

By Senator Campbell

32-391-06

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

1 representation of a capital defendant be paid
2 to the attorney; providing that an attorney who
3 is listed on the registry and representing at
4 least one capital defendant is entitled to
5 tuition and expenses for continuing legal
6 education courses; providing that an attorney
7 may represent no more than 10 inmates in
8 capital postconviction cases at any one time;
9 requiring that, if a trial court judge intends
10 to award attorney's fees in excess of those set
11 by law, the judge must include written findings
12 of fact specifically stating the extraordinary
13 nature of the expenditures of the time, energy,
14 and talents of the attorney in the case which
15 are not ordinarily expended in other capital
16 collateral cases; providing an effective date.

17

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

19

20 Section 1. Section 27.7001, Florida Statutes, is
21 amended to read:

22 27.7001 Legislative intent and findings.--It is the
23 intent of the Legislature to create part IV of this chapter,
24 consisting of ss. 27.7001-27.711, inclusive, to provide for
25 the collateral representation of any person convicted and
26 sentenced to death in this state, so that collateral legal
27 proceedings to challenge any Florida capital conviction and
28 sentence may be commenced in a timely manner and so as to
29 assure the people of this state that the judgments of its
30 courts may be regarded with the finality to which they are
31 entitled in the interests of justice. It is the further

1 | intent of the Legislature that collateral representation shall
2 | not include representation during retrials, resentencings,
3 | proceedings commenced under chapter 940, or civil litigation.
4 | The Legislature further finds that not all capital collateral
5 | cases are extraordinary and unusual.

6 | Section 2. Paragraph (d) is added to subsection (2) of
7 | section 27.709, Florida Statutes, to read:

8 | 27.709 Commission on Capital Cases.--

9 | (2)

10 | (d) The commission may sponsor program of continuing
11 | legal education which are devoted specifically to capital
12 | cases and shall undertake any project recommended or approved
13 | by the commission members.

14 | Section 3. Section 27.710, Florida Statutes, is
15 | amended to read:

16 | 27.710 Registry of attorneys applying to represent
17 | persons in postconviction capital collateral proceedings;
18 | certification of minimum requirements; appointment by trial
19 | court.--

20 | (1) The executive director of the Commission on
21 | Capital Cases shall compile and maintain a statewide registry
22 | of attorneys in private practice who have certified that they
23 | meet the minimum requirements of s. 27.704(2) ~~and~~, who are
24 | available for appointment by the court under this section to
25 | represent persons convicted and sentenced to death in this
26 | state in postconviction collateral proceedings, ~~and who have~~
27 | ~~attended within the last year a continuing legal education~~
28 | ~~program of at least 10 hours' duration devoted specifically to~~
29 | ~~the defense of capital cases, if available. Continuing legal~~
30 | ~~education programs meeting the requirements of this rule~~
31 | ~~offered by The Florida Bar or another recognized provider and~~

1 ~~approved for continuing legal education credit by The Florida~~
2 ~~Bar shall satisfy this requirement. The failure to comply with~~
3 ~~this requirement may be cause for removal from the list until~~
4 ~~the requirement is fulfilled.~~ To ensure that sufficient
5 attorneys are available for appointment by the court, when the
6 number of attorneys on the registry falls below 50, the
7 executive director shall notify the chief judge of each
8 circuit by letter and request the chief judge to promptly
9 submit the names of at least three private attorneys who
10 regularly practice criminal law in that circuit and who appear
11 to meet the minimum requirements to represent persons in
12 postconviction capital collateral proceedings. The executive
13 director shall send an application to each attorney identified
14 by the chief judge so that the attorney may register for
15 appointment as counsel in postconviction capital collateral
16 proceedings. As necessary, the executive director may also
17 advertise in legal publications and other appropriate media
18 for qualified attorneys interested in registering for
19 appointment as counsel in postconviction capital collateral
20 proceedings. Not later than September 1 of each year, and as
21 necessary thereafter, the executive director shall provide to
22 the Chief Justice of the Supreme Court, the chief judge and
23 state attorney in each judicial circuit, and the Attorney
24 General a current copy of its registry of attorneys who are
25 available for appointment as counsel in postconviction capital
26 collateral proceedings. The registry must be indexed by
27 judicial circuit and must contain the requisite information
28 submitted by the applicants in accordance with this section.

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

3 1. Is an active practitioner who has at least 5 years'
4 experience in the practice of criminal law, is familiar with
5 the production of evidence and the use of expert witnesses,
6 including psychiatric and forensic evidence, and has
7 demonstrated the proficiency necessary for representation in
8 capital cases, including the investigation and presentation of
9 mitigation evidence;

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

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

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

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

21 (III) One of which must have included a postconviction
22 evidentiary hearing and five of which must have been other
23 felony trials; or

24 b. Has appealed one capital conviction and appealed:

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

27 (II) At least three felony convictions and
28 participated in one capital postconviction evidentiary
29 hearing.

30 (b) If the trial court finds that exceptional
31 circumstances exist requiring appointment of an attorney who

1 does not meet the criteria set forth in paragraph (a), the
2 trial court shall enter a written order specifying the
3 exceptional circumstances requiring appointment of the
4 attorney and explicit findings that the attorney chosen will
5 provide competent representation in accordance with the intent
6 of this section.

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

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

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

1 discontinuation of representation if a conflict of interest no
2 longer exists with respect to the case.

3 (4)(a) Each private attorney who is appointed by the
4 court to represent a capital defendant must enter into a
5 contract with the Chief Financial Officer. If the appointed
6 attorney fails to execute the contract within 30 days after
7 the date the contract is mailed to the attorney, the executive
8 director of the Commission on Capital Cases shall notify the
9 trial court and shall remove the attorney from the registry
10 list. The Chief Financial Officer shall develop the form of
11 the contract, function as contract manager, and enforce
12 performance of the terms and conditions of the contract. By
13 signing such contract, the attorney certifies that he or she
14 intends to continue the representation under the terms and
15 conditions set forth in the contract until the sentence is
16 reversed, reduced, or carried out or until released by order
17 of the trial court.

18 (b) Each private attorney appointed by a court to
19 represent a capital defendant shall submit a report each
20 quarter to the commission in the format designated by the
21 commission. If the attorney does not submit the report within
22 30 days after the end of the quarter, the executive director
23 shall remove the attorney from the registry.

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

26 (b) Upon notification by the state attorney or the
27 Attorney General that:

28 1. Thirty days have elapsed since appointment of the
29 capital collateral regional counsel and no entry of appearance
30 has been filed under ~~pursuant to~~ s. 924.056; or
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1 2. A person under sentence of death who was previously
2 represented by private counsel is currently unrepresented in a
3 postconviction capital collateral proceeding,

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5 the executive director shall immediately notify the trial
6 court that imposed the sentence of death that the court must
7 immediately appoint an attorney, selected from the current
8 registry, to represent ~~the~~ such person in collateral actions
9 challenging the legality of the judgment and sentence in the
10 appropriate state and federal courts. If the attorney
11 appointed to represent a person under a sentence of death does
12 not wish to continue representing the person in federal
13 proceedings, the attorney must make reasonable efforts to
14 assist the person in finding an attorney who meets the federal
15 criteria to represent the person in any federal proceedings.

16 The court shall have the authority to strike a notice of
17 appearance filed by a Capital Collateral Regional Counsel, if
18 the court finds the notice was not filed in good faith and may
19 so notify the executive director that the client is no longer
20 represented by the Office of Capital Collateral Regional
21 Counsel. In making an assignment, the court shall give
22 priority to attorneys whose experience and abilities in
23 criminal law, especially in capital proceedings, are known by
24 the court to be commensurate with the responsibility of
25 representing a person sentenced to death. The trial court must
26 issue an order of appointment which contains specific findings
27 that the appointed counsel meets the statutory requirements
28 and has the high ethical standards necessary to represent a
29 person sentenced to death.

30 (6) More than one attorney may not be appointed and
31 compensated at any one time under s. 27.711 to represent a

1 person in postconviction capital collateral proceedings.

2 However, an attorney appointed under this section may
3 designate another attorney to assist him or her if the
4 designated attorney meets the qualifications of this section.

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

8 27.711 Terms and conditions of appointment of
9 attorneys as counsel in postconviction capital collateral
10 proceedings.--

11 (3) An attorney appointed to represent a capital
12 defendant is entitled to payment of the fees set forth in this
13 section only upon full performance by the attorney of the
14 duties specified in this section and approval of payment by
15 the trial court, and the submission of a payment request by
16 the attorney, subject to the availability of sufficient
17 funding specifically appropriated for this purpose. An
18 attorney may not be compensated under this section for work
19 performed by the attorney before July 1, 2003, while employed
20 by the northern regional office of the capital collateral
21 counsel. The Chief Financial Officer shall notify the
22 executive director and the court if it appears that sufficient
23 funding has not been specifically appropriated for this
24 purpose to pay any fees which may be incurred. The attorney
25 shall maintain appropriate documentation, including a current
26 and detailed hourly accounting of time spent representing the
27 capital defendant. The fee and payment schedule in this
28 section is the exclusive means of compensating a
29 court-appointed attorney who represents a capital defendant.
30 When appropriate, a court-appointed attorney must seek further
31 compensation from the Federal Government, as provided in 18

1 U.S.C. s. 3006A or other federal law, in habeas corpus
2 litigation in the federal courts. An attorney who incurs costs
3 for representing capital defendants on a pro bono basis shall
4 be paid from registry funds by the Chief Financial Officer.
5 These payments must be approved by the trial court before
6 payment.

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

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

15 (b) The attorney is entitled to \$100 per hour, up to a
16 maximum of \$20,000, after timely filing in the trial court the
17 capital defendant's complete original motion for
18 postconviction relief under the Florida Rules of Criminal
19 Procedure. The motion must raise all issues to be addressed by
20 the trial court. However, an attorney is entitled to fees
21 under this paragraph if the court schedules a hearing on a
22 matter that makes the filing of the original motion for
23 postconviction relief unnecessary or if the court otherwise
24 disposes of the case.

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

29 (d) The attorney is entitled to \$100 per hour, up to a
30 maximum of \$20,000, after timely filing in the Supreme Court
31 the capital defendant's brief or briefs that address the trial

1 court's final order granting or denying the capital
2 defendant's motion for postconviction relief and the state
3 petition for writ of habeas corpus.

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

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

14 (g) At the conclusion of the capital defendant's
15 postconviction capital collateral proceedings in state court,
16 the attorney is entitled to \$100 per hour, up to a maximum of
17 \$2,500, for the preparation of the initial federal pleading
18 ~~after filing a petition for writ of certiorari in the Supreme~~
19 ~~Court of the United States.~~

20 (h) If, at any time, a death warrant is issued, the
21 attorney is entitled to \$100 per hour, up to a maximum of
22 \$5,000. This payment shall be full compensation for attorney's
23 fees and costs for representing the capital defendant
24 throughout the proceedings before the state courts of Florida.

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

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

11 (9) An attorney may not represent more than 10 inmates
12 ~~five defendants~~ in capital postconviction litigation at any
13 one time. The 10-inmate-representation limit includes capital
14 postconviction cases proceeding under contract with the
15 capital collateral regional counsel, inmates represented pro
16 bono, and inmates privately retaining the attorney. An
17 attorney may not be appointed to additional capital
18 postconviction cases until the attorney's representation total
19 falls below the 10-case limit.

20 (15) If a trial court judge intends to award attorney
21 fees in excess of those outlined in this section, the judge
22 must include written findings of fact that specifically state
23 the extraordinary nature of the expenditures of the time,
24 energy, and talents of the attorney in the case which are not
25 ordinarily expended in other capital collateral cases.

26 Section 5. This act shall take effect July 1, 2006.
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SENATE SUMMARY

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3 Authorizes the Commission on Capital Cases to sponsor
4 continuing legal education programs devoted specifically
5 to capital cases. Specifies the criteria that a private
6 attorney must satisfy in order to be eligible to be
7 appointed as counsel in a postconviction capital
8 collateral proceeding. Provides that a judge may appoint
9 an attorney who does not meet the appointment criteria if
10 exceptional circumstances exist. Directs the executive
11 director of the commission to remove an attorney from the
12 registry if the attorney fails to timely file an executed
13 contract. Requires a private attorney appointed by a
14 court to represent a capital defendant to submit a report
15 each quarter to the commission. Requires an attorney to
16 make reasonable efforts to assist the person under a
17 sentence of death in finding an attorney under certain
18 circumstances. Provides that an attorney may represent no
19 more than 10 inmates in capital postconviction cases at
20 any one time. Requires that if a trial court judge
21 intends to award attorney's fees in excess of those set
22 by law, the judge must include written findings of fact
23 specifically stating the extraordinary nature of the
24 expenditures of the time, energy, and talents of the
25 attorney in the case which are not ordinarily expended in
26 other capital collateral cases.
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