

CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to capital collateral representation;
7 amending s. 27.709, F.S.; authorizing the Commission on
8 Capital Cases to sponsor certain continuing legal
9 education classes; amending s. 27.710, F.S.; revising
10 provisions relating to continuing legal education
11 requirements for attorneys on the registry of attorneys
12 applying to represent persons in postconviction capital
13 collateral proceedings; providing for minimum
14 qualification of attorneys on the registry; providing for
15 notification of court when appointed attorneys fail to
16 submit specified reports; requiring an appointed attorney
17 who does not wish to continue representation at the
18 federal level to make reasonable efforts to assist the
19 client in finding replacement counsel; amending s. 27.711,
20 F.S.; providing for payment of attorneys after a final
21 hearing, rather than after a final order; providing for
22 additional payments to attorneys; increasing the maximum

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23 | number of inmates that may be represented by a capital
24 | collateral attorney; providing an effective date.

25 |

26 | Be It Enacted by the Legislature of the State of Florida:

27 |

28 | Section 1. Subsection (2) of section 27.709, Florida
29 | Statutes, is amended to read:

30 | 27.709 Commission on Capital Cases.--

31 | (2) The commission shall:

32 | (a) ~~The commission shall~~ Review the administration of
33 | justice in capital collateral cases, receive relevant public
34 | input, review the operation of the capital collateral regional
35 | counsel and private counsel appointed pursuant to ss. 27.710 and
36 | 27.711, and advise and make recommendations to the Governor,
37 | Legislature, and Supreme Court.

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

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

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51 (d) Have the authority to sponsor continuing legal
52 education training devoted specifically to capital cases.

53 Section 2. Section 27.710, Florida Statutes, is amended to
54 read:

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

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

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79 executive director shall notify the chief judge of each circuit
80 by letter and request the chief judge to promptly submit the
81 names of at least three private attorneys who regularly practice
82 criminal law in that circuit and who appear to meet the minimum
83 requirements to represent persons in postconviction capital
84 collateral proceedings. The executive director shall send an
85 application to each attorney identified by the chief judge so
86 that the attorney may register for appointment as counsel in
87 postconviction capital collateral proceedings. As necessary, the
88 executive director may also advertise in legal publications and
89 other appropriate media for qualified attorneys interested in
90 registering for appointment as counsel in postconviction capital
91 collateral proceedings. Not later than September 1 of each year,
92 and as necessary thereafter, the executive director shall
93 provide to the Chief Justice of the Supreme Court, the chief
94 judge and state attorney in each judicial circuit, and the
95 Attorney General a current copy of its registry of attorneys who
96 are available for appointment as counsel in postconviction
97 capital collateral proceedings. The registry must be indexed by
98 judicial circuit and must contain the requisite information
99 submitted by the applicants in accordance with this section.

100 (2) To be eligible for court appointment as counsel in
101 postconviction capital collateral proceedings, an attorney must
102 certify on an application provided by the executive director
103 that he or she:

104 (a) Is familiar with the production of evidence and use of
105 expert witnesses, including psychiatric and forensic evidence.

106 (b) Has demonstrated proficiency necessary for
 107 representation in capital cases, including the investigation and
 108 presentation of mitigation evidence.

109 (c) Satisfies the minimum requirements for private counsel
 110 set forth in subsection (1) and has 5 years' experience in
 111 felony criminal law practice, which must have included serving
 112 as lead or co-counsel in either: ~~s. 27.704(2).~~

113 1. Nine state or federal criminal jury trials tried to
 114 completion, of which two were capital trials and three were
 115 murder trials or one murder trial and five felony trials or one
 116 postconviction evidentiary hearing and five felony trials; or

117 2. One capital appeal and no fewer than three felony
 118 appeals, of which one was a murder appeal; or six felony
 119 appeals, of which two were murder appeals; or one capital
 120 postconviction evidentiary hearing and three felony appeals.

121 (3) Satisfaction of the minimum requirements must be
 122 proven by written notification to the commission. The
 123 certification requirement shall be satisfied upon the submission
 124 of the application by electronic mail without a signature.

125 (4) In the event the trial court determines that
 126 exceptional circumstances require appointment of counsel not
 127 meeting the requirements of this section, the trial court may
 128 appoint that person and shall enter an order specifying, in
 129 writing, the exceptional circumstances requiring deviation from
 130 this section and the court's explicit determination that counsel
 131 chosen will provide competent representation in accord with the
 132 policy concerns of this section.

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133 (5)~~(3)~~ An attorney ~~who applies for registration and court~~
134 ~~appointment as counsel in postconviction capital collateral~~
135 ~~proceedings must certify that he or she is counsel of record in~~
136 ~~not more than four such proceedings and, if appointed to~~
137 represent a person in postconviction capital collateral
138 proceedings, shall continue such representation under the terms
139 and conditions set forth in s. 27.711 until the sentence is
140 reversed, reduced, or carried out or unless permitted to
141 withdraw from representation by the trial court. The court may
142 not permit an attorney to withdraw from representation without a
143 finding of sufficient good cause. The court may impose
144 appropriate sanctions if it finds that an attorney has shown bad
145 faith with respect to continuing to represent a defendant in a
146 postconviction capital collateral proceeding. This section does
147 not preclude the court from reassigning a case to a capital
148 collateral regional counsel following discontinuation of
149 representation if a conflict of interest no longer exists with
150 respect to the case.

151 (6)~~(4)~~ Each private attorney who is appointed by the court
152 to represent a capital defendant must enter into a contract with
153 the Chief Financial Officer. If the appointed attorney fails to
154 execute the contract within 30 days after the date the contract
155 is mailed to the attorney, the executive director of the
156 Commission on Capital Cases shall notify the trial court. The
157 Chief Financial Officer shall develop the form of the contract,
158 function as contract manager, and enforce performance of the
159 terms and conditions of the contract. By signing such contract,
160 the attorney certifies that he or she intends to continue the

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161 representation under the terms and conditions set forth in the
 162 contract until the sentence is reversed, reduced, or carried out
 163 or until released by order of the trial court. Additionally, the
 164 attorney shall agree to submit quarterly reports to the
 165 Commission on Capital Cases in a consistent format designated by
 166 the commission. If the appointed attorney fails to submit a
 167 quarterly report within 30 days following the end of the
 168 quarter, the executive director shall notify the trial court and
 169 the attorney.

170 (7)(5)(a) Upon the motion of the capital collateral
 171 regional counsel to withdraw pursuant to s. 924.056(1)(a); or

172 (b) Upon notification by the state attorney or the
 173 Attorney General that:

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

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

180
 181 the executive director shall immediately notify the trial court
 182 that imposed the sentence of death that the court must
 183 immediately appoint an attorney, selected from the current
 184 registry, to represent such person in collateral actions
 185 challenging the legality of the judgment and sentence in the
 186 appropriate state and federal courts. If the appointed attorney
 187 does not wish to continue representation at the federal level,
 188 the appointed attorney shall make reasonable efforts to assist

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189 | the client in finding replacement counsel who meets the federal
 190 | requirements to represent a capital defendant in federal
 191 | proceedings. The court shall have the authority to strike a
 192 | notice of appearance filed by a Capital Collateral Regional
 193 | Counsel, if the court finds the notice was not filed in good
 194 | faith and may so notify the executive director that the client
 195 | is no longer represented by the Office of Capital Collateral
 196 | Regional Counsel. In making an assignment, the court shall give
 197 | priority to attorneys whose experience and abilities in criminal
 198 | law, especially in capital proceedings, are known by the court
 199 | to be commensurate with the responsibility of representing a
 200 | person sentenced to death. The trial court must issue an order
 201 | of appointment which contains specific findings that the
 202 | appointed counsel meets the statutory requirements and has the
 203 | high ethical standards necessary to represent a person sentenced
 204 | to death.

205 | ~~(8)(6)~~ More than one attorney may not be appointed and
 206 | compensated at any one time under s. 27.711 to represent a
 207 | person in postconviction capital collateral proceedings.
 208 | However, an attorney appointed under this section may designate
 209 | another attorney to assist him or her if the designated attorney
 210 | meets the qualifications of this section.

211 | Section 3. Subsections (4), (7), and (9) of section
 212 | 27.711, Florida Statutes, are amended to read:

213 | 27.711 Terms and conditions of appointment of attorneys as
 214 | counsel in postconviction capital collateral proceedings.--

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

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217 | entitled to payment of the following fees by the Chief Financial
218 | Officer:

219 | (a) Regardless of the stage of postconviction capital
220 | collateral proceedings, the attorney is entitled to \$100 per
221 | hour, up to a maximum of \$2,500, after accepting appointment and
222 | filing a notice of appearance.

223 | (b) The attorney is entitled to \$100 per hour, up to a
224 | maximum of \$20,000, after timely filing in the trial court the
225 | capital defendant's complete original motion for postconviction
226 | relief under the Florida Rules of Criminal Procedure. The motion
227 | must raise all issues to be addressed by the trial court.

228 | However, an attorney is entitled to fees under this paragraph if
229 | the court schedules a hearing on a matter that makes the filing
230 | of the original motion for postconviction relief unnecessary or
231 | if the court otherwise disposes of the case.

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

236 | (d) The attorney is entitled to \$100 per hour, up to a
237 | maximum of \$20,000, after timely filing in the Supreme Court the
238 | capital defendant's brief or briefs that address the trial
239 | court's final order granting or denying the capital defendant's
240 | motion for postconviction relief and the state petition for writ
241 | of habeas corpus.

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

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

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

252 (g) At the conclusion of the capital defendant's
253 postconviction capital collateral proceedings in state court,
254 the attorney is entitled to \$100 per hour, up to a maximum of
255 \$2,500, after filing a petition for writ of habeas corpus
256 pursuant to 28 U.S.C. s. 2254 certiorari in the Supreme Court of
257 the United States.

258 (h) If, at any time, a death warrant is issued, the
259 attorney is entitled to \$100 per hour, up to a maximum of
260 \$5,000. This payment shall be full compensation for attorney's
261 fees and costs for representing the capital defendant throughout
262 the proceedings before the state courts of Florida.

263 (i) The attorney is entitled to \$100 per hour, up to a
264 maximum of \$10,000, as a supplement to attorney's fees in
265 paragraphs (a)-(h), for good cause shown and if approved by the
266 court, if those paragraphs do not provide adequate compensation
267 due to extraordinary circumstances.

268
269 The hours billed by a contracting attorney under this subsection
270 may include time devoted to representation of the defendant by
271 another attorney who is qualified under s. 27.710 and who has

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272 | been designated by the contracting attorney to assist him or
273 | her.

274 | (7) Each registry ~~An attorney~~ handling at least one
275 | capital case, regardless of the total number of capital
276 | defendants he or she is representing, ~~who is actively~~
277 | ~~representing a capital defendant~~ is entitled to a maximum of
278 | \$1,000 within 2 fiscal years ~~\$500 per fiscal year~~ for tuition
279 | and expenses for continuing legal education that pertains to the
280 | representation of capital defendants in Florida. Upon approval
281 | by the trial court, the attorney is entitled to payment by the
282 | Chief Financial Officer for expenses for such tuition and
283 | continuing legal education.

284 | (9) An attorney may not represent more than 10 inmates
285 | ~~five defendants~~ in capital postconviction litigation at any one
286 | time.

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