

By the Committee on Judiciary and Senator Campbell

308-1973-99

1 A bill to be entitled
 2 An act relating to conflicts of interests in
 3 the representation of indigent defendants;
 4 amending s. 27.53, F.S.; requiring that the
 5 court review an alleged conflict of interest
 6 without disclosing confidential information;
 7 providing for withdrawal of the public defender
 8 unless the court determines that the conflict
 9 does not exist or the court is unable to make a
 10 determination; requiring each circuit conflict
 11 committee to assess the circuit's conflict
 12 representation system; requiring that the
 13 committees report findings and recommendations
 14 to the Legislature; providing an effective
 15 date.

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 17 Be It Enacted by the Legislature of the State of Florida:

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 19 Section 1. Subsection (3) of section 27.53, Florida
 20 Statutes, is amended to read:

21 27.53 Appointment of assistants and other staff;
 22 method of payment.--

23 (3) If at any time during the representation of two
 24 or more indigents, the public defender determines ~~shall~~
 25 ~~determine~~ that the interests of those accused are so adverse
 26 or hostile that they cannot all be counseled by the public
 27 defender or his or her staff without conflict of interest, or
 28 that none can be counseled by the public defender or his or
 29 her staff because of conflict of interest, ~~it shall be~~ the
 30 public defender shall file a motion to withdraw and ~~defender's~~
 31 ~~duty to~~ move the court to appoint other counsel. The court

1 shall review and may inquire into, and may conduct a hearing
2 at its discretion concerning, the adequacy of the public
3 defender's representations regarding a conflict of interest
4 but shall not require the disclosure of any confidential
5 information. The court shall permit withdrawal unless the
6 court determines that the public defender has failed to
7 establish that a conflict of interest exists. If the court is
8 unable to determine whether a conflict exists because the
9 conflict is based on confidential information, the court shall
10 permit withdrawal. If the court grants the motion to withdraw,
11 it may appoint one or more members of The Florida Bar, who are
12 in no way affiliated with the public defender, in his or her
13 capacity as such, or in his or her private practice, to
14 represent those accused. However, the trial court shall
15 appoint such other counsel upon its own motion when the facts
16 developed upon the face of the record and files in the cause
17 disclose such conflict. The court shall advise the
18 appropriate public defender and clerk of court, in writing,
19 when making such appointment and state the conflict prompting
20 the appointment. The appointed attorney shall be compensated
21 as provided in s. 925.036.

22 Section 2. Each circuit conflict committee established
23 under section 925.037, Florida Statutes, shall assess the
24 circuit's conflict representation system and determine whether
25 another conflict representation system would be more
26 cost-effective, offer greater administrative control, and
27 provide representation of a higher quality in cases involving
28 a conflict of interest. In making this determination, the
29 committee shall consider other conflict representation
30 systems, including the attorney-management program established
31 in the Eighth Judicial Circuit. The committee shall also

1 determine how to improve the reliability of the information
2 and cost data that is reported for conflict cases within the
3 circuit. Each committee shall report its findings and
4 recommendations to the Legislature by February 1, 2000.

5 Section 3. This act shall take effect upon becoming a
6 law.

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8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
10 SB 1910

11 Clarifies that the court has discretion to determine whether
12 to conduct a hearing to review the public defender's
13 representations contained in a motion to withdraw due to a
14 conflict of interest.

15 Changes the bill to reflect that the court must permit the
16 public defender to withdraw when the court is unable to
17 determine whether a conflict of interest exists because the
18 conflict is based on confidential information.

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