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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.

31

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.