

1 A bill to be entitled
 2 An act relating to capital collateral representation;
 3 amending s. 27.709, F.S.; providing for the Commission on
 4 Capital Cases to undertake certain projects and
 5 authorizing it to sponsor certain continuing legal
 6 education classes; amending s. 27.710, F.S.; revising
 7 provisions relating to continuing legal education
 8 requirements for attorneys on the registry of attorneys
 9 applying to represent persons in postconviction capital
 10 collateral proceedings; providing for the removal of
 11 appointed attorneys who fail to sign contracts or submit
 12 specified reports; requiring an appointed attorney who
 13 does not wish to continue representation at the federal
 14 level to make reasonable efforts to assist the client in
 15 finding replacement counsel; amending s. 27.711, F.S.;
 16 providing for payment of attorneys after a final hearing,
 17 rather than after a final order; providing for additional
 18 payments to attorneys; increasing the maximum number of
 19 inmates that may be represented by a capital collateral
 20 attorney; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Subsection (2) of section 27.709, Florida
 25 Statutes, is amended to read:

26 27.709 Commission on Capital Cases.--

27 (2) The commission shall:

28 (a) ~~The commission shall~~ Review the administration of
 29 justice in capital collateral cases, receive relevant public
 30 input, review the operation of the capital collateral regional
 31 counsel and private counsel appointed pursuant to ss. 27.710 and
 32 27.711, and advise and make recommendations to the Governor,
 33 Legislature, and Supreme Court.

34 (b) ~~As part of its duties, the commission shall~~ Compile
 35 and analyze case-tracking reports produced by the Supreme Court.
 36 In analyzing these reports, the commission shall develop
 37 statistics to identify trends and changes in case management and
 38 case processing, identify and evaluate unproductive points of
 39 delay, and generally evaluate the way cases are progressing. The
 40 commission shall report these findings to the Legislature by
 41 January 1 of each year.

42 (c) ~~In addition, the commission shall~~ Receive complaints
 43 regarding the practice of any office of regional counsel and
 44 private counsel appointed pursuant to ss. 27.710 and 27.711 and
 45 shall refer any complaint to The Florida Bar, the State Supreme
 46 Court, or the Commission on Ethics, as appropriate.

47 (d) Undertake any project recommended or approved by the
 48 appointed commission members.

49 (e) Have the authority to sponsor continuing legal
 50 education training devoted specifically to capital cases.

51 Section 2. Subsections (1), (2), (3), (4), and (5) of
 52 section 27.710, Florida Statutes, are amended to read:

53 27.710 Registry of attorneys applying to represent persons
 54 in postconviction capital collateral proceedings; certification
 55 of minimum requirements; appointment by trial court.--

56 (1) The executive director of the Commission on Capital
 57 Cases shall compile and maintain a statewide registry of
 58 attorneys in private practice who have certified that they meet
 59 the minimum requirements of s. 27.704(2), who are available for
 60 appointment by the court under this section to represent persons
 61 convicted and sentenced to death in this state in postconviction
 62 collateral proceedings, and who have attended at least 12 hours
 63 of continuing legal education within the last 2 years ~~year a~~
 64 ~~continuing legal education program of at least 10 hours'~~
 65 ~~duration~~ devoted specifically to the defense of capital cases,
 66 if available. Every 2 years, attorneys who satisfy the minimum
 67 requirements of s. 27.704(2) and who are handling a capital case
 68 shall be required to attend at least 12 hours of continuing
 69 legal education. Continuing legal education programs meeting the
 70 requirements of this rule offered by The Florida Bar or another
 71 recognized provider and approved for continuing legal education
 72 credit by The Florida Bar shall satisfy this requirement. The
 73 failure to comply with this requirement may be cause for removal
 74 from the list until the requirement is fulfilled. To ensure that
 75 sufficient attorneys are available for appointment by the court,
 76 when the number of attorneys on the registry falls below 50, the
 77 executive director shall notify the chief judge of each circuit
 78 by letter and request the chief judge to promptly submit the
 79 names of at least three private attorneys who regularly practice
 80 criminal law in that circuit and who appear to meet the minimum
 81 requirements to represent persons in postconviction capital
 82 collateral proceedings. The executive director shall send an
 83 application to each attorney identified by the chief judge so

84 that the attorney may register for appointment as counsel in
85 postconviction capital collateral proceedings. As necessary, the
86 executive director may also advertise in legal publications and
87 other appropriate media for qualified attorneys interested in
88 registering for appointment as counsel in postconviction capital
89 collateral proceedings. Not later than September 1 of each year,
90 and as necessary thereafter, the executive director shall
91 provide to the Chief Justice of the Supreme Court, the chief
92 judge and state attorney in each judicial circuit, and the
93 Attorney General a current copy of its registry of attorneys who
94 are available for appointment as counsel in postconviction
95 capital collateral proceedings. The registry must be indexed by
96 judicial circuit and must contain the requisite information
97 submitted by the applicants in accordance with this section.

98 (2) To be eligible for court appointment as counsel in
99 postconviction capital collateral proceedings, an attorney must
100 certify on an application provided by the executive director
101 that he or she satisfies the minimum requirements for private
102 counsel set forth in subsection (1) and s. 27.704(2).

103 Satisfaction of the minimum requirements must be proven by
104 written notification to the commission. The certification
105 requirement shall be satisfied upon the submission of the
106 application by electronic mail without a signature.

107 (3) An attorney ~~who applies for registration and court~~
108 ~~appointment as counsel in postconviction capital collateral~~
109 ~~proceedings must certify that he or she is counsel of record in~~
110 ~~not more than four such proceedings and, if appointed to~~
111 represent a person in postconviction capital collateral

112 proceedings, shall continue such representation under the terms
113 and conditions set forth in s. 27.711 until the sentence is
114 reversed, reduced, or carried out or unless permitted to
115 withdraw from representation by the trial court. The court may
116 not permit an attorney to withdraw from representation without a
117 finding of sufficient good cause. The court may impose
118 appropriate sanctions if it finds that an attorney has shown bad
119 faith with respect to continuing to represent a defendant in a
120 postconviction capital collateral proceeding. This section does
121 not preclude the court from reassigning a case to a capital
122 collateral regional counsel following discontinuation of
123 representation if a conflict of interest no longer exists with
124 respect to the case.

125 (4) Each private attorney who is appointed by the court to
126 represent a capital defendant must enter into a contract with
127 the Chief Financial Officer. If the appointed attorney fails to
128 execute the contract within 30 days after the date the contract
129 is mailed to the attorney, the executive director of the
130 Commission on Capital Cases shall notify the trial court. If the
131 attorney fails to execute the contract within 30 days after the
132 executive director's notification, the trial court shall remove
133 the attorney from the case, and the executive director shall
134 remove the attorney from the registry without awarding any
135 attorney's fees. The Chief Financial Officer shall develop the
136 form of the contract, function as contract manager, and enforce
137 performance of the terms and conditions of the contract. By
138 signing such contract, the attorney certifies that he or she
139 intends to continue the representation under the terms and

140 conditions set forth in the contract until the sentence is
 141 reversed, reduced, or carried out or until released by order of
 142 the trial court. Additionally, the attorney shall agree to
 143 submit quarterly reports to the Commission on Capital Cases in a
 144 consistent format designated by the commission. If the appointed
 145 attorney fails to submit a quarterly report within 30 days
 146 following the end of the quarter, the executive director shall
 147 notify the trial court and the attorney. If the attorney does
 148 not submit the requested quarterly report within 30 days after
 149 the executive director's notice, the attorney shall be removed
 150 from the case by the trial court and from the registry by the
 151 executive director.

152 (5)(a) Upon the motion of the capital collateral regional
 153 counsel to withdraw pursuant to s. 924.056(1)(a); or

154 (b) Upon notification by the state attorney or the
 155 Attorney General that:

156 1. Thirty days have elapsed since appointment of the
 157 capital collateral regional counsel and no entry of appearance
 158 has been filed pursuant to s. 924.056; or

159 2. A person under sentence of death who was previously
 160 represented by private counsel is currently unrepresented in a
 161 postconviction capital collateral proceeding,

162
 163 the executive director shall immediately notify the trial court
 164 that imposed the sentence of death that the court must
 165 immediately appoint an attorney, selected from the current
 166 registry, to represent such person in collateral actions
 167 challenging the legality of the judgment and sentence in the

168 appropriate state and federal courts. If the appointed attorney
 169 does not wish to continue representation at the federal level,
 170 the appointed attorney shall make reasonable efforts to assist
 171 the client in finding replacement counsel who meets the federal
 172 requirements to represent a capital defendant in federal
 173 proceedings. The court shall have the authority to strike a
 174 notice of appearance filed by a Capital Collateral Regional
 175 Counsel, if the court finds the notice was not filed in good
 176 faith and may so notify the executive director that the client
 177 is no longer represented by the Office of Capital Collateral
 178 Regional Counsel. In making an assignment, the court shall give
 179 priority to attorneys whose experience and abilities in criminal
 180 law, especially in capital proceedings, are known by the court
 181 to be commensurate with the responsibility of representing a
 182 person sentenced to death. The trial court must issue an order
 183 of appointment which contains specific findings that the
 184 appointed counsel meets the statutory requirements and has the
 185 high ethical standards necessary to represent a person sentenced
 186 to death.

187 Section 3. Paragraphs (c) and (g) of subsection (4) and
 188 subsections (7) and (9) of section 27.711, Florida Statutes, are
 189 amended, and paragraph (i) is added to subsection (4) of said
 190 section, to read:

191 27.711 Terms and conditions of appointment of attorneys as
 192 counsel in postconviction capital collateral proceedings.--

193 (4) Upon approval by the trial court, an attorney
 194 appointed to represent a capital defendant under s. 27.710 is

195 entitled to payment of the following fees by the Chief Financial
 196 Officer:

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

201 (g) At the conclusion of the capital defendant's
 202 postconviction capital collateral proceedings in state court,
 203 the attorney is entitled to \$100 per hour, up to a maximum of
 204 \$2,500, after filing a petition for writ of habeas corpus
 205 pursuant to 28 U.S.C. s. 2254 ~~certiorari in the Supreme Court of~~
 206 ~~the United States.~~

207 (i) The attorney is entitled to \$100 per hour, up to a
 208 maximum of \$16,000, as a supplement to attorney's fees in
 209 paragraphs (a)-(h) if those paragraphs do not provide adequate
 210 compensation.

211
 212 The hours billed by a contracting attorney under this subsection
 213 may include time devoted to representation of the defendant by
 214 another attorney who is qualified under s. 27.710 and who has
 215 been designated by the contracting attorney to assist him or
 216 her.

217 (7) Each registry An attorney handling at least one
 218 capital case, regardless of the total number of capital
 219 defendants he or she is representing, who is actively
 220 ~~representing a capital defendant~~ is entitled to a maximum of
 221 \$500 per fiscal year for tuition and expenses for continuing
 222 legal education that pertains to the representation of capital

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223 defendants. Upon approval by the trial court, the attorney is
224 entitled to payment by the Chief Financial Officer for expenses
225 for such tuition and continuing legal education.

226 (9) An attorney may not represent more than 10 inmates
227 ~~five defendants~~ in capital postconviction litigation at any one
228 time.

229 Section 4. This act shall take effect July 1, 2005.