

By the Committees on Judiciary; Criminal Justice; and Senator Campbell

590-2314-05

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

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

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30 Section 1. Subsection (2) of section 27.709, Florida
31 Statutes, is amended to read:

1 27.709 Commission on Capital Cases.--

2 (2) The commission shall:

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

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

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

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

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

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

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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:

18 (a) Is familiar with the production of evidence and
19 use of expert witnesses, including psychiatric and forensic
20 evidence;

21 (b) Has demonstrated proficiency necessary for
22 representation in capital cases, including the investigation
23 and presentation of mitigation evidence; and

24 (c) Satisfies the minimum requirements for private
25 counsel set forth in subsection (1) and has 5 years'
26 experience in felony criminal law practice, which must have
27 included serving as lead or co-counsel in:

28 1. Nine state or federal criminal jury trials tried to
29 completion, of which two were capital and three must have been
30 murder trials or one murder trial and five felony trials or
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1 one postconviction evidentiary hearing and five felony trials;
2 or

3 2. One capital appeal and no fewer than three felony
4 appeals, of which one was murder; or six felony appeals, of
5 which two were murder; or one capital postconviction
6 evidentiary hearing and three felony appeals.

7 (d) Satisfaction of the minimum requirements must be
8 proven by written notification to the commission. The
9 certification requirement shall be satisfied upon the
10 submission of the application by electronic mail without a
11 signature.

12 (e) If the trial court determines that exceptional
13 circumstances require appointment of counsel not meeting the
14 requirements of this section, the trial court may appoint that
15 person and shall enter an order specifying, in writing, the
16 exceptional circumstances requiring deviation from this
17 section and the court's explicit determination that counsel
18 chosen will provide competent representation in accordance
19 with the policy concerns of this section s. 27.704(2).

20 (3) An attorney ~~who applies for registration and court~~
21 ~~appointment as counsel in postconviction capital collateral~~
22 ~~proceedings must certify that he or she is counsel of record~~
23 ~~in not more than four such proceedings and, if appointed to~~
24 ~~represent a person in postconviction capital collateral~~
25 ~~proceedings,~~ shall continue such representation under the
26 terms and conditions set forth in s. 27.711 until the sentence
27 is reversed, reduced, or carried out or unless permitted to
28 withdraw from representation by the trial court. The court may
29 not permit an attorney to withdraw from representation without
30 a finding of sufficient good cause. The court may impose
31 appropriate sanctions if it finds that an attorney has shown

1 bad faith with respect to continuing to represent a defendant
2 in a postconviction capital collateral proceeding. This
3 section does not preclude the court from reassigning a case to
4 a capital collateral regional counsel following
5 discontinuation of representation if a conflict of interest no
6 longer exists with respect to the case.

7 (4) Each private attorney who is appointed by the
8 court to represent a capital defendant must enter into a
9 contract with the Chief Financial Officer. If the appointed
10 attorney fails to execute the contract within 30 days after
11 the date the contract is mailed to the attorney, the executive
12 director of the Commission on Capital Cases shall notify the
13 trial court. The Chief Financial Officer shall develop the
14 form of the contract, function as contract manager, and
15 enforce performance of the terms and conditions of the
16 contract. By signing such contract, the attorney certifies
17 that he or she intends to continue the representation under
18 the terms and conditions set forth in the contract until the
19 sentence is reversed, reduced, or carried out or until
20 released by order of the trial court. Additionally, the
21 attorney shall agree to submit quarterly reports to the
22 Commission on Capital Cases in a consistent format designated
23 by the commission. If the appointed attorney fails to submit a
24 quarterly report within 30 days following the end of the
25 quarter, the executive director shall notify the trial court
26 and the attorney.

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

29 (b) Upon notification by the state attorney or the
30 Attorney General that:

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

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

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8 the executive director shall immediately notify the trial
9 court that imposed the sentence of death that the court must
10 immediately appoint an attorney, selected from the current
11 registry, to represent such person in collateral actions
12 challenging the legality of the judgment and sentence in the
13 appropriate state and federal courts. If the appointed
14 attorney does not wish to continue representation at the
15 federal level, the appointed attorney shall make reasonable
16 efforts to assist the client in finding replacement counsel
17 who meets the federal requirements to represent a capital
18 defendant in federal proceedings. The court shall have the
19 authority to strike a notice of appearance filed by a Capital
20 Collateral Regional Counsel, if the court finds the notice was
21 not filed in good faith and may so notify the executive
22 director that the client is no longer represented by the
23 Office of Capital Collateral Regional Counsel. In making an
24 assignment, the court shall give priority to attorneys whose
25 experience and abilities in criminal law, especially in
26 capital proceedings, are known by the court to be commensurate
27 with the responsibility of representing a person sentenced to
28 death. The trial court must issue an order of appointment
29 which contains specific findings that the appointed counsel
30 meets the statutory requirements and has the high ethical
31 standards necessary to represent a person sentenced to death.

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

5 27.711 Terms and conditions of appointment of
6 attorneys as counsel in postconviction capital collateral
7 proceedings.--

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

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

16 (g) At the conclusion of the capital defendant's
17 postconviction capital collateral proceedings in state court,
18 the attorney is entitled to \$100 per hour, up to a maximum of
19 \$2,500, after filing a petition for writ of habeas corpus
20 pursuant to 28 U.S.C. s. 2254 ~~certiorari in the Supreme Court~~
21 ~~of the United States.~~

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

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28 The hours billed by a contracting attorney under this
29 subsection may include time devoted to representation of the
30 defendant by another attorney who is qualified under s. 27.710
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1 and who has been designated by the contracting attorney to
2 assist him or her.

3 (7) Each registry An attorney handling at least one
4 capital case, regardless of the total number of capital
5 defendants he or she is representing, who is actively
6 representing a capital defendant is entitled to a maximum of
7 \$1,000 within 2 fiscal years\$500 per fiscal year for tuition
8 and expenses for continuing legal education that pertains to
9 the representation of capital defendants in this state. Upon
10 approval by the trial court, the attorney is entitled to
11 payment by the Chief Financial Officer for expenses for such
12 tuition and continuing legal education.

13 (9) An attorney may not represent more than five
14 inmates defendants in capital postconviction litigation at any
15 one time. However, an attorney who represents more than five
16 inmates as of July 1, 2005, may continue to represent those
17 particular inmates until such time as their cases are
18 concluded.

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

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21 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
22 COMMITTEE SUBSTITUTE FOR
23 CS/Senate Bill 1802

24 This committee substitute:

- 25 -- Removes authorization for attorneys to represent up to 10
26 inmates at one time in capital postconviction litigation;
27 -- Authorizes attorneys who are representing more than five
28 inmates as of July 1, 2005, to continue to represent them
29 until completion of their cases.
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