

By the Committees on Judiciary, Criminal Justice and Senator
Burt

308-1972-99

1 A bill to be entitled
2 An act relating to capital collateral
3 representation; amending s. 27.703, F.S.;
4 requiring private counsel appointments to be in
5 accordance with specified provisions; amending
6 s. 27.710, F.S.; requiring notification of the
7 trial court if an appointed attorney fails to
8 execute a contract within a specified period;
9 authorizing an attorney appointed to represent
10 a defendant in a postconviction capital
11 collateral proceeding to designate another
12 attorney to assist in the representation;
13 amending s. 27.711, F.S.; revising provisions
14 governing the award of attorney's fees;
15 providing that an additional payment for
16 miscellaneous expenses may be paid under
17 extraordinary circumstances from a separate
18 budget allocation; providing for payment of
19 certain tuition and other expenses for an
20 attorney who is actively representing a capital
21 defendant; providing for the transmittal of
22 files and documents to the successor attorney;
23 requiring the court to monitor the performance
24 of counsel appointed to represent a capital
25 defendant in a postconviction proceeding;
26 providing for payment of attorneys'
27 miscellaneous expenses which were incurred
28 before a specified date; providing an effective
29 date.

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

1 Section 1. Subsection (2) of section 27.703, Florida
2 Statutes, is amended to read:

3 27.703 Conflict of interest and substitute counsel.--

4 (2) Appointed counsel shall be paid from funds
5 appropriated to the Justice Administrative Commission. The
6 hourly rate may not exceed \$100. However, effective July 1,
7 1999, all appointments of private counsel under this section
8 shall be in accordance with ss. 27.710 and 27.711.

9 Section 2. Subsections (4) and (6) of section 27.710,
10 Florida Statutes, 1998 Supplement, are amended to read:

11 27.710 Registry of attorneys applying to represent
12 persons in postconviction capital collateral proceedings;
13 certification of minimum requirements; appointment by trial
14 court.--

15 (4) Each private attorney who is appointed by the
16 court to represent a capital defendant must enter into a
17 contract with the Comptroller. If the appointed attorney fails
18 to execute the contract within 30 days after the date the
19 contract is mailed to the attorney, the executive director of
20 the Commission on the Administration of Justice in Capital
21 Cases shall notify the trial court.The executive director of
22 the Commission on the Administration of Justice in Capital
23 Cases shall develop the form of the contract, and the
24 Comptroller shall function as contract manager and shall
25 enforce performance of the terms and conditions of the
26 contract. By signing such contract, the attorney certifies
27 that he or she intends to continue the representation under
28 the terms and conditions set forth in the contract until the
29 sentence is reversed, reduced, or carried out or until
30 released by order of the trial court.

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

7 Section 3. Section 27.711, Florida Statutes, 1998
8 Supplement, is amended to read:

9 27.711 Terms and conditions of appointment of
10 attorneys as counsel in postconviction capital collateral
11 proceedings.--

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

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

16 (b) "Executive director" means the executive director
17 of the Commission on the Administration of Justice in Capital
18 Cases.

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

30 (2) After appointment by the trial court under s.
31 27.710, the attorney must immediately file a notice of

1 appearance with the trial court indicating acceptance of the
2 appointment to represent the capital defendant throughout all
3 postconviction capital collateral proceedings, including
4 federal habeas corpus proceedings, in accordance with this
5 section or until released by order of the trial court.

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

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

29 (a) Regardless of the stage of postconviction capital
30 collateral proceedings, the attorney is entitled to \$100 per
31 hour, up to a maximum of \$2,500, after ~~upon~~ accepting

1 appointment and filing a notice of appearance. ~~This fee is in~~
2 ~~the nature of a fee for a retainer agreement.~~

3 (b) The attorney is entitled to \$100 per hour, up to a
4 maximum of \$20,000, after timely filing in the trial court the
5 capital defendant's complete original motion for
6 postconviction relief under the Florida Rules of Criminal
7 Procedure. The motion must raise all issues to be addressed by
8 the trial court. However, an attorney is entitled to fees
9 under this paragraph if the court schedules a hearing on a
10 matter that makes the filing of the original motion for
11 postconviction relief unnecessary or if the court otherwise
12 disposes of the case.

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

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

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

28 ~~(f)~~(e) The attorney is entitled to \$100 per hour, up
29 to a maximum of ~~\$20,000~~\$4,000, after the appeal of the trial
30 court's denial of the capital defendant's motion for
31 postconviction relief and the capital defendant's state

1 petition for writ of habeas corpus become final in the Supreme
2 Court.

3 (g)~~(f)~~ At the conclusion of the capital defendant's
4 postconviction capital collateral proceedings in state court,
5 the attorney is entitled to \$100 per hour, up to a maximum of
6 \$2,500, after filing a petition for writ of certiorari in the
7 Supreme Court of the United States.

8 (h)~~(g)~~ If, at any time, the Supreme Court of the
9 United States accepts for review the capital defendant's
10 collateral challenge of the conviction and sentence of death,
11 the attorney is entitled to \$100 per hour, up to a maximum of
12 \$5,000. This payment shall be full compensation for
13 representing the capital defendant throughout the certiorari
14 proceedings before the United States Supreme Court.

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16 The hours billed by a contracting attorney under this
17 subsection may include time devoted to representation of the
18 defendant by another attorney who is qualified under s. 27.710
19 and who has been designated by the contracting attorney to
20 assist him or her.

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

27 (6) An attorney who represents a capital defendant is
28 entitled to a maximum of \$15,000~~\$5,000~~ for miscellaneous
29 expenses, such as the costs of preparing transcripts,
30 compensating expert witnesses, and copying documents. Upon
31 approval by the trial court, the attorney is entitled to

1 payment by the Comptroller of up to \$15,000 for miscellaneous
2 expenses, except that, if the trial court finds that
3 extraordinary circumstances exist, the attorney is entitled to
4 payment in excess of \$15,000, and such funds must be drawn
5 from a separate budget allocation.

6 (7) An attorney who is actively representing a capital
7 defendant is entitled to a maximum of \$500 per fiscal year for
8 tuition and expenses for continuing legal education that
9 pertains to the representation of capital defendants. Upon
10 approval by the trial court, the attorney is entitled to
11 payment by the Comptroller for expenses for such tuition and
12 continuing legal education.

13 (8)(7) By accepting court appointment under s. 27.710
14 to represent a capital defendant, the attorney agrees to
15 continue such representation under the terms and conditions
16 set forth in this section until the capital defendant's
17 sentence is reversed, reduced, or carried out, and the
18 attorney is permitted to withdraw from such representation by
19 a court of competent jurisdiction. The withdrawing attorney
20 shall deliver all files, notes, documents, and research to the
21 successor attorney within 15 days after notice from the
22 successor attorney. The successor attorney shall bear the cost
23 of transmitting the files, notes, documents, and research.

24 (9)(8) An attorney may not represent more than five
25 capital defendants at any one time.

26 (10)(9) This section does not authorize an attorney
27 who represents a capital defendant to file repetitive or
28 frivolous pleadings that are not supported by law or by the
29 facts of the case. An action taken by an attorney who
30 represents a capital defendant in postconviction capital
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1 collateral proceedings may not be the basis for a claim of
2 ineffective assistance of counsel.

3 (11)~~(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 (12) The court shall monitor the performance of
11 assigned counsel to ensure that the capital defendant is
12 receiving quality representation. The court shall also receive
13 and evaluate allegations that are made regarding the
14 performance of assigned counsel. The Comptroller, the
15 Department of Legal Affairs, the executive director of the
16 Commission on the Administration of Justice in Capital Cases,
17 or any interested person may advise the court of any
18 circumstance that could affect the quality of representation,
19 including, but not limited to, false or fraudulent billing,
20 misconduct, failure to meet continuing legal education
21 requirements, solicitation to receive compensation from the
22 capital defendant, or failure to file appropriate motions in a
23 timely manner.

24 Section 4. Any attorney who incurred miscellaneous
25 expenses under section 27.711(6), Florida Statutes, before
26 July 1, 1999, is entitled to payment for such miscellaneous
27 expenses up to the amount specified in this act.

28 Section 5. This act shall take effect July 1, 1999.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/SB 2054

Amends s. 27.703(2), F.S., to clarify that appointments of private counsel due to a conflict of interest by the Capital Collateral Regional Counsel (CCRC) will also be in accordance with the bill's attorney registry provisions in ss. 27.710 and 27.711, F.S.