

1 A bill to be entitled
2 An act relating to the Commission on Capital Cases;
3 amending s. 27.7001, F.S.; providing legislative findings;
4 amending s. 27.709, F.S.; authorizing the Commission on
5 Capital Cases to sponsor continuing legal education
6 programs devoted specifically to capital cases; amending
7 s. 27.710, F.S.; specifying criteria that a private
8 attorney must satisfy in order to be eligible to be
9 appointed as counsel in a postconviction capital
10 collateral proceeding; providing that a judge may appoint
11 an attorney who does not meet the appointment criteria if
12 exceptional circumstances exist; providing that an
13 attorney may be removed from the capital collateral
14 registry if the attorney does not meet the criteria;
15 directing the executive director of the commission to
16 remove an attorney from the registry if the attorney fails
17 to timely file an executed contract; requiring a private
18 attorney appointed by a court to represent a capital
19 defendant to submit a report each quarter to the
20 commission; requiring that the executive director remove
21 an attorney from the registry if the attorney does not
22 submit the report within a specified time; requiring that
23 an attorney make reasonable efforts to assist the person
24 under a sentence of death in finding an attorney under
25 certain circumstances; amending s. 27.711, F.S.; requiring
26 that costs incurred during pro bono representation of a
27 capital defendant be paid to the attorney; providing that
28 an attorney who is listed on the registry and representing

29 at least one capital defendant is entitled to tuition and
 30 expenses for continuing legal education courses; providing
 31 that an attorney may represent no more than 10 inmates in
 32 capital postconviction cases at any one time; requiring
 33 that, if a trial court judge intends to award attorney's
 34 fees in excess of those set by law, the judge must include
 35 written findings of fact specifically stating the
 36 extraordinary nature of the expenditures of the time,
 37 energy, and talents of the attorney in the case which are
 38 not ordinarily expended in other capital collateral cases;
 39 providing an effective date.

40

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

42

43 Section 1. Section 27.7001, Florida Statutes, is amended
 44 to read:

45 27.7001 Legislative intent and findings.--It is the intent
 46 of the Legislature to create part IV of this chapter, consisting
 47 of ss. 27.7001-27.711, inclusive, to provide for the collateral
 48 representation of any person convicted and sentenced to death in
 49 this state, so that collateral legal proceedings to challenge
 50 any Florida capital conviction and sentence may be commenced in
 51 a timely manner and so as to assure the people of this state
 52 that the judgments of its courts may be regarded with the
 53 finality to which they are entitled in the interests of justice.
 54 It is the further intent of the Legislature that collateral
 55 representation shall not include representation during retrials,
 56 resentencings, proceedings commenced under chapter 940, or civil

57 litigation. The Legislature further finds that not all capital
 58 collateral cases are extraordinary and unusual.

59 Section 2. Paragraph (d) is added to subsection (2) of
 60 section 27.709, Florida Statutes, to read:

61 27.709 Commission on Capital Cases.--

62 (2)

63 (d) The commission may sponsor programs of continuing
 64 legal education which are devoted specifically to capital cases
 65 and shall undertake any project recommended or approved by the
 66 commission members.

67 Section 3. Section 27.710, Florida Statutes, is amended to
 68 read:

69 27.710 Registry of attorneys applying to represent persons
 70 in postconviction capital collateral proceedings; certification
 71 of minimum requirements; appointment by trial court.--

72 (1) The executive director of the Commission on Capital
 73 Cases shall compile and maintain a statewide registry of
 74 attorneys in private practice who have certified that they meet
 75 the minimum requirements of s. 27.704(2) and, who are available
 76 for appointment by the court under this section to represent
 77 persons convicted and sentenced to death in this state in
 78 postconviction collateral proceedings, ~~and who have attended~~
 79 ~~within the last year a continuing legal education program of at~~
 80 ~~least 10 hours' duration devoted specifically to the defense of~~
 81 ~~capital cases, if available. Continuing legal education programs~~
 82 ~~meeting the requirements of this rule offered by The Florida Bar~~
 83 ~~or another recognized provider and approved for continuing legal~~
 84 ~~education credit by The Florida Bar shall satisfy this~~

85 ~~requirement. The failure to comply with this requirement may be~~
86 ~~cause for removal from the list until the requirement is~~
87 ~~fulfilled.~~ To ensure that sufficient attorneys are available for
88 appointment by the court, when the number of attorneys on the
89 registry falls below 50, the executive director shall notify the
90 chief judge of each circuit by letter and request the chief
91 judge to promptly submit the names of at least three private
92 attorneys who regularly practice criminal law in that circuit
93 and who appear to meet the minimum requirements to represent
94 persons in postconviction capital collateral proceedings. The
95 executive director shall send an application to each attorney
96 identified by the chief judge so that the attorney may register
97 for appointment as counsel in postconviction capital collateral
98 proceedings. As necessary, the executive director may also
99 advertise in legal publications and other appropriate media for
100 qualified attorneys interested in registering for appointment as
101 counsel in postconviction capital collateral proceedings. Not
102 later than September 1 of each year, and as necessary
103 thereafter, the executive director shall provide to the Chief
104 Justice of the Supreme Court, the chief judge and state attorney
105 in each judicial circuit, and the Attorney General a current
106 copy of its registry of attorneys who are available for
107 appointment as counsel in postconviction capital collateral
108 proceedings. The registry must be indexed by judicial circuit
109 and must contain the requisite information submitted by the
110 applicants in accordance with this section.

111 (2)(a) To be eligible for court appointment as counsel in
112 postconviction capital collateral proceedings, an attorney must

113 certify on an application provided by the executive director
 114 that he or she:

115 1. Is an active practitioner who has at least 5 years'
 116 experience in the practice of criminal law, is familiar with the
 117 production of evidence and the use of expert witnesses,
 118 including psychiatric and forensic evidence, and has
 119 demonstrated the proficiency necessary for representation in
 120 capital cases, including the investigation and presentation of
 121 mitigation evidence;

122 2. Has attended a minimum of 12 hours of continuing legal
 123 education programs within the previous 2 years which were
 124 devoted to the defense of capital cases and offered by The
 125 Florida Bar or another recognized provider of continuing legal
 126 education courses; and

127 3.a. Has tried at least nine state or federal jury trials
 128 to completion, two of which must have been capital cases and:

129 (I) Three of which must have been murder trials;

130 (II) One of which must have been a murder trial and five
 131 of which must have been other felony trials; or

132 (III) One of which must have included a postconviction
 133 evidentiary hearing and five of which must have been other
 134 felony trials; or

135 b. Has appealed one capital conviction and appealed:

136 (I) At least three felony convictions, one of which must
 137 have been a murder; or

138 (II) At least three felony convictions and participated in
 139 one capital postconviction evidentiary hearing.

140 (b) If the trial court finds that exceptional

141 circumstances exist requiring appointment of an attorney who
 142 does not meet the criteria set forth in paragraph (a), the trial
 143 court shall enter a written order specifying the exceptional
 144 circumstances requiring appointment of the attorney and explicit
 145 findings that the attorney chosen will provide competent
 146 representation in accordance with the intent of this section.

147 (c) A failure to comply with any criterion set forth in
 148 paragraph (a) may be cause to remove the attorney from the
 149 registry until the criterion is satisfied.

150 (d) Satisfaction of the criterion may be proven by
 151 submitting a written certification to the commission. The
 152 certification is complete upon submission of the application by
 153 electronic mail without a signature ~~satisfies the minimum~~
 154 ~~requirements for private counsel set forth in s. 27.704(2).~~

155 ~~(3) An attorney who applies for registration and court~~
 156 ~~appointment as counsel in postconviction capital collateral~~
 157 ~~proceedings must certify that he or she is counsel of record in~~
 158 ~~not more than four such proceedings and, if appointed to~~
 159 ~~represent a person in postconviction capital collateral~~
 160 ~~proceedings,~~ shall continue the ~~such~~ representation under the
 161 terms and conditions set forth in s. 27.711 until the sentence
 162 is reversed, reduced, or carried out or unless permitted to
 163 withdraw from representation by the trial court. The court may
 164 not permit an attorney to withdraw from representation without a
 165 finding of sufficient good cause. The court may impose
 166 appropriate sanctions if it finds that an attorney has shown bad
 167 faith with respect to continuing to represent a defendant in a
 168 postconviction capital collateral proceeding. This section does

169 not preclude the court from reassigning a case to a capital
 170 collateral regional counsel following discontinuation of
 171 representation if a conflict of interest no longer exists with
 172 respect to the case.

173 (4)(a) Each private attorney who is appointed by the court
 174 to represent a capital defendant must enter into a contract with
 175 the Chief Financial Officer. If the appointed attorney fails to
 176 execute the contract within 30 days after the date the contract
 177 is mailed to the attorney, the executive director of the
 178 Commission on Capital Cases shall notify the trial court and
 179 shall remove the attorney from the registry list. The Chief
 180 Financial Officer shall develop the form of the contract,
 181 function as contract manager, and enforce performance of the
 182 terms and conditions of the contract. By signing such contract,
 183 the attorney certifies that he or she intends to continue the
 184 representation under the terms and conditions set forth in the
 185 contract until the sentence is reversed, reduced, or carried out
 186 or until released by order of the trial court.

187 (b) Each private attorney appointed by a court to
 188 represent a capital defendant shall submit a report each quarter
 189 to the commission in the format designated by the commission. If
 190 the attorney does not submit the report within 30 days after the
 191 end of the quarter, the executive director shall remove the
 192 attorney from the registry.

193 (5)(a) Upon the motion of the capital collateral regional
 194 counsel to withdraw under ~~pursuant to~~ s. 924.056(1)(a); or

195 (b) Upon notification by the state attorney or the
 196 Attorney General that:

197 1. Thirty days have elapsed since appointment of the
 198 capital collateral regional counsel and no entry of appearance
 199 has been filed under ~~pursuant to~~ s. 924.056; or

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

203
 204 the executive director shall immediately notify the trial court
 205 that imposed the sentence of death that the court must
 206 immediately appoint an attorney, selected from the current
 207 registry, to represent the ~~such~~ person in collateral actions
 208 challenging the legality of the judgment and sentence in the
 209 appropriate state and federal courts. If the attorney appointed
 210 to represent a person under a sentence of death does not wish to
 211 continue representing the person in federal proceedings, the
 212 attorney must make reasonable efforts to assist the person in
 213 finding an attorney who meets the federal criteria to represent
 214 the person in any federal proceedings. The court shall have the
 215 authority to strike a notice of appearance filed by a Capital
 216 Collateral Regional Counsel, if the court finds the notice was
 217 not filed in good faith and may so notify the executive director
 218 that the client is no longer represented by the Office of
 219 Capital Collateral Regional Counsel. In making an assignment,
 220 the court shall give priority to attorneys whose experience and
 221 abilities in criminal law, especially in capital proceedings,
 222 are known by the court to be commensurate with the
 223 responsibility of representing a person sentenced to death. The
 224 trial court must issue an order of appointment which contains

225 specific findings that the appointed counsel meets the statutory
226 requirements and has the high ethical standards necessary to
227 represent a person sentenced to death.

228 (6) More than one attorney may not be appointed and
229 compensated at any one time under s. 27.711 to represent a
230 person in postconviction capital collateral proceedings.
231 However, an attorney appointed under this section may designate
232 another attorney to assist him or her if the designated attorney
233 meets the qualifications of this section.

234 Section 4. Subsections (3), (4), (7), and (9) of section
235 27.711, Florida Statutes, are amended, and subsection (15) is
236 added to that section, to read:

237 27.711 Terms and conditions of appointment of attorneys as
238 counsel in postconviction capital collateral proceedings.--

239 (3) An attorney appointed to represent a capital defendant
240 is entitled to payment of the fees set forth in this section
241 only upon full performance by the attorney of the duties
242 specified in this section and approval of payment by the trial
243 court, and the submission of a payment request by the attorney,
244 subject to the availability of sufficient funding specifically
245 appropriated for this purpose. An attorney may not be
246 compensated under this section for work performed by the
247 attorney before July 1, 2003, while employed by the northern
248 regional office of the capital collateral counsel. The Chief
249 Financial Officer shall notify the executive director and the
250 court if it appears that sufficient funding has not been
251 specifically appropriated for this purpose to pay any fees which
252 may be incurred. The attorney shall maintain appropriate

253 documentation, including a current and detailed hourly
 254 accounting of time spent representing the capital defendant. The
 255 fee and payment schedule in this section is the exclusive means
 256 of compensating a court-appointed attorney who represents a
 257 capital defendant. When appropriate, a court-appointed attorney
 258 must seek further compensation from the Federal Government, as
 259 provided in 18 U.S.C. s. 3006A or other federal law, in habeas
 260 corpus litigation in the federal courts. An attorney who incurs
 261 costs for representing capital defendants on a pro bono basis
 262 shall be paid from registry funds by the Chief Financial
 263 Officer. These payments must be approved by the trial court
 264 before payment.

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

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

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

278 However, an attorney is entitled to fees under this paragraph if
 279 the court schedules a hearing on a matter that makes the filing
 280 of the original motion for postconviction relief unnecessary or

281 if the court otherwise disposes of the case.

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

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

292 (e) The attorney is entitled to \$100 per hour, up to a
 293 maximum of \$10,000, after the trial court issues an order,
 294 following ~~pursuant to~~ a remand from the Supreme Court, which
 295 directs the trial court to hold further proceedings on the
 296 capital defendant's motion for postconviction relief.

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

302 (g) At the conclusion of the capital defendant's
 303 postconviction capital collateral proceedings in state court,
 304 the attorney is entitled to \$100 per hour, up to a maximum of
 305 \$2,500, for the preparation of the initial federal pleading
 306 ~~after filing a petition for writ of certiorari in the Supreme~~
 307 ~~Court of the United States.~~

308 (h) If, at any time, a death warrant is issued, the

309 attorney is entitled to \$100 per hour, up to a maximum of
 310 \$5,000. This payment shall be full compensation for attorney's
 311 fees and costs for representing the capital defendant throughout
 312 the proceedings before the state courts of Florida.

313
 314 The hours billed by a contracting attorney under this subsection
 315 may include time devoted to representation of the defendant by
 316 another attorney who is qualified under s. 27.710 and who has
 317 been designated by the contracting attorney to assist him or
 318 her.

319 (7) Each registry ~~An attorney who is representing at least~~
 320 one capital defendant ~~actively representing a capital defendant~~
 321 is entitled to a maximum of \$500 per fiscal year for tuition and
 322 expenses for continuing legal education that pertains to the
 323 representation of capital defendants, regardless of the total
 324 number of capital defendants the attorney is representing. Upon
 325 approval by the trial court, the attorney is entitled to payment
 326 by the Chief Financial Officer for expenses for such tuition and
 327 continuing legal education.

328 (9) An attorney may not represent more than 10 inmates
 329 ~~five defendants~~ in capital postconviction litigation at any one
 330 time. The 10-inmate-representation limit includes capital
 331 postconviction cases proceeding under contract with the capital
 332 collateral regional counsel, inmates represented pro bono, and
 333 inmates privately retaining the attorney. An attorney may not be
 334 appointed to additional capital postconviction cases until the
 335 attorney's representation total falls below the 10-case limit.

336 (15) If a trial court judge intends to award attorney fees

HB 325

2006

337 in excess of those outlined in this section, the judge must
338 include written findings of fact that specifically state the
339 extraordinary nature of the expenditures of the time, energy,
340 and talents of the attorney in the case which are not ordinarily
341 expended in other capital collateral cases.

342 Section 5. This act shall take effect July 1, 2006.