

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

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

30  
31 Be It Enacted by the Legislature of the State of Florida:

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

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

6           27.702 Duties of the capital collateral regional  
7 counsel; reports.--

8           (1) The capital collateral regional counsel shall  
9 represent each person convicted and sentenced to death in this  
10 state for the sole purpose of instituting and prosecuting  
11 collateral actions challenging the legality of the judgment  
12 and sentence imposed against such person in the state courts,  
13 federal courts in this state, the United States Court of  
14 Appeals for the Eleventh Circuit, and the United States  
15 Supreme Court. ~~Representation by the regional counsel shall~~  
16 ~~commence automatically upon termination of direct appellate~~  
17 ~~proceedings in state or federal courts. Within 91 days after~~  
18 ~~the date the Supreme Court issues a mandate on a direct appeal~~  
19 ~~or the United States Supreme Court denies a petition for~~  
20 ~~certiorari, whichever is later, the capital collateral~~  
21 ~~regional counsel shall file a notice of appearance in the~~  
22 ~~trial court in which the judgment and sentence were entered~~  
23 ~~and shall secure all direct appeal files for collateral~~  
24 ~~representation. Upon receipt of files from the public~~  
25 ~~defender or other counsel, the capital collateral regional~~  
26 ~~counsel shall assign each such case to personnel in his or her~~  
27 ~~office for investigation, client contact, and any further~~  
28 ~~action the circumstances warrant.~~The three capital collateral  
29 regional counsels' offices shall function independently and be  
30 separate budget entities, and the regional counsels shall be  
31 the office heads for all purposes. The Justice Administrative

1 Commission shall provide administrative support and service to  
2 the three offices to the extent requested by the regional  
3 counsels. The three regional offices shall not be subject to  
4 control, supervision, or direction by the Justice  
5 Administrative Commission in any manner, including, but not  
6 limited to, personnel, purchasing, transactions involving real  
7 or personal property, and budgetary matters.

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

13 Section 3. Section 27.710, Florida Statutes, is  
14 created to read:

15 27.710 Registry of attorneys applying to represent  
16 persons in postconviction capital collateral proceedings;  
17 certification of minimum requirements; appointment by trial  
18 court.--

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

1 practice criminal law in that circuit and who appear to meet  
2 the minimum requirements to represent persons in  
3 postconviction capital collateral proceedings. The executive  
4 director shall send an application to each attorney identified  
5 by the chief judge so that the attorney may register for  
6 appointment as counsel in postconviction capital collateral  
7 proceedings. As necessary, the executive director may also  
8 advertise in legal publications and other appropriate media  
9 for qualified attorneys interested in registering for  
10 appointment as counsel in postconviction capital collateral  
11 proceedings. Not later than September 1 of each year, and as  
12 necessary thereafter, the executive director shall provide to  
13 the Chief Justice of the Supreme Court, the chief judge and  
14 state attorney in each judicial circuit, and the Attorney  
15 General a current copy of its registry of attorneys who are  
16 available for appointment as counsel in postconviction capital  
17 collateral proceedings. The registry must be indexed by  
18 judicial circuit and must contain the requisite information  
19 submitted by the applicants in accordance with this section.

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

25 (3) An attorney who applies for registration and court  
26 appointment as counsel in postconviction capital collateral  
27 proceedings must certify that he or she is counsel of record  
28 in not more than four such proceedings and, if appointed to  
29 represent a person in postconviction capital collateral  
30 proceedings, shall continue such representation under the  
31 terms and conditions set forth in s. 27.711 until the sentence

1 is reversed, reduced, or carried out or unless permitted to  
2 withdraw from representation by the trial court. The court may  
3 not permit an attorney to withdraw from representation without  
4 a finding of sufficient good cause. The court may impose  
5 appropriate sanctions if it finds that an attorney has shown  
6 bad faith with respect to continuing to represent a defendant  
7 in a postconviction capital collateral proceeding. This  
8 section does not preclude the court from reassigning a case to  
9 a capital collateral regional counsel following  
10 discontinuation of representation if a conflict of interest no  
11 longer exists with respect to the case.

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

24 (5) Upon notification by the Attorney General that:  
25 (a) Ninety-one days have elapsed since the Supreme  
26 Court issued a mandate on a direct appeal, or the Supreme  
27 Court of the United States has denied a petition for  
28 certiorari, whichever is later;

29 (b) A person under sentence of death who was  
30 previously represented by private counsel is currently  
31

1 unrepresented in a postconviction capital collateral  
2 proceeding; or

3 (c) The trial court has issued an order finding that a  
4 year and a day have elapsed since the commencement of the  
5 period for filing a motion for postconviction relief under s.  
6 924.055(2), and the defendant's complete original motion for  
7 postconviction relief has not been filed in the trial court,  
8  
9 the executive director shall immediately notify the trial  
10 court that imposed the sentence of death that the court must  
11 immediately appoint an attorney, selected from the current  
12 registry, to represent such person in collateral actions  
13 challenging the legality of the judgment and sentence in the  
14 appropriate state and federal courts. The court shall have the  
15 authority to strike a notice of appearance filed by a Capital  
16 Collateral Regional Counsel, if the court finds the notice was  
17 not filed in good faith and may so notify the executive  
18 director that the client is no longer represented by the  
19 Office of Capital Collateral Regional Counsel. In making an  
20 assignment, the court shall give priority to attorneys whose  
21 experience and abilities in criminal law, especially in  
22 capital proceedings, are known by the court to be commensurate  
23 with the responsibility of representing a person sentenced to  
24 death. The trial court must issue an order of appointment  
25 which contains specific findings that the appointed counsel  
26 meets the statutory requirements and has the high ethical  
27 standards necessary to represent a person sentenced to death.

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

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1           Section 4. Section 27.711, Florida Statutes, is  
2 created to read:

3           27.711 Terms and conditions of appointment of  
4 attorneys as counsel in postconviction capital collateral  
5 proceedings.--

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

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

10           (b) "Executive director" means the executive director  
11 of the Commission on the Administration of Justice in Capital  
12 Cases.

13           (c) "Postconviction capital collateral proceedings"  
14 means one series of collateral litigation of an affirmed  
15 conviction and sentence of death, including the proceedings in  
16 the trial court that imposed the capital sentence, any  
17 appellate review of the sentence by the Supreme Court, any  
18 certiorari review of the sentence by the United States Supreme  
19 Court, and any authorized federal habeas corpus litigation  
20 with respect to the sentence. The term does not include  
21 repetitive or successive collateral challenges to a conviction  
22 and sentence of death which is affirmed by the Supreme Court  
23 and undisturbed by any collateral litigation.

24           (2) After appointment by the trial court under s.  
25 27.710, the attorney must immediately file a notice of  
26 appearance with the trial court indicating acceptance of the  
27 appointment to represent the capital defendant throughout all  
28 postconviction capital collateral proceedings, including  
29 federal habeas corpus proceedings, in accordance with this  
30 section or until released by order of the trial court.

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1           (3) An attorney appointed to represent a capital  
2 defendant is entitled to payment of the fees set forth in this  
3 section only upon full performance by the attorney of the  
4 duties specified in this section and approval of payment by  
5 the trial court, and the submission of a payment request by  
6 the attorney, subject to the availability of sufficient  
7 funding specifically appropriated for this purpose. The  
8 Justice Administrative Commission shall notify the Executive  
9 Director and the court if it appears that sufficient funding  
10 has not been specifically appropriated for this purpose to pay  
11 any fees which may be incurred. The attorney shall maintain  
12 appropriate documentation, including a current and detailed  
13 hourly accounting of time spent representing the capital  
14 defendant. The fee and payment schedule in this section is the  
15 exclusive means of compensating a court-appointed attorney who  
16 represents a capital defendant. When appropriate, a  
17 court-appointed attorney must seek further compensation from  
18 the Federal Government, as provided in 18 U.S.C. s. 3006A or  
19 other federal law, in habeas corpus litigation in the federal  
20 courts.

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

24           (a) Regardless of the stage of postconviction capital  
25 collateral proceedings, the attorney is entitled to \$100 per  
26 hour, up to a maximum of \$2,500, upon accepting appointment  
27 and filing a notice of appearance. This fee is in the nature  
28 of a fee for a retainer agreement.

29           (b) The attorney is entitled to \$100 per hour, up to a  
30 maximum of \$20,000, after timely filing in the trial court the  
31 capital defendant's complete original motion for

1 postconviction relief under the Florida Rules of Criminal  
2 Procedure. The motion must raise all issues to be addressed by  
3 the trial court.

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

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

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

19 (f) At the conclusion of the capital defendant's  
20 postconviction capital collateral proceedings in state court,  
21 the attorney is entitled to \$100 per hour, up to a maximum of  
22 \$2,500, after filing a petition for writ of certiorari in the  
23 Supreme Court of the United States.

24 (g) If, at any time, the Supreme Court of the United  
25 States accepts for review the capital defendant's collateral  
26 challenge of the conviction and sentence of death, the  
27 attorney is entitled to \$100 per hour, up to a maximum of  
28 \$5,000. This payment shall be full compensation for  
29 representing the capital defendant throughout the certiorari  
30 proceedings before the United States Supreme Court.

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1 The hours billed by a contracting attorney under this  
2 subsection may include time devoted to representation of the  
3 defendant by another attorney who is qualified under s. 27.710  
4 and who has been designated by the contracting attorney to  
5 assist him or her.

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

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

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

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

27 (9) This section does not authorize an attorney who  
28 represents a capital defendant to file repetitive or frivolous  
29 pleadings that are not supported by law or by the facts of the  
30 case. An action taken by an attorney who represents a capital  
31 defendant in postconviction capital collateral proceedings may

1 not be the basis for a claim of ineffective assistance of  
2 counsel.

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

10 Section 5. (1)(a) There is created the Commission on  
11 Legislative Reform of Judicial Administration, which shall  
12 consist of twelve of the following members:

13 1. Three members appointed by the Chief Justice of the  
14 Florida Supreme Court.

15 2. Three members appointed by the Speaker of the House  
16 of Representatives.

17 3. Three members appointed by the President of the  
18 Senate.

19 4. One member appointed by the Governor.

20 5. One member appointed by the Public Defender's  
21 Attorneys Association.

22 6. One member appointed by the Florida Prosecuting  
23 Attorneys' Association.

24 (b) The Chair of the Commission shall be selected by  
25 the members.

26 (c) The Commission shall meet at least monthly, and  
27 other meetings may be called by the chair upon giving at least  
28 7 days notice to all members and the public.

29 (d) Members of the commission are entitled to per diem  
30 and travel expenses to be paid by the appointing authority.

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1           (e) The initial members of the commission shall be  
2 appointed on or before July 15, 1998. A member's term shall  
3 expire upon submission of the report to the Legislature.

4           (f) The staff of the Commission of the Administration  
5 of Justice in Capital Cases shall staff the commission.

6           (2) The Commission shall study the feasibility of  
7 judicial administration reforms, including but not limited to,  
8 appropriate minimum standards, if any, for counsel in capital  
9 cases; the feasibility of authorizing cross circuit  
10 assignments of Public Defenders to minimize the cost of  
11 representation in conflicts-of-interest cases; the potential  
12 resolutions of the inability of the Office of the Public  
13 Defender for the Tenth Judicial Circuit to represent indigent  
14 criminal defendants on appeal in a timely fashion, and other  
15 issues regarding indigent criminal appeals; and other judicial  
16 reforms that could expedite justice and reduce costs in  
17 judicial administration. The Commission shall submit a report  
18 to the Speaker of the House of Representatives and the  
19 President of the Senate no later than January 1, 1999,  
20 containing their recommendations. The Commission's authority  
21 will expire on January 4, 1999, and the term of office of each  
22 member will expire on that date.

23           Section 6. There is hereby appropriated \$500,000 from  
24 the General Revenue Fund to the Justice Administration  
25 Commission for the purpose of implementing this act.

26           Section 7. This act shall take effect July 1, 1998.