

1 A bill to be entitled
2 An act relating to capital collateral
3 representation; amending s. 27.702, F.S.;
4 redesignating the Commission on the
5 Administration of Justice in Capital Cases as
6 the Commission on Capital Cases; amending s.
7 27.703, F.S.; requiring private counsel
8 appointments to be in accordance with specified
9 provisions; amending s. 27.709, F.S.;
10 conforming provisions to changes made by the
11 act; amending s. 27.710, F.S.; requiring
12 notification of the trial court if an appointed
13 attorney fails to execute a contract within a
14 specified period; authorizing an attorney
15 appointed to represent a defendant in a
16 postconviction capital collateral proceeding to
17 designate another attorney to assist in the
18 representation; amending s. 27.711, F.S.;
19 revising provisions governing the award of
20 attorney's fees; providing that an additional
21 payment for miscellaneous expenses may be paid
22 under extraordinary circumstances from a
23 separate budget allocation; providing for
24 payment of certain tuition and other expenses
25 for an attorney who is actively representing a
26 capital defendant; providing for the payment of
27 attorneys fees and costs when an attorney is
28 permitted to withdraw or is otherwise removed
29 from representation; providing for the
30 transmittal of files and documents to the
31 successor attorney; requiring the court to

1 monitor the performance of counsel appointed to
2 represent a capital defendant in a
3 postconviction proceeding; providing for
4 payment of attorneys' miscellaneous expenses
5 which were incurred before a specified date;
6 providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection (4) of section 27.702, Florida
11 Statutes, 1998 Supplement, is amended to read:

12 27.702 Duties of the capital collateral regional
13 counsel; reports.--

14 (4)(a) The capital collateral regional counsel or
15 private counsel shall give written notification of each
16 pleading filed by that office and the name of the person
17 filing the pleading to the Commission on ~~the Administration of~~
18 ~~Justice in~~ Capital Cases and to the trial court assigned to
19 the case.

20 (b) Each capital collateral regional counsel shall
21 provide a quarterly report to the President of the Senate, the
22 Speaker of the House of Representatives, and the Commission on
23 ~~the Administration of Justice in~~ Capital Cases which details
24 the number of hours worked by investigators and legal counsel
25 per case and the amounts per case expended during the
26 preceding quarter in investigating and litigating capital
27 collateral cases.

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

30 27.703 Conflict of interest and substitute counsel.--

31

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

6 Section 3. Section 27.709, Florida Statutes, 1998
7 Supplement, is amended to read:

8 27.709 Commission on ~~the Administration of Justice in~~
9 Capital Cases.--

10 (1)(a) There is created the Commission on ~~the~~
11 ~~Administration of Justice in~~ Capital Cases, which shall
12 consist of the six following members:

13 1. Two members appointed by the Governor.

14 2. Two members appointed by the President of the
15 Senate from the membership of the Senate. One member shall be
16 a member of the majority party, and one member shall be a
17 member of the minority party.

18 3. Two members appointed by the Speaker of the House
19 of Representatives from the membership of the House of
20 Representatives. One member shall be a member of the majority
21 party, and one member shall be a member of the minority party.

22 (b) The chair of the commission shall be selected by
23 the members for a term of 1 year.

24 (c) The commission shall meet quarterly, and other
25 meetings may be called by the chair upon giving at least 7
26 days' notice to all members and the public.

27 (d) Members of the commission are entitled to per diem
28 and travel expenses to be paid by the appointing entity.

29 (e) The initial members of the commission must be
30 appointed on or before October 1, 1997. Members of the
31 commission shall be appointed to serve terms of 4 years each,

1 except that a member's term shall expire upon leaving office
2 as a member of the Senate or the House of Representatives. Two
3 of the initial members, one from the Senate and one from the
4 House of Representatives, shall be appointed for terms of 2
5 years each. Two of the initial members, one from the Senate
6 and one from the House of Representatives, shall be appointed
7 for terms of 3 years each.

8 (f) The Office of Legislative Services shall provide
9 staff support for the commission.

10 (2) The commission shall review the administration of
11 justice in capital collateral cases, receive relevant public
12 input, review the operation of the capital collateral regional
13 counsel, and advise and make recommendations to the Governor,
14 Legislature, and Supreme Court. In addition, the commission
15 shall receive complaints regarding the practice of any office
16 of regional counsel and shall refer any complaint to The
17 Florida Bar, the State Supreme Court, or the Commission on
18 Ethics, as appropriate.

19 (3) The Commission on ~~the Administration of Justice in~~
20 Capital Cases shall conduct a study to evaluate whether the
21 elimination of state postconviction proceedings in death
22 penalty cases will reduce delays in carrying out a sentence of
23 death in capital cases. In conducting the study, the
24 commission shall take public testimony from any interested
25 party. The commission shall review the average number of
26 postconviction motions and writs filed in capital cases, prior
27 legislative and judicial attempts to reduce delays in capital
28 cases, and the length of time required for capital
29 postconviction claims in state and federal court. The
30 commission shall consider average delays in capital cases,
31 whether those delays have increased in the last 10 years, and

1 the reasons for any increase in delays. The study shall
2 include a report which addresses the legal, fiscal, and
3 practical considerations concerning the elimination of state
4 postconviction proceedings, and the recommendation of the
5 commission. Public notice shall be provided, in a manner
6 agreed to by the commission, for all hearings where the
7 commission intends to hear public testimony concerning the
8 elimination of state postconviction proceedings in death
9 penalty cases for purposes of this study. The report shall be
10 submitted to the Speaker of the House of Representatives, the
11 President of the Senate, and the minority leaders in the House
12 and the Senate by December 1, 1998.

13 Section 4. Subsections (1), (4), and (6) of section
14 27.710, Florida Statutes, 1998 Supplement, are amended to
15 read:

16 27.710 Registry of attorneys applying to represent
17 persons in postconviction capital collateral proceedings;
18 certification of minimum requirements; appointment by trial
19 court.--

20 (1) The executive director of the Commission on ~~the~~
21 ~~Administration of Justice in~~ Capital Cases shall compile and
22 maintain a statewide registry of attorneys in private practice
23 who have certified that they meet the minimum requirements of
24 s. 27.704(2) and who are available for appointment by the
25 court under this section to represent persons convicted and
26 sentenced to death in this state in postconviction capital
27 collateral proceedings. To ensure that sufficient attorneys
28 are available for appointment by the court, when the number of
29 attorneys on the registry falls below 50, the executive
30 director shall notify the chief judge of each circuit by
31 letter and request the chief judge to promptly submit the

1 names of at least three private attorneys who regularly
2 practice criminal law in that circuit and who appear to meet
3 the minimum requirements to represent persons in
4 postconviction capital collateral proceedings. The executive
5 director shall send an application to each attorney identified
6 by the chief judge so that the attorney may register for
7 appointment as counsel in postconviction capital collateral
8 proceedings. As necessary, the executive director may also
9 advertise in legal publications and other appropriate media
10 for qualified attorneys interested in registering for
11 appointment as counsel in postconviction capital collateral
12 proceedings. Not later than September 1 of each year, and as
13 necessary thereafter, the executive director shall provide to
14 the Chief Justice of the Supreme Court, the chief judge and
15 state attorney in each judicial circuit, and the Attorney
16 General a current copy of its registry of attorneys who are
17 available for appointment as counsel in postconviction capital
18 collateral proceedings. The registry must be indexed by
19 judicial circuit and must contain the requisite information
20 submitted by the applicants in accordance with this section.

21 (4) Each private attorney who is appointed by the
22 court to represent a capital defendant must enter into a
23 contract with the Comptroller. If the appointed attorney fails
24 to execute the contract within 30 days after the date the
25 contract is mailed to the attorney, the executive director of
26 the Commission on Capital Cases shall notify the trial court.
27 The executive director of the Commission on ~~the Administration~~
28 ~~of Justice in~~ Capital Cases shall develop the form of the
29 contract, and the Comptroller shall function as contract
30 manager and shall enforce performance of the terms and
31 conditions of the contract. By signing such contract, the

1 attorney certifies that he or she intends to continue the
2 representation under the terms and conditions set forth in the
3 contract until the sentence is reversed, reduced, or carried
4 out or until released by order of the trial court.

5 (6) More than one attorney may not be appointed and
6 compensated at any one time under s. 27.711 to represent a
7 person in postconviction capital collateral proceedings.

8 However, an attorney appointed under this section may
9 designate another attorney to assist him or her if the
10 designated attorney meets the qualifications of this section.

11 Section 5. Section 27.711, Florida Statutes, 1998
12 Supplement, is amended to read:

13 27.711 Terms and conditions of appointment of
14 attorneys as counsel in postconviction capital collateral
15 proceedings.--

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

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

20 (b) "Executive director" means the executive director
21 of the Commission on ~~the Administration of Justice in Capital~~
22 Cases.

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

1 and sentence of death which is affirmed by the Supreme Court
2 and undisturbed by any collateral litigation.

3 (2) After appointment by the trial court under s.
4 27.710, the attorney must immediately file a notice of
5 appearance with the trial court indicating acceptance of the
6 appointment to represent the capital defendant throughout all
7 postconviction capital collateral proceedings, including
8 federal habeas corpus proceedings, in accordance with this
9 section or until released by order of the trial court.

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

30
31

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

4 (a) Regardless of the stage of postconviction capital
5 collateral proceedings, the attorney is entitled to \$100 per
6 hour, up to a maximum of \$2,500, after ~~upon~~ accepting
7 appointment and filing a notice of appearance. ~~This fee is in
8 the nature of a fee for a retainer agreement.~~

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

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

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

29 (e) The attorney is entitled to \$100 per hour, up to a
30 maximum of \$10,000, after the trial court issues an order,
31 pursuant to a remand from the Supreme Court, which directs the

1 trial court to hold further proceedings on the capital
2 defendant's motion for postconviction relief.

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

9 (g)~~(f)~~ At the conclusion of the capital defendant's
10 postconviction capital collateral proceedings in state court,
11 the attorney is entitled to \$100 per hour, up to a maximum of
12 \$2,500, after filing a petition for writ of certiorari in the
13 Supreme Court of the United States.

14 (h)~~(g)~~ If, at any time, the Supreme Court of the
15 United States accepts for review the capital defendant's
16 collateral challenge of the conviction and sentence of death,
17 the attorney is entitled to \$100 per hour, up to a maximum of
18 \$5,000. This payment shall be full compensation for
19 representing the capital defendant throughout the certiorari
20 proceedings before the United States Supreme Court.

21
22 The hours billed by a contracting attorney under this
23 subsection may include time devoted to representation of the
24 defendant by another attorney who is qualified under s. 27.710
25 and who has been designated by the contracting attorney to
26 assist him or her.

27 (5) An attorney who represents a capital defendant may
28 use the services of one or more investigators to assist in
29 representing a capital defendant. Upon approval by the trial
30 court, the attorney is entitled to payment from the

31

1 Comptroller of \$40 per hour, up to a maximum of \$15,000, for
2 the purpose of paying for investigative services.

3 (6) An attorney who represents a capital defendant is
4 entitled to a maximum of ~~\$15,000~~\$5,000 for miscellaneous
5 expenses, such as the costs of preparing transcripts,
6 compensating expert witnesses, and copying documents. Upon
7 approval by the trial court, the attorney is entitled to
8 payment by the Comptroller of up to \$15,000 for miscellaneous
9 expenses, except that, if the trial court finds that
10 extraordinary circumstances exist, the attorney is entitled to
11 payment in excess of \$15,000.

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

19 ~~(8)~~(7) By accepting court appointment under s. 27.710
20 to represent a capital defendant, the attorney agrees to
21 continue such representation under the terms and conditions
22 set forth in this section until the capital defendant's
23 sentence is reversed, reduced, or carried out, and the
24 attorney is permitted to withdraw from such representation by
25 a court of competent jurisdiction. However, if an attorney is
26 permitted to withdraw or is otherwise removed from
27 representation prior to full performance of the duties
28 specified in this section, the trial court shall approve
29 payment of fees and costs for work performed, which may not
30 exceed the amounts specified in this section. An attorney who
31 withdraws or is removed from representation shall deliver all

1 files, notes, documents, and research to the successor
2 attorney within 15 days after notice from the successor
3 attorney. The successor attorney shall bear the cost of
4 transmitting the files, notes, documents, and research.

5 ~~(9)(8)~~ An attorney may not represent more than five
6 capital defendants at any one time.

7 ~~(10)(9)~~ This section does not authorize an attorney
8 who represents a capital defendant to file repetitive or
9 frivolous pleadings that are not supported by law or by the
10 facts of the case. An action taken by an attorney who
11 represents a capital defendant in postconviction capital
12 collateral proceedings may not be the basis for a claim of
13 ineffective assistance of counsel.

14 ~~(11)(10)~~ An attorney appointed under s. 27.710 to
15 represent a capital defendant may not represent the capital
16 defendant during a retrial, a resentencing proceeding, a
17 proceeding commenced under chapter 940, a proceeding
18 challenging a conviction or sentence other than the conviction
19 and sentence of death for which the appointment was made, or
20 any civil litigation other than habeas corpus proceedings.

21 (12) The court shall monitor the performance of
22 assigned counsel to ensure that the capital defendant is
23 receiving quality representation. The court shall also receive
24 and evaluate allegations that are made regarding the
25 performance of assigned counsel. The Comptroller, the
26 Department of Legal Affairs, the executive director, or any
27 interested person may advise the court of any circumstance
28 that could affect the quality of representation, including,
29 but not limited to, false or fraudulent billing, misconduct,
30 failure to meet continuing legal education requirements,
31 solicitation to receive compensation from the capital

1 defendant, or failure to file appropriate motions in a timely
2 manner.

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

7 Section 7. This act shall take effect July 1, 1999.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31