

By Senator Burt

16-1351B-99

1 A bill to be entitled
2 An act relating to capital collateral
3 representation; amending s. 27.710, F.S.;
4 requiring notification of the trial court if an
5 appointed attorney fails to execute a contract
6 within a specified period; authorizing an
7 attorney appointed to represent a defendant in
8 a postconviction capital collateral proceeding
9 to designate another attorney to assist in the
10 representation; amending s. 27.711, F.S.;
11 revising the maximum amount that may be paid to
12 an attorney at specified stages of such a
13 proceeding; providing that an additional
14 payment for miscellaneous expenses may be paid
15 under extraordinary circumstances from a
16 separate budget allocation; providing for
17 payment of certain tuition and other expenses
18 for an attorney who is actively representing a
19 capital defendant; providing for the
20 transmittal of files and documents to the
21 successor attorney; requiring the court to
22 monitor the performance of counsel appointed to
23 represent a capital defendant in a
24 postconviction proceeding; providing an
25 effective date.

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

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29 Section 1. Subsections (4) and (6) of section 27.710,
30 Florida Statutes, 1998 Supplement, are amended to read:

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1 27.710 Registry of attorneys applying to represent
2 persons in postconviction capital collateral proceedings;
3 certification of minimum requirements; appointment by trial
4 court.--

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. If the appointed attorney fails
8 to execute the contract within 30 days after the date the
9 contract is mailed to the attorney, the executive director of
10 the Commission on the Administration of Justice in Capital
11 Cases shall notify the trial court.The executive director of
12 the Commission on the Administration of Justice in Capital
13 Cases shall develop the form of the contract, and the
14 Comptroller shall function as contract manager and shall
15 enforce performance of the terms and conditions of the
16 contract. By signing such contract, the attorney certifies
17 that he or she intends to continue the representation under
18 the terms and conditions set forth in the contract until the
19 sentence is reversed, reduced, or carried out or until
20 released by order of the trial court.

21 (6) More than one attorney may not be appointed and
22 compensated at any one time under s. 27.711 to represent a
23 person in postconviction capital collateral proceedings.
24 However, an attorney appointed under this section may
25 designate another attorney to assist him or her if the
26 designated attorney meets the qualifications of this section.

27 Section 2. Section 27.711, Florida Statutes, 1998
28 Supplement, is amended to read:

29 27.711 Terms and conditions of appointment of
30 attorneys as counsel in postconviction capital collateral
31 proceedings.--

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

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

5 (b) "Executive director" means the executive director
6 of the Commission on the Administration of Justice in Capital
7 Cases.

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

19 (2) After appointment by the trial court under s.
20 27.710, the attorney must immediately file a notice of
21 appearance with the trial court indicating acceptance of the
22 appointment to represent the capital defendant throughout all
23 postconviction capital collateral proceedings, including
24 federal habeas corpus proceedings, in accordance with this
25 section or until released by order of the trial court.

26 (3) An attorney appointed to represent a capital
27 defendant is entitled to payment of the fees set forth in this
28 section only upon full performance by the attorney of the
29 duties specified in this section and approval of payment by
30 the trial court, and the submission of a payment request by
31 the attorney, subject to the availability of sufficient

1 funding specifically appropriated for this purpose. The
2 Justice Administrative Commission shall notify the executive
3 director and the court if it appears that sufficient funding
4 has not been specifically appropriated for this purpose to pay
5 any fees which may be incurred. The attorney shall maintain
6 appropriate documentation, including a current and detailed
7 hourly accounting of time spent representing the capital
8 defendant. The fee and payment schedule in this section is the
9 exclusive means of compensating a court-appointed attorney who
10 represents a capital defendant. When appropriate, a
11 court-appointed attorney must seek further compensation from
12 the Federal Government, as provided in 18 U.S.C. s. 3006A or
13 other federal law, in habeas corpus litigation in the federal
14 courts.

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

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

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

29 (c) The attorney is entitled to \$100 per hour, up to a
30 maximum of \$20,000~~\$10,000~~, after the trial court issues a

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1 final order granting or denying the capital defendant's motion
2 for postconviction relief.

3 (d) The attorney is entitled to \$100 per hour, up to a
4 maximum of \$20,000~~\$4,000~~, after timely filing in the Supreme
5 Court the capital defendant's brief or briefs that address the
6 trial court's final order granting or denying the capital
7 defendant's motion for postconviction relief and the state
8 petition for writ of habeas corpus.

9 (e) The attorney is entitled to \$100 per hour, up to a
10 maximum of \$10,000, after the trial court issues an order,
11 pursuant to a remand from the Supreme Court, which directs the
12 trial court to hold further proceedings on the capital
13 defendant's motion for postconviction relief.

14 ~~(f)~~(e) The attorney is entitled to \$100 per hour, up
15 to a maximum of \$4,000~~\$20,000~~, after the appeal of the trial
16 court's denial of the capital defendant's motion for
17 postconviction relief and the capital defendant's state
18 petition for writ of habeas corpus become final in the Supreme
19 Court.

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

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

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

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

13 (6) An attorney who represents a capital defendant is
14 entitled to a maximum of \$15,000~~\$5,000~~ for miscellaneous
15 expenses, such as the costs of preparing transcripts,
16 compensating expert witnesses, and copying documents. Upon
17 approval by the trial court, the attorney is entitled to
18 payment by the Comptroller of up to \$15,000 for miscellaneous
19 expenses, except that, if the trial court finds that
20 extraordinary circumstances exist, the attorney is entitled to
21 payment in excess of \$15,000, and such funds must be drawn
22 from a separate budget allocation.

23 (7) An attorney who is actively representing a capital
24 defendant is entitled to a maximum of \$500 per fiscal year for
25 tuition and expenses for continuing legal education that
26 pertains to the representation of capital defendants. Upon
27 approval by the trial court, the attorney is entitled to
28 payment by the Comptroller for expenses for such tuition and
29 continuing legal education.

30 (8)~~(7)~~ By accepting court appointment under s. 27.710
31 to represent a capital defendant, the attorney agrees to

1 continue such representation under the terms and conditions
2 set forth in this section until the capital defendant's
3 sentence is reversed, reduced, or carried out, and the
4 attorney is permitted to withdraw from such representation by
5 a court of competent jurisdiction. The withdrawing attorney
6 shall deliver all files, notes, documents, and research to the
7 successor attorney within 15 days after notice from the
8 successor attorney. The successor attorney shall bear the cost
9 of transmitting the files, notes, documents, and research.

10 ~~(9)(8)~~ An attorney may not represent more than five
11 capital defendants at any one time.

12 ~~(10)(9)~~ This section does not authorize an attorney
13 who represents a capital defendant to file repetitive or
14 frivolous pleadings that are not supported by law or by the
15 facts of the case. An action taken by an attorney who
16 represents a capital defendant in postconviction capital
17 collateral proceedings may not be the basis for a claim of
18 ineffective assistance of counsel.

19 ~~(11)(10)~~ An attorney appointed under s. 27.710 to
20 represent a capital defendant may not represent the capital
21 defendant during a retrial, a resentencing proceeding, a
22 proceeding commenced under chapter 940, a proceeding
23 challenging a conviction or sentence other than the conviction
24 and sentence of death for which the appointment was made, or
25 any civil litigation other than habeas corpus proceedings.

26 (12) The court shall monitor the performance of
27 assigned counsel to ensure that the capital defendant is
28 receiving quality representation. The court shall also receive
29 and evaluate allegations that are made regarding the
30 performance of assigned counsel. The Comptroller, the
31 Department of Legal Affairs, the executive director of the

1 Commission on the Administration of Justice in Capital Cases,
2 or any interested person may advise the court of any
3 circumstance that could affect the quality of representation,
4 including, but not limited to, false or fraudulent billing,
5 misconduct, failure to meet continuing legal education
6 requirements, solicitation to receive compensation from the
7 capital defendant, or failure to file appropriate motions in a
8 timely manner.

9 Section 3. This act shall take effect July 1, 1999.

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12 SENATE SUMMARY

13 Requires that the executive director of the Commission on
14 the Administration of Justice in Capital Cases notify the
15 trial court if an attorney appointed to represent a
16 capital defendant fails to execute a contract within the
17 required time. Provides that the court-appointed attorney
18 may designate another attorney to assist in representing
19 a defendant in a capital collateral proceeding. Revises
20 the maximum amount that may be paid to the defendant's
21 attorney at various stages of a capital collateral
22 proceeding. Increases the amount that may be paid for
23 miscellaneous expenses. Authorizes the trial court to
24 approve an additional payment for miscellaneous expenses
25 under extraordinary circumstances which is paid from a
26 separate budget allocation. Provides for the trial court
27 to approve payment of a maximum of \$500 per fiscal year
28 for tuition and other expenses for an attorney who is
29 actively representing a capital defendant. Provides for
30 monitoring the performance of an attorney appointed to
31 represent a capital defendant. (See bill for details.)