review the attorney's invoices when presented for payment, and the power to process all "due process costs" for court-appointed lawyers. What are these "due process costs"? Any cost associated with the representation of an indigent defendant in the State of Florida that has been required by the right to legal counsel provided by the federal Constitution or state or federal statute.

So, within the last five years, the JAC has become the Florida Overseer of indigent defense counsel that wished to receive payment from the state for their efforts, and reimbursement for the expenses they have incurred in their representation. The [JAC powers](#) (Section 27.40, 27.503) include:

- Power to approve a standardized contract form for all Florida attorneys to use for fees, costs, and expenses;
- Power to require this contract be entered into by any attorney that wants to be included on a registry;
- Power to pay private court-appointed lawyers as provided by law;
- Power to review invoices for payment and to pay flat fee per case invoices without court approval;
- Power to penalize (at rate of 15% of the allowed fees, costs, and expenses total) any attorney who submitted his invoice late (defined in the statute as over 90 days after disposition of the case at the lower court level); and
- Power to contest any attorney's motion to the court for an order approving his or her fees, costs, and expenses for payment by the State of Florida.

JAC v. Lenamon

In a double homicide case involving nine (9) defendants, the Public Defender of the Twentieth Judicial District and the Office of the Criminal Conflict and Civil Regional Counsel each undertook the representation of an accused party, and the remaining seven defendants were left with the circuit court judge appointing private criminal defense lawyers as their attorneys.

The judge's task was complicated by the fact that the State of Florida promptly filed a notice that it would be seeking the death penalty against several of these defendants. The attorneys representing these men would therefore have to be death-penalty qualified under Florida law. Not just any criminal defense attorney could be assigned to their case.

Looking to the Twentieth Judicial District's list of death-penalty qualified attorneys, the judge had a limited number of lawyers within which to choose. There were not enough within the District; the judge would have to look elsewhere. There was no choice.

The name "Terence Lenamon" appeared on the death-penalty qualified list for the *Eleventh* Judicial District. So Lenamon was appointed. Since his name wasn't on the Twentieth Judicial District's registry, he had no contractual agreement to represent defendants in that district on file with the JAC. He was practicing over in Miami, not in Lee County.

So, a separate agreement -- specific to this single representation -- was entered into between the JAC and Terry Lenamon. Ninety days before trial, the contract had its first test.

Lenamon submitted a motion to the circuit court, asking for \$69,225 in fees and \$3937.46 in expenses. The

fees were clearly based upon an hourly rate of \$125.00/hour and the JAC quickly objected. According to the

JAC, the rate should be \$100.00/hour. Period.

The circuit court judge heard arguments from both sides, took into consideration the rate being charged by his local Indigent Services Committee (\$125.00), and approved the \$125.00 rate that Lenamon had requested.

A Fee Fight on the Eve of a Capital Trial

Here, within weeks of a major homicide trial with multiple defendants, the JAC opened up a second battlefield for Lenamon and first moved the circuit court to reconsider its decision (the judge didn't change his mind), thereafter appealing the decision to the Florida appeals court.

On appeal, the JAC won. Perhaps the most telling language in the reviewing court's opinion comes in its third footnote (Opinion, p. 5) (emphasis added):

Mr. Lenamon also argues that the \$125 per hour rate was fair and reasonable in light of the exceptional circumstances present in this case. We do not doubt that the \$125 per hour rate approved in the circuit court's order is fair and reasonable. However, the question before us is whether payment at a rate exceeding \$100 per hour is authorized by law, not whether it is fair and reasonable.

Based solely upon the language urged by the JAC in section 27.5304(12) (d), and regardless of the realities of the situation – which were recognized by the court – Lenamon was denied thousands in legal fees. And, forced to fight at the same time he was in court, defending a man against being sentenced to death by the same governmental entity (the State of Florida) that was cutting his bill.

What will be the consequences of JAC v. Lenamon?

It's too soon to tell. However, it's not hard to predict that other experienced criminal defense attorneys are not going to be very welcoming of appointments in other judicial districts when considering the JAC's position in [*Justice Administrative Commission v. Lenamon*](#).

Everyone understands that there is not enough money in the budget to provide proper fees and expenses for indigent defense in the State of Florida. Everyone knows the economy is bad, and no one knows how long this recession will last. The JAC is trying to pinch every penny in the defense budget. Everyone gets that.

Nevertheless, it's burdensome enough to ask a death-penalty qualified attorney to travel to outside his or her practice area to meet a county's need for a lawyer at their level of expertise. They've been drafted, they haven't volunteered.

It's more than onerous to fight that same lawyer over \$25/hour – especially in a time window overlapping trial preparation in a death case. Remember, this places the defense attorney with fighting the State of Florida in one courtroom on behalf of his client, and then fighting the State of Florida down the hall, just to try and keep them from cutting his fees for doing his job in the first courtroom.

When the next attorney in this position – court-appointed outside their district -- negotiates that fee agreement with the JAC, the case of *JAC v. Lenamon* had best be on his or her mind.