

By the Committee on Crime & Punishment and Representative  
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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 attorney's  
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. Section 27.703, Florida Statutes, is  
2 amended to read:

3           27.703 Conflict of interest and substitute counsel.--

4           (1) If, at any time during the representation of two  
5 or more persons, the capital collateral regional counsel  
6 determines that the interests of those persons are so adverse  
7 or hostile that they cannot all be counseled by the regional  
8 counsel or his or her staff without conflict of interest, the  
9 sentencing court shall, upon application by the regional  
10 counsel, designate another regional counsel and, only if a  
11 conflict exists with the other two counsels, appoint one or  
12 more members of The Florida Bar to represent one or more of  
13 such persons.

14           (2) Appointed counsel shall be paid from funds  
15 appropriated to the Justice Administrative Commission. The  
16 hourly rate may not exceed \$100. However, effective July 1,  
17 1999, all appointments of private counsel under this section  
18 shall be in accordance with ss. 27.710 and 27.711.

19           (3) Prior to employment, counsel appointed pursuant to  
20 this section must have participated in at least five felony  
21 jury trials, five felony appeals, or five capital  
22 postconviction evidentiary hearings, or any combination of at  
23 least five of such proceedings.

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

26           27.710 Registry of attorneys applying to represent  
27 persons in postconviction capital collateral proceedings;  
28 certification of minimum requirements; appointment by trial  
29 court.--

30           (4) Each private attorney who is appointed by the  
31 court to represent a capital defendant must enter into a

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

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

21 Section 3. Section 27.711, Florida Statutes, 1998  
22 Supplement, is amended to read:

23 27.711 Terms and conditions of appointment of  
24 attorneys as counsel in postconviction capital collateral  
25 proceedings.--

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

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

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1           (b) "Executive director" means the executive director  
2 of the Commission on the Administration of Justice in Capital  
3 Cases.

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

15           (2) After appointment by the trial court under s.  
16 27.710, the attorney must immediately file a notice of  
17 appearance with the trial court indicating acceptance of the  
18 appointment to represent the capital defendant throughout all  
19 postconviction capital collateral proceedings, including  
20 federal habeas corpus proceedings, in accordance with this  
21 section or until released by order of the trial court.

22           (3) An attorney appointed to represent a capital  
23 defendant is entitled to payment of the fees set forth in this  
24 section only upon full performance by the attorney of the  
25 duties specified in this section and approval of payment by  
26 the trial court, and the submission of a payment request by  
27 the attorney, subject to the availability of sufficient  
28 funding specifically appropriated for this purpose. The  
29 Justice Administrative Commission shall notify the executive  
30 director and the court if it appears that sufficient funding  
31 has not been specifically appropriated for this purpose to pay

1 any fees which may be incurred. The attorney shall maintain  
2 appropriate documentation, including a current and detailed  
3 hourly accounting of time spent representing the capital  
4 defendant. The fee and payment schedule in this section is the  
5 exclusive means of compensating a court-appointed attorney who  
6 represents a capital defendant. When appropriate, a  
7 court-appointed attorney must seek further compensation from  
8 the Federal Government, as provided in 18 U.S.C. s. 3006A or  
9 other federal law, in habeas corpus litigation in the federal  
10 courts.

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

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

19 (b) The attorney is entitled to \$100 per hour, up to a  
20 maximum of \$20,000, after timely filing in the trial court the  
21 capital defendant's complete original motion for  
22 postconviction relief under the Florida Rules of Criminal  
23 Procedure. The motion must raise all issues to be addressed by  
24 the trial court. However, an attorney is entitled to fees  
25 under this paragraph if the court schedules a hearing on a  
26 matter that makes the filing of the original motion for  
27 postconviction relief unnecessary or if the court otherwise  
28 disposes of the case.

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



