

1 A bill to be entitled
2 An act relating to capital collateral
3 proceedings; amending s. 27.7001, F.S.;
4 providing legislative intent; creating s.
5 27.7002, F.S., relating to adequacy of capital
6 collateral representation; relating to
7 compensation of attorneys; requiring
8 appointment in accordance with chapter;
9 authorizing removal of attorney from registry
10 under certain circumstances; providing for
11 permanent disqualification from attorney
12 registry under certain circumstances; amending
13 s. 27.710, F.S.; providing an additional
14 requirement for attorneys who may be listed on
15 the statewide registry of attorneys in private
16 practice who are available for appointment to
17 represent persons convicted and sentenced to
18 death in this state in postconviction capital
19 collateral proceedings; amending s. 27.711,
20 F.S.; revising language with respect to fees
21 for representing certain capital defendants;
22 providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Section 27.7001, Florida Statutes, is
27 amended to read:

28 27.7001 Legislative intent and findings.--It is the
29 intent of the Legislature to create part IV of this chapter,
30 consisting of ss. 27.7001-27.711 ~~27.708~~, inclusive, to provide
31 for the collateral representation of any person convicted and

1 sentenced to death in this state, so that collateral legal
2 proceedings to challenge any Florida capital conviction and
3 sentence may be commenced in a timely manner and so as to
4 assure the people of this state that the judgments of its
5 courts may be regarded with the finality to which they are
6 entitled in the interests of justice. It is the further
7 intent of the Legislature that collateral representation shall
8 not include representation during retrials, resentencings,
9 proceedings commenced under chapter 940, or civil litigation.

10 Section 2. Section 27.7002, Florida Statutes, is
11 created to read:

12 27.7002. Limitation on collateral representation,
13 lawyer disqualification, use of state funds for excess fees
14 not authorized.--

15 (1) This chapter does not create any right on behalf
16 of any person, provided counsel pursuant to any provision of
17 this chapter, to challenge in any form or manner the adequacy
18 of the collateral representation provided.

19 (2) With respect to counsel appointed to represent
20 defendants in collateral proceedings pursuant to ss. 27.710
21 and 27.711, the sole method of assuring adequacy of
22 representation provided shall be in accordance with the
23 provisions of s. 27.711(12).

24 (3) No provision of this chapter shall be construed to
25 generate any right on behalf of any attorney appointed
26 pursuant to s. 27.710, or seeking appointment pursuant to s.
27 27.710, to be compensated above the amounts provided in s.
28 27.711.

29 (4) No attorney may be appointed, at state expense, to
30 represent any defendant in collateral legal proceedings except
31 as expressly authorized in this chapter.

1 (5) The use of state funds for compensation of counsel
 2 appointed pursuant to s. 27.710 above the amounts set forth in
 3 s. 27.711 is not authorized.

4 (6) The executive director of the Commission on
 5 Capital Cases is authorized to permanently remove from the
 6 registry of attorneys provided in ss. 27.710 and 27.711, any
 7 attorney who seeks compensation for services above the amounts
 8 provided in s. 27.711.

9 (7) Any attorney who notifies any court, judge, state
 10 attorney, the Attorney General, or the executive director of
 11 the Commission on Capital Cases, that he or she cannot provide
 12 adequate or proper representation under the terms and
 13 conditions set forth in s. 27.711, shall be permanently
 14 disqualified from any attorney registry created under this
 15 chapter, unless good cause arises after a change in
 16 circumstances.

17 Section 3. Subsection (1) of section 27.710, Florida
 18 Statutes, is amended to read:

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

23 (1) The executive director of the Commission on
 24 Capital Cases shall compile and maintain a statewide registry
 25 of attorneys in private practice who have certified that they
 26 meet the minimum requirements of s. 27.704(2), who are
 27 available for appointment by the court under this section to
 28 represent persons convicted and sentenced to death in this
 29 state in postconviction collateral proceedings, and have
 30 attended within the last year a continuing legal education
 31 program of at least 10 hours' duration devoted specifically to

1 the defense of capital cases, if available. Continuing legal
2 education programs meeting the requirements of this rule
3 offered by The Florida Bar or another recognized provider and
4 approved for continuing legal education credit by The Florida
5 Bar shall satisfy this requirement. The failure to comply with
6 this requirement may be cause for removal from the list until
7 the requirement is fulfilled ~~who are available for appointment~~
8 ~~by the court under this section to represent persons convicted~~
9 ~~and sentenced to death in this state in postconviction capital~~
10 ~~collateral proceedings.~~ To ensure that sufficient attorneys
11 are available for appointment by the court, when the number of
12 attorneys on the registry falls below 50, the executive
13 director shall notify the chief judge of each circuit by
14 letter and request the chief judge to promptly submit the
15 names of at least three private attorneys who regularly
16 practice criminal law in that circuit and who appear to meet
17 the minimum requirements to represent persons in
18 postconviction capital collateral proceedings. The executive
19 director shall send an application to each attorney identified
20 by the chief judge so that the attorney may register for
21 appointment as counsel in postconviction capital collateral
22 proceedings. As necessary, the executive director may also
23 advertise in legal publications and other appropriate media
24 for qualified attorneys interested in registering for
25 appointment as counsel in postconviction capital collateral
26 proceedings. Not later than September 1 of each year, and as
27 necessary thereafter, the executive director shall provide to
28 the Chief Justice of the Supreme Court, the chief judge and
29 state attorney in each judicial circuit, and the Attorney
30 General a current copy of its registry of attorneys who are
31 available for appointment as counsel in postconviction capital

1 collateral proceedings. The registry must be indexed by
2 judicial circuit and must contain the requisite information
3 submitted by the applicants in accordance with this section.

4 Section 4. Subsection (4) of section 27.711, Florida
5 Statutes, is amended to read:

6 27.711 Terms and conditions of appointment of
7 attorneys as counsel in postconviction capital collateral
8 proceedings.--

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

12 (a) Regardless of the stage of postconviction capital
13 collateral proceedings, the attorney is entitled to \$100 per
14 hour, up to a maximum of \$2,500, after accepting appointment
15 and filing a notice of appearance.

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

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

30 (d) The attorney is entitled to \$100 per hour, up to a
31 maximum of \$20,000, after timely filing in the Supreme Court

1 the capital defendant's brief or briefs that address the trial
2 court's final order granting or denying the capital
3 defendant's motion for postconviction relief and the state
4 petition for writ of habeas corpus.

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

10 (f) The attorney is entitled to \$100 per hour, up to a
11 maximum of \$4,000, after the appeal of the trial court's
12 denial of the capital defendant's motion for postconviction
13 relief and the capital defendant's state petition for writ of
14 habeas corpus become final in the Supreme Court.

15 (g) At the conclusion of the capital defendant's
16 postconviction capital collateral proceedings in state court,
17 the attorney is entitled to \$100 per hour, up to a maximum of
18 \$2,500, after filing a petition for writ of certiorari in the
19 Supreme Court of the United States.

20 (h) If, at any time, a death warrant is issued ~~the~~
21 ~~Supreme Court of the United States accepts for review the~~
22 ~~capital defendant's collateral challenge of the conviction and~~
23 ~~sentence of death~~, the attorney is entitled to \$100 per hour,
24 up to a maximum of \$5,000. This payment shall be full
25 compensation for attorney's fees and costs for representing
26 the capital defendant throughout the ~~certiorari~~ proceedings
27 before the state courts of Florida ~~United States Supreme~~
28 ~~Court~~.

29
30 The hours billed by a contracting attorney under this
31 subsection may include time devoted to representation of the

1 defendant by another attorney who is qualified under s. 27.710
2 and who has been designated by the contracting attorney to
3 assist him or her.

4 Section 5. This act shall take effect July 1, 2002.

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