

1 A bill to be entitled
2 An act relating to postconviction capital
3 collateral proceedings; requesting that the
4 Division of Statutory Revision designate part
5 IV of ch. 27, F.S., as "Capital Collateral
6 Representation"; amending s. 27.702, F.S.;
7 deleting a requirement that specifies the time
8 for the capital collateral regional counsel to
9 commence the representation of a person
10 sentenced to death; creating s. 27.710, F.S.;
11 requiring that the executive director of the
12 Commission on the Administration of Justice in
13 Capital Cases maintain a registry of attorneys
14 in private practice who are available to be
15 appointed to represent defendants in
16 postconviction capital collateral proceedings;
17 authorizing the executive director to obtain
18 names of attorneys who may register for
19 appointment; providing eligibility requirements
20 for appointment as counsel in postconviction
21 capital collateral proceedings; providing for
22 appointment of an attorney selected from the
23 registry; limiting the circumstances under
24 which the court may permit an attorney to
25 withdraw from representation following
26 appointment; authorizing the court to impose
27 sanctions; requiring that appointed counsel
28 enter into a contract with the Comptroller;
29 providing for the Comptroller to enforce
30 performance of the contract; providing that
31 more than one attorney may not be appointed at

1 any one time to represent a capital defendant;
2 creating s. 27.711, F.S.; requiring that an
3 attorney appointed to represent a capital
4 defendant file a notice of appearance;
5 providing a schedule of fees to which the
6 attorney is entitled for specified appearances
7 and representations; requiring that the trial
8 court approve the payment of costs and fees;
9 providing that such fees constitute the
10 exclusive means of compensation for such
11 representation; authorizing compensation as
12 provided by federal law under certain
13 circumstances; authorizing the use of
14 investigative services and the payment of fees
15 for such services; providing that by accepting
16 appointment to represent a capital defendant
17 the attorney agrees to continue such
18 representation until the defendant's sentence
19 is reversed, reduced, or carried out; limiting
20 the number of capital defendants that an
21 attorney may represent; prohibiting a claim of
22 ineffective assistance of counsel based on an
23 action by the attorney who represents a capital
24 defendant; prohibiting the attorney from
25 representing the capital defendant in certain
26 other proceedings; providing an effective date.

27
28 WHEREAS, persons convicted of murder and sentenced to
29 death in Florida are entitled to challenge the legality of the
30 judgment and sentence imposed upon them in postconviction
31

1 capital collateral litigation in the state and federal courts
2 in this state, and

3 WHEREAS, persons sentenced to death are entitled to
4 legal representation, at public expense, in such proceedings
5 by the office of the Capital Collateral Regional Counsel or by
6 counsel appointed by the court, or may be represented by
7 private counsel hired by such person under sentence of death,
8 and

9 WHEREAS, the Legislature of Florida deems it a matter
10 of great public importance that state resources appropriated
11 to finance postconviction capital collateral litigation are
12 expended in a cost-effective manner and that such litigation
13 be concluded without unreasonable or purposeful delay, and

14 WHEREAS, the Legislature finds that the prudent
15 expenditure of public moneys for and the reasonably
16 expeditious and orderly conclusion to postconviction capital
17 collateral litigation will best be accomplished by contracting
18 for such services either with the offices of the Capital
19 Collateral Regional Counsel or with private counsel who are
20 retained or appointed for such purpose, NOW, THEREFORE,

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. The Division of Statutory Revision is
25 requested to designate part IV of chapter 27, Florida
26 Statutes, as "Capital Collateral Representation."

27 Section 2. Subsections (1) and (2) of section 27.702,
28 Florida Statutes, are amended to read:

29 27.702 Duties of the capital collateral regional
30 counsel; reports.--

31

1 (1) The capital collateral regional counsel shall
2 represent each person convicted and sentenced to death in this
3 state for the sole purpose of instituting and prosecuting
4 collateral actions challenging the legality of the judgment
5 and sentence imposed against such person in the state courts,
6 federal courts in this state, the United States Court of
7 Appeals for the Eleventh Circuit, and the United States
8 Supreme Court. ~~Representation by the regional counsel shall
9 commence automatically upon termination of direct appellate
10 proceedings in state or federal courts. Within 91 days after
11 the date the Supreme Court issues a mandate on a direct appeal
12 or the United States Supreme Court denies a petition for
13 certiorari, whichever is later, the capital collateral
14 regional counsel shall file a notice of appearance in the
15 trial court in which the judgment and sentence were entered
16 and shall secure all direct appeal files for collateral
17 representation. Upon receipt of files from the public
18 defender or other counsel, the capital collateral regional
19 counsel shall assign each such case to personnel in his or her
20 office for investigation, client contact, and any further
21 action the circumstances warrant.~~The three capital collateral
22 regional counsels' offices shall function independently and be
23 separate budget entities, and the regional counsels shall be
24 the office heads for all purposes. The Justice Administrative
25 Commission shall provide administrative support and service to
26 the three offices to the extent requested by the regional
27 counsels. The three regional offices shall not be subject to
28 control, supervision, or direction by the Justice
29 Administrative Commission in any manner, including, but not
30 limited to, personnel, purchasing, transactions involving real
31 or personal property, and budgetary matters.

1 (2) The capital collateral regional counsel shall
2 represent persons ~~each person~~ convicted and sentenced to death
3 within the region in collateral postconviction proceedings,
4 unless a court appoints or permits other counsel to appear as
5 counsel of record.

6 Section 3. Section 27.710, Florida Statutes, is
7 created to read:

8 27.710 Registry of attorneys applying to represent
9 persons in postconviction capital collateral proceedings;
10 certification of minimum requirements; appointment by trial
11 court.--

12 (1) The executive director of the Commission on the
13 Administration of Justice in Capital Cases shall compile and
14 maintain a statewide registry of attorneys in private practice
15 who have certified that they meet the minimum requirements of
16 s. 27.704(2) and who are available for appointment by the
17 court under this section to represent persons convicted and
18 sentenced to death in this state in postconviction capital
19 collateral proceedings. To ensure that sufficient attorneys
20 are available for appointment by the court, when the number of
21 attorneys on the registry falls below 50, the executive
22 director shall notify the chief judge of each circuit by
23 letter and request the chief judge to promptly submit the
24 names of at least three private attorneys who regularly
25 practice criminal law in that circuit and who appear to meet
26 the minimum requirements to represent persons in
27 postconviction capital collateral proceedings. The executive
28 director shall send an application to each attorney identified
29 by the chief judge so that the attorney may register for
30 appointment as counsel in postconviction capital collateral
31 proceedings. As necessary, the executive director may also

1 advertise in legal publications and other appropriate media
2 for qualified attorneys interested in registering for
3 appointment as counsel in postconviction capital collateral
4 proceedings. Not later than September 1 of each year, and as
5 necessary thereafter, the executive director shall provide to
6 the Chief Justice of the Supreme Court, the chief judge and
7 state attorney in each judicial circuit, and the Attorney
8 General a current copy of its registry of attorneys who are
9 available for appointment as counsel in postconviction capital
10 collateral proceedings. The registry must be indexed by
11 judicial circuit and must contain the requisite information
12 submitted by the applicants in accordance with this section.

13 (2) To be eligible for court appointment as counsel in
14 postconviction capital collateral proceedings, an attorney
15 must certify on an application provided by the executive
16 director that he or she satisfies the minimum requirements for
17 private counsel set forth in s. 27.704(2).

18 (3) An attorney who applies for registration and court
19 appointment as counsel in postconviction capital collateral
20 proceedings must certify that he or she is counsel of record
21 in not more than four such proceedings and, if appointed to
22 represent a person in postconviction capital collateral
23 proceedings, shall continue such representation under the
24 terms and conditions set forth in s. 27.711 until the sentence
25 is reversed, reduced, or carried out or unless permitted to
26 withdraw from representation by the trial court. The court may
27 not permit an attorney to withdraw from representation without
28 a finding of sufficient good cause. The court may impose
29 appropriate sanctions if it finds that an attorney has shown
30 bad faith with respect to continuing to represent a defendant
31 in a postconviction capital collateral proceeding. This

1 section does not preclude the court from reassigning a case to
2 a capital collateral regional counsel following
3 discontinuation of representation if a conflict of interest no
4 longer exists with respect to the case.

5 (4) Each private attorney who is appointed by the
6 court to represent a capital defendant must enter into a
7 contract with the Comptroller. The executive director of the
8 Commission on the Administration of Justice in Capital Cases
9 shall develop the form of the contract and the Comptroller
10 shall function as contract manager and shall enforce
11 performance of the terms and conditions of the contract. By
12 signing such contract, the attorney certifies that he or she
13 intends to continue the representation under the terms and
14 conditions set forth in the contract until the sentence is
15 reversed, reduced, or carried out or until released by order
16 of the trial court.

17 (5) Upon notification by the Attorney General that:

18 (a) Ninety-one days have elapsed since the Supreme
19 Court issued a mandate on a direct appeal, or the Supreme
20 Court of the United States has denied a petition for
21 certiorari, whichever is later; or

22 (b) A person under sentence of death who was
23 previously represented by private counsel is currently
24 unrepresented in a postconviction capital collateral
25 proceeding,

26
27 the executive director shall immediately notify the trial
28 court that imposed the sentence of death that the court must
29 immediately appoint an attorney, selected from the current
30 registry, to represent such person in collateral actions
31 challenging the legality of the judgment and sentence in the

1 appropriate state and federal courts. In making an assignment,
2 the court shall give priority to attorneys whose experience
3 and abilities in criminal law, especially in capital
4 proceedings, are known by the court to be commensurate with
5 the responsibility of representing a person sentenced to
6 death. The trial court must issue an order of appointment
7 which contains specific findings that the appointed counsel
8 meets the statutory requirements and has the high ethical
9 standards necessary to represent a person sentenced to death.

10 (6) More than one attorney may not be appointed and
11 compensated at any one time under s. 27.711 to represent a
12 person in postconviction capital collateral proceedings.

13 Section 4. Section 27.711, Florida Statutes, is
14 created to read:

15 27.711 Terms and conditions of appointment of
16 attorneys as counsel in postconviction capital collateral
17 proceedings.--

18 (1) As used in s. 27.710 and this section, the term:

19 (a) "Capital defendant" means the person who is
20 represented in postconviction capital collateral proceedings
21 by an attorney appointed under s. 27.710.

22 (b) "Executive director" means the executive director
23 of the Commission on the Administration of Justice in Capital
24 Cases.

25 (c) "Postconviction capital collateral proceedings"
26 means one series of collateral litigation of an affirmed
27 conviction and sentence of death, including the proceedings in
28 the trial court that imposed the capital sentence, any
29 appellate review of the sentence by the Supreme Court, any
30 certiorari review of the sentence by the United States Supreme
31 Court, and any authorized federal habeas corpus litigation

1 with respect to the sentence. The term does not include
2 repetitive or successive collateral challenges to a conviction
3 and sentence of death which is affirmed by the Supreme Court
4 and undisturbed by any collateral litigation.

5 (2) After appointment by the trial court under s.
6 27.710, the attorney must immediately file a notice of
7 appearance with the trial court indicating acceptance of the
8 appointment to represent the capital defendant throughout all
9 postconviction capital collateral proceedings in accordance
10 with this section or until released by order of the trial
11 court.

12 (3) An attorney appointed to represent a capital
13 defendant is entitled to payment of the fees set forth in this
14 section only upon full performance by the attorney of the
15 duties specified in this section and approval of payment by
16 the trial court. The attorney shall maintain appropriate
17 documentation, including a current and detailed hourly
18 accounting of time spent representing the capital defendant.
19 The fee and payment schedule in this section is the exclusive
20 means of compensating a court-appointed attorney who
21 represents a capital defendant. When appropriate, a
22 court-appointed attorney may seek further compensation from
23 the Federal Government, as provided in 18 U.S.C. s. 3006A or
24 other federal law, in habeas corpus litigation in the federal
25 courts.

26 (4) Upon approval by the trial court, an attorney
27 appointed to represent a capital defendant under s. 27.710 is
28 entitled to payment of the following fees by the Comptroller:

29 (a) Regardless of the stage of postconviction capital
30 collateral proceedings, the attorney is entitled to \$100 per
31 hour, up to a maximum of \$2,500, upon accepting appointment

1 and filing a notice of appearance. This fee is in the nature
2 of a fee for a retainer agreement.

3 (b) The attorney is entitled to \$100 per hour, up to a
4 maximum of \$20,000, after timely filing in the trial court the
5 capital defendant's complete original motion for
6 postconviction relief under the Florida Rules of Criminal
7 Procedure. The motion must raise all issues to be addressed by
8 the trial court.

9 (c) The attorney is entitled to \$100 per hour, up to a
10 maximum of \$10,000, after the trial court issues a final order
11 granting or denying the capital defendant's motion for
12 postconviction relief.

13 (d) The attorney is entitled to \$100 per hour, up to a
14 maximum of \$4,000, after timely filing in the Supreme Court
15 the capital defendant's brief or briefs that address the trial
16 court's final order granting or denying the capital
17 defendant's motion for postconviction relief and the state
18 petition for writ of habeas corpus.

19 (e) The attorney is entitled to \$100 per hour, up to a
20 maximum of \$20,000, after the appeal of the trial court's
21 denial of the capital defendant's motion for postconviction
22 relief and the capital defendant's state petition for writ of
23 habeas corpus become final in the Supreme Court.

24 (f) At the conclusion of the capital defendant's
25 postconviction capital collateral proceedings in state court,
26 the attorney is entitled to \$100 per hour, up to a maximum of
27 \$2,500, after filing a petition for writ of certiorari in the
28 Supreme Court of the United States.

29 (g) If, at any time, the Supreme Court of the United
30 States accepts for review the capital defendant's collateral
31 challenge of the conviction and sentence of death, the

1 attorney is entitled to \$100 per hour, up to a maximum of
2 \$5,000. This payment shall be full compensation for
3 representing the capital defendant throughout the certiorari
4 proceedings before the United States Supreme Court.

5
6 The hours billed by a contracting attorney under this
7 subsection may include time devoted to representation of the
8 defendant by another attorney who is qualified under s. 27.710
9 and who has been designated by the contracting attorney to
10 assist him or her.

11 (5) An attorney who represents a capital defendant may
12 use the services of one or more investigators to assist in
13 representing a capital defendant. Upon approval by the trial
14 court, the attorney is entitled to payment from the
15 Comptroller of \$40 per hour, up to a maximum of \$15,000, for
16 the purpose of paying for investigative services.

17 (6) An attorney who represents a capital defendant is
18 entitled to a maximum of \$5,000 for miscellaneous expenses,
19 such as the costs of preparing transcripts, compensating
20 expert witnesses, and copying documents. Upon approval by the
21 trial court, the attorney is entitled to payment by the
22 Comptroller for miscellaneous expenses.

23 (7) By accepting court appointment under s. 27.710 to
24 represent a capital defendant, the attorney agrees to continue
25 such representation under the terms and conditions set forth
26 in this section until the capital defendant's sentence is
27 reversed, reduced, or carried out, and the attorney is
28 permitted to withdraw from such representation by a court of
29 competent jurisdiction.

30 (8) An attorney may not represent more than five
31 capital defendants at any one time.

1 (9) This section does not authorize an attorney who
2 represents a capital defendant to file repetitive or frivolous
3 pleadings that are not supported by law or by the facts of the
4 case. An action taken by an attorney who represents a capital
5 defendant in postconviction capital collateral proceedings may
6 not be the basis for a claim of ineffective assistance of
7 counsel.

8 (10) An attorney appointed under s. 27.710 to
9 represent a capital defendant may not represent the capital
10 defendant during a retrial, a resentencing proceeding, a
11 proceeding commenced under chapter 940, a proceeding
12 challenging a conviction or sentence other than the conviction
13 and sentence of death for which the appointment was made, or
14 any civil litigation other than habeas corpus proceedings.

15 Section 5. This act shall take effect July 1, 1998.