

By Senator Campbell

32-1592-05

See HB

1 A bill to be entitled

2 An act relating to capital collateral

3 representation; amending s. 27.709, F.S.;

4 providing for the Commission on Capital Cases

5 to undertake certain projects and authorizing

6 it to sponsor certain continuing legal

7 education classes; amending s. 27.710, F.S.;

8 revising provisions relating to continuing

9 legal education requirements for attorneys on

10 the registry of attorneys applying to represent

11 persons in postconviction capital collateral

12 proceedings; providing for the removal of

13 appointed attorneys who fail to sign contracts

14 or submit specified reports; requiring an

15 appointed attorney who does not wish to

16 continue representation at the federal level to

17 make reasonable efforts to assist the client in

18 finding replacement counsel; amending s.

19 27.711, F.S.; providing for payment of

20 attorneys after a final hearing, rather than

21 after a final order; providing for additional

22 payments to attorneys; increasing the maximum

23 number of inmates that may be represented by a

24 capital collateral attorney; providing an

25 effective date.

26

27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Subsection (2) of section 27.709, Florida

30 Statutes, is amended to read:

31 27.709 Commission on Capital Cases.--

1 (2) The commission shall:

2 (a) ~~The commission shall~~ Review the administration of
3 justice in capital collateral cases, receive relevant public
4 input, review the operation of the capital collateral regional
5 counsel and private counsel appointed pursuant to ss. 27.710
6 and 27.711, and advise and make recommendations to the
7 Governor, Legislature, and Supreme Court.

8 (b) ~~As part of its duties, the commission shall~~
9 Compile and analyze case-tracking reports produced by the
10 Supreme Court. In analyzing these reports, the commission
11 shall develop statistics to identify trends and changes in
12 case management and case processing, identify and evaluate
13 unproductive points of delay, and generally evaluate the way
14 cases are progressing. The commission shall report these
15 findings to the Legislature by January 1 of each year.

16 (c) ~~In addition, the commission shall~~ Receive
17 complaints regarding the practice of any office of regional
18 counsel and private counsel appointed pursuant to ss. 27.710
19 and 27.711 and shall refer any complaint to The Florida Bar,
20 the State Supreme Court, or the Commission on Ethics, as
21 appropriate.

22 (d) Undertake any project recommended or approved by
23 the appointed commission members.

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

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

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

1 (1) The executive director of the Commission on
2 Capital Cases shall compile and maintain a statewide registry
3 of attorneys in private practice who have certified that they
4 meet the minimum requirements of s. 27.704(2), who are
5 available for appointment by the court under this section to
6 represent persons convicted and sentenced to death in this
7 state in postconviction collateral proceedings, and who have
8 attended at least 12 hours of continuing legal education
9 within the last 2 years ~~year a continuing legal education~~
10 ~~program of at least 10 hours' duration~~ devoted specifically to
11 the defense of capital cases, if available. Every 2 years,
12 attorneys who satisfy the minimum requirements of s. 27.704(2)
13 and who are handling a capital case shall be required to
14 attend at least 12 hours of continuing legal education.
15 Continuing legal education programs meeting the requirements
16 of this rule offered by The Florida Bar or another recognized
17 provider and approved for continuing legal education credit by
18 The Florida Bar shall satisfy this requirement. The failure to
19 comply with this requirement may be cause for removal from the
20 list until the requirement is fulfilled. To ensure that
21 sufficient attorneys are available for appointment by the
22 court, when the number of attorneys on the registry falls
23 below 50, the executive director shall notify the chief judge
24 of each circuit by letter and request the chief judge to
25 promptly submit the names of at least three private attorneys
26 who regularly practice criminal law in that circuit and who
27 appear to meet the minimum requirements to represent persons
28 in postconviction capital collateral proceedings. The
29 executive director shall send an application to each attorney
30 identified by the chief judge so that the attorney may
31 register for appointment as counsel in postconviction capital

1 collateral proceedings. As necessary, the executive director
2 may also advertise in legal publications and other appropriate
3 media for qualified attorneys interested in registering for
4 appointment as counsel in postconviction capital collateral
5 proceedings. Not later than September 1 of each year, and as
6 necessary thereafter, the executive director shall provide to
7 the Chief Justice of the Supreme Court, the chief judge and
8 state attorney in each judicial circuit, and the Attorney
9 General a current copy of its registry of attorneys who are
10 available for appointment as counsel in postconviction capital
11 collateral proceedings. The registry must be indexed by
12 judicial circuit and must contain the requisite information
13 submitted by the applicants in accordance with this section.

14 (2) To be eligible for court appointment as counsel in
15 postconviction capital collateral proceedings, an attorney
16 must certify on an application provided by the executive
17 director that he or she satisfies the minimum requirements for
18 private counsel set forth in subsection (1) and s. 27.704(2).
19 Satisfaction of the minimum requirements must be proven by
20 written notification to the commission. The certification
21 requirement shall be satisfied upon the submission of the
22 application by electronic mail without a signature.

23 (3) ~~An attorney who applies for registration and court~~
24 ~~appointment as counsel in postconviction capital collateral~~
25 ~~proceedings must certify that he or she is counsel of record~~
26 ~~in not more than four such proceedings and, if appointed to~~
27 represent a person in postconviction capital collateral
28 proceedings, shall continue such representation under the
29 terms and conditions set forth in s. 27.711 until the sentence
30 is reversed, reduced, or carried out or unless permitted to
31 withdraw from representation by the trial court. The court may

1 not permit an attorney to withdraw from representation without
2 a finding of sufficient good cause. The court may impose
3 appropriate sanctions if it finds that an attorney has shown
4 bad faith with respect to continuing to represent a defendant
5 in a postconviction capital collateral proceeding. This
6 section does not preclude the court from reassigning a case to
7 a capital collateral regional counsel following
8 discontinuation of representation if a conflict of interest no
9 longer exists with respect to the case.

10 (4) Each private attorney who is appointed by the
11 court to represent a capital defendant must enter into a
12 contract with the Chief Financial Officer. If the appointed
13 attorney fails to execute the contract within 30 days after
14 the date the contract is mailed to the attorney, the executive
15 director of the Commission on Capital Cases shall notify the
16 trial court. If the attorney fails to execute the contract
17 within 30 days after the executive director's notification,
18 the trial court shall remove the attorney from the case, and
19 the executive director shall remove the attorney from the
20 registry without awarding any attorney's fees. The Chief
21 Financial Officer shall develop the form of the contract,
22 function as contract manager, and enforce performance of the
23 terms and conditions of the contract. By signing such
24 contract, the attorney certifies that he or she intends to
25 continue the representation under the terms and conditions set
26 forth in the contract until the sentence is reversed, reduced,
27 or carried out or until released by order of the trial court.
28 Additionally, the attorney shall agree to submit quarterly
29 reports to the Commission on Capital Cases in a consistent
30 format designated by the commission. If the appointed attorney
31 fails to submit a quarterly report within 30 days following

1 the end of the quarter, the executive director shall notify
2 the trial court and the attorney. If the attorney does not
3 submit the requested quarterly report within 30 days after the
4 executive director's notice, the attorney shall be removed
5 from the case by the trial court and from the registry by the
6 executive director.

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

9 (b) Upon notification by the state attorney or the
10 Attorney General that:

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

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

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18 the executive director shall immediately notify the trial
19 court that imposed the sentence of death that the court must
20 immediately appoint an attorney, selected from the current
21 registry, to represent such person in collateral actions
22 challenging the legality of the judgment and sentence in the
23 appropriate state and federal courts. If the appointed
24 attorney does not wish to continue representation at the
25 federal level, the appointed attorney shall make reasonable
26 efforts to assist the client in finding replacement counsel
27 who meets the federal requirements to represent a capital
28 defendant in federal proceedings. The court shall have the
29 authority to strike a notice of appearance filed by a Capital
30 Collateral Regional Counsel, if the court finds the notice was
31 not filed in good faith and may so notify the executive

1 | director that the client is no longer represented by the
2 | Office of Capital Collateral Regional Counsel. In making an
3 | assignment, the court shall give priority to attorneys whose
4 | experience and abilities in criminal law, especially in
5 | capital proceedings, are known by the court to be commensurate
6 | with the responsibility of representing a person sentenced to
7 | death. The trial court must issue an order of appointment
8 | which contains specific findings that the appointed counsel
9 | meets the statutory requirements and has the high ethical
10 | standards necessary to represent a person sentenced to death.

11 | Section 3. Paragraphs (c) and (g) of subsection (4)
12 | and subsections (7) and (9) of section 27.711, Florida
13 | Statutes, are amended, and paragraph (i) is added to
14 | subsection (4) of that section, to read:

15 | 27.711 Terms and conditions of appointment of
16 | attorneys as counsel in postconviction capital collateral
17 | proceedings.--

18 | (4) Upon approval by the trial court, an attorney
19 | appointed to represent a capital defendant under s. 27.710 is
20 | entitled to payment of the following fees by the Chief
21 | Financial Officer:

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

26 | (g) At the conclusion of the capital defendant's
27 | postconviction capital collateral proceedings in state court,
28 | the attorney is entitled to \$100 per hour, up to a maximum of
29 | \$2,500, after filing a petition for writ of habeas corpus
30 | pursuant to 28 U.S.C. s. 2254 ~~certiorari in the Supreme Court~~
31 | ~~of the United States.~~

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

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6 The hours billed by a contracting attorney under this
7 subsection may include time devoted to representation of the
8 defendant by another attorney who is qualified under s. 27.710
9 and who has been designated by the contracting attorney to
10 assist him or her.

11 (7) Each registry An attorney handling at least one
12 capital case, regardless of the total number of capital
13 defendants he or she is representing, who is actively
14 ~~representing a capital defendant~~ is entitled to a maximum of
15 \$500 per fiscal year for tuition and expenses for continuing
16 legal education that pertains to the representation of capital
17 defendants. Upon approval by the trial court, the attorney is
18 entitled to payment by the Chief Financial Officer for
19 expenses for such tuition and continuing legal education.

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

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