

By the Committee on Criminal Justice; and Senator Campbell

591-1084-06

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 7 inmates in capital  
8 postconviction cases at any one time; requiring  
9 that, if a trial court judge intends to award  
10 attorney's fees in excess of those set by law,  
11 the judge must include written findings of fact  
12 specifically stating the extraordinary nature  
13 of the expenditures of the time, energy, and  
14 talents of the attorney in the case which are  
15 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 or 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 programs 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 this section and s-  
24 | ~~27.704(2)~~, who are available for appointment by the court  
25 | under this section to represent persons convicted and  
26 | sentenced to death in this state in postconviction collateral  
27 | proceedings, ~~and who have attended within the last year a~~  
28 | ~~continuing legal education program of at least 10 hours'~~  
29 | ~~duration devoted specifically to the defense of capital cases,~~  
30 | ~~if available. Continuing legal education programs meeting the~~  
31 | ~~requirements of this rule offered by The Florida Bar or~~

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

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

1 must certify on an application provided by the executive  
2 director that he or she is a member in good standing of The  
3 Florida Bar and:

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

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

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

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

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

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

25 b. Has appealed one capital conviction and appealed:

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

28 (II) At least three felony convictions and  
29 participated in one capital postconviction evidentiary  
30 hearing; or

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1           (III) At least six felony convictions, two of which  
2 must have been murders.

3           (b) If the trial court finds that exceptional  
4 circumstances exist requiring appointment of an attorney who  
5 does not meet the criteria set forth in paragraph (a), the  
6 trial court shall enter a written order specifying the  
7 exceptional circumstances requiring appointment of the  
8 attorney and explicit findings that the attorney chosen will  
9 provide competent representation in accordance with the intent  
10 of this section.

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

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

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

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

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

21 (b) Each private attorney appointed by a court to  
22 represent a capital defendant shall submit a report each  
23 quarter to the commission in the format designated by the  
24 commission. If the attorney does not submit the report within  
25 30 days after the end of the quarter, the executive director  
26 shall remove the attorney from the registry and the court may  
27 impose a fine or remove the attorney from the case.

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

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

1           1. Thirty days have elapsed since appointment of the  
2 capital collateral regional counsel and no entry of appearance  
3 has been filed under ~~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,

7  
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 the ~~such~~ person in collateral actions  
12 challenging the legality of the judgment and sentence in the  
13 appropriate state and federal courts. If the attorney  
14 appointed to represent a person under a sentence of death does  
15 not wish to continue representing the person in federal  
16 proceedings, the attorney must make reasonable efforts to  
17 assist the person in finding an attorney who meets the federal  
18 criteria to represent the person in any federal proceedings.

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

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

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

12 27.711 Terms and conditions of appointment of  
13 attorneys as counsel in postconviction capital collateral  
14 proceedings.--

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

1 section is the exclusive means of compensating a  
2 court-appointed attorney who represents a capital defendant.  
3 When appropriate, a court-appointed attorney must seek further  
4 compensation from the Federal Government, as provided in 18  
5 U.S.C. s. 3006A or other federal law, in habeas corpus  
6 litigation in the federal courts. An attorney appointed under  
7 s. 27.710, or appointed by the court to replace a capital  
8 collateral regional counsel staff attorney or capital  
9 collateral regional counsel contract attorney, who incurs  
10 costs for representing capital defendants on a pro bono basis  
11 shall be paid from registry funds by the Chief Financial  
12 Officer. These payments must be approved by the trial court  
13 before payment.

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

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

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

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

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

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

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

21 (g) At the conclusion of the capital defendant's  
22 postconviction capital collateral proceedings in state court,  
23 the attorney is entitled to \$100 per hour, up to a maximum of  
24 \$2,500, for the preparation of the initial federal pleading  
25 ~~after filing a petition for writ of certiorari in the Supreme~~  
26 ~~Court of the United States.~~

27 (h) If, at any time, a death warrant is issued, the  
28 attorney is entitled to \$100 per hour, up to a maximum of  
29 \$5,000. This payment shall be full compensation for attorney's  
30 fees and costs for representing the capital defendant  
31 throughout the proceedings before the state courts of Florida.

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

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

17       (9) An attorney may not represent more than 7 inmates  
18 ~~five defendants~~ in capital postconviction litigation at any  
19 one time. The 7-inmate-representation limit includes capital  
20 postconviction cases proceeding under contract with the  
21 capital collateral regional counsel, inmates represented pro  
22 bono, and inmates privately retaining the attorney. An  
23 attorney may not be appointed to additional capital  
24 postconviction cases until the attorney's representation total  
25 falls below the 7-case limit.

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

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

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3                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
4                   COMMITTEE SUBSTITUTE FOR  
5                   Senate Bill 360

6

6 - Clarifies the Legislative finding to conform to the case  
7 law standard for awarding attorney's fees in excess of  
8 the statutory fee schedule - "extraordinary or unusual"  
9 circumstances.

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10 - Provides that the Commission on Capital Cases is  
11 authorized to sponsor more than one continuing legal  
12 education program devoted to capital cases.

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13 - Deletes a cross-reference that does not apply to registry  
14 attorneys and clarifies that registry attorneys must be  
15 members of the Florida Bar in good standing.

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16 - Amends the requirements a registry attorney must meet to  
17 include appeals of at least six felony convictions, two  
18 of which were murders.

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19 - Provides sanctions that may be imposed against registry  
20 counsel who fails to submit the statutorily required  
21 quarterly reports, including a court-imposed fine or  
22 removal of the attorney from the case.

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23 - Clarifies that pro bono counsel appointed by the CCRC's,  
24 or appointed by the court, or those who are in a  
25 contractual relationship with the CCRC, may recover costs  
26 from registry funds.

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27 - Adjusts the number of inmates an attorney may represent  
28 in capital postconviction cases at any one time from 10  
29 to 7.

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