

By the Committee on Criminal Justice and Senator Burt

307-1803-99

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 provisions governing the award of
12 attorney's fees; providing that an additional
13 payment for miscellaneous expenses may be paid
14 under extraordinary circumstances from a
15 separate budget allocation; providing for
16 payment of certain tuition and other expenses
17 for an attorney who is actively representing a
18 capital defendant; providing for the
19 transmittal of files and documents to the
20 successor attorney; requiring the court to
21 monitor the performance of counsel appointed to
22 represent a capital defendant in a
23 postconviction proceeding; providing for
24 payment of attorneys' miscellaneous expenses
25 which were incurred before a specified date;
26 providing an effective date.

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

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

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, after ~~upon~~ accepting
21 appointment and filing a notice of appearance. ~~This fee is in~~
22 ~~the nature 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. However, an attorney is entitled to fees
29 under this paragraph if the court schedules a hearing on a
30 matter that makes the filing of the original motion for

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1 postconviction relief unnecessary or if the court otherwise
2 disposes of the case.

3 (c) The attorney is entitled to \$100 per hour, up to a
4 maximum of \$20,000~~\$10,000~~, after the trial court issues a
5 final order granting or denying the capital defendant's motion
6 for postconviction relief.

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

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

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

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

1 the 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.

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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 ~~\$15,000~~\$5,000 for miscellaneous
19 expenses, such as the costs of preparing transcripts,
20 compensating expert witnesses, and copying documents. Upon
21 approval by the trial court, the attorney is entitled to
22 payment by the Comptroller of up to \$15,000 for miscellaneous
23 expenses, except that, if the trial court finds that
24 extraordinary circumstances exist, the attorney is entitled to
25 payment in excess of \$15,000, and such funds must be drawn
26 from a separate budget allocation.

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

1 payment by the Comptroller for expenses for such tuition and
2 continuing legal education.

3 (8)(7) By accepting court appointment under s. 27.710
4 to represent a capital defendant, the attorney agrees to
5 continue such representation under the terms and conditions
6 set forth in this section until the capital defendant's
7 sentence is reversed, reduced, or carried out, and the
8 attorney is permitted to withdraw from such representation by
9 a court of competent jurisdiction. The withdrawing attorney
10 shall deliver all files, notes, documents, and research to the
11 successor attorney within 15 days after notice from the
12 successor attorney. The successor attorney shall bear the cost
13 of transmitting the files, notes, documents, and research.

14 (9)(8) An attorney may not represent more than five
15 capital defendants at any one time.

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

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

30 (12) The court shall monitor the performance of
31 assigned counsel to ensure that the capital defendant is

1 receiving quality representation. The court shall also receive
2 and evaluate allegations that are made regarding the
3 performance of assigned counsel. The Comptroller, the
4 Department of Legal Affairs, the executive director of the
5 Commission on the Administration of Justice in Capital Cases,
6 or any interested person may advise the court of any
7 circumstance that could affect the quality of representation,
8 including, but not limited to, false or fraudulent billing,
9 misconduct, failure to meet continuing legal education
10 requirements, solicitation to receive compensation from the
11 capital defendant, or failure to file appropriate motions in a
12 timely manner.

13 Section 3. Any attorney who incurred miscellaneous
14 expenses under section 27.711(6), Florida Statutes, before
15 July 1, 1999, is entitled to payment for such miscellaneous
16 expenses up to the amount specified in this act.

17 Section 4. This act shall take effect July 1, 1999.

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19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
20 COMMITTEE SUBSTITUTE FOR
21 Senate Bill 2054

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22 - Clarifies an ambiguity in section 27.711(4)(a), F.S., by
23 deleting a reference to "retainer fee" and providing
24 that the registry attorney is entitled to fees up to
25 \$2500 for work done in the early stages of the
litigation. This provision does not increase the
attorney fees currently authorized for such work.

26 - Authorizes the court to pay an attorney for work
performed in negotiating for a court hearing or other
27 disposition which in turn makes a post conviction motion
unnecessary. This provision clarifies that it is not
28 necessary for an attorney to actually file a post
conviction motion if the parties otherwise dispose of
the case.

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30 - Clarifies that an attorney working on a pending case who
incurs expenses prior to the bill's effective date, will
31 be entitled to payment up to the \$15,000 cap on
miscellaneous expenses.