

By Senator Crist

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1 A bill to be entitled
2 An act relating to capital collateral representation;
3 amending s. 27.7001, F.S.; providing a legislative finding
4 that not all capital cases are extraordinary or unusual;
5 amending s. 27.701, F.S.; requiring that regional counsel
6 be appointed by and serve at the pleasure of the
7 Commission on Capital Cases; removing provisions
8 establishing a pilot program in the northern region of the
9 state; amending s. 27.702, F.S.; clarifying the
10 administrative roles and functions of the Justice
11 Administrative Commission, the Commission on Capital
12 Cases, and the Capital Collateral Regional Counsel;
13 amending s. 27.709, F.S.; increasing and revising the
14 membership of the Commission on Capital Cases; relocating
15 the commission from the Office of Legislative Services to
16 the Justice Administrative Commission for purposes of
17 administration; authorizing the commission to sponsor
18 programs of continuing legal education on capital cases;
19 authorizing the commission to issue subpoenas and hold
20 hearings it considers appropriate for the administration
21 of justice in capital cases; authorizing the commission to
22 terminate the appointment of a capital collateral regional
23 counsel before the end of the counsel's term; amending s.
24 27.710, F.S.; revising the criteria required for an
25 attorney to be eligible to be placed on the registry of
26 attorneys qualified to represent defendants in
27 postconviction capital collateral proceedings; providing
28 certain limited exceptions; requiring attorneys to sign a
29 contract with the Chief Financial Officer in order to

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30 receive funds from the state; requiring each private
31 attorney appointed by a court to represent a capital
32 defendant to submit a report each quarter to the
33 commission; providing for removal and reinstatement to the
34 registry of attorneys; amending s. 27.711, F.S.; providing
35 for terms and conditions for appointment of counsel in
36 postconviction capital collateral proceedings; providing
37 for pro bono attorneys to receive reimbursement for
38 certain specified expenses; limiting representation by a
39 court-appointed attorney to seven defendants; prohibiting
40 an attorney from entering into an employment contract with
41 the offices of the Capital Collateral Regional Counsel if
42 he or she represents seven or more defendants in capital
43 collateral litigation; requiring a trial court judge who
44 proposes to award attorney's fees in excess of those set
45 forth in law to make written findings of fact that state
46 the extraordinary nature of the expenditures of time,
47 energy, and talents of the attorney in the case which are
48 not ordinarily expended in other capital collateral cases
49 and how the case is unusual; reenacting s. 27.7002, F.S.,
50 relating to the limitation of cases on collateral
51 representation, to incorporate the amendments made to ss.
52 27.710 and 27.711, F.S., in references thereto; providing
53 an effective date.

54
55 Be It Enacted by the Legislature of the State of Florida:

56
57 Section 1. Section 27.7001, Florida Statutes, is amended to
58 read:

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59 27.7001 Legislative intent and findings.--It is the intent
60 of the Legislature to create part IV of this chapter, consisting
61 of ss. 27.7001-27.711, inclusive, to provide for the collateral
62 representation of any person convicted and sentenced to death in
63 this state, so that collateral legal proceedings to challenge any
64 Florida capital conviction and sentence may be commenced in a
65 timely manner and so as to assure the people of this state that
66 the judgments of its courts may be regarded with the finality to
67 which they are entitled in the interests of justice. It is the
68 further intent of the Legislature that collateral representation
69 shall not include representation during retrials, resentencings,
70 proceedings commenced under chapter 940, or civil litigation. The
71 Legislature further finds that not all capital collateral cases
72 are extraordinary or unusual.

73 Section 2. Section 27.701, Florida Statutes, is amended to
74 read:

75 27.701 Capital collateral regional counsel.--

76 ~~(1)~~ There are created three regional offices of capital
77 collateral counsel, which shall be located in a northern, middle,
78 and southern region of the state. The northern region shall
79 consist of the First, Second, Third, Fourth, Eighth, and
80 Fourteenth Judicial Circuits; the middle region shall consist of
81 the Fifth, Sixth, Seventh, Ninth, Tenth, Twelfth, Thirteenth, and
82 Eighteenth Judicial Circuits; and the southern region shall
83 consist of the Eleventh, Fifteenth, Sixteenth, Seventeenth,
84 Nineteenth, and Twentieth Judicial Circuits. Each regional office
85 shall be administered by a regional counsel. A regional counsel
86 must be, and must have been for the preceding 5 years, a member
87 in good standing of The Florida Bar or a similar organization in

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88 another state. Each capital collateral regional counsel shall be
89 appointed by the Commission on Capital Cases ~~Governor~~, and is
90 subject to confirmation by the Senate. The Supreme Court Judicial
91 Nominating Commission shall recommend to the Commission on
92 Capital Cases ~~Governor~~ three qualified candidates for each
93 appointment as regional counsel. The commission ~~Governor~~ shall
94 appoint a regional counsel for each region from among the
95 recommendations, or, if it is in the best interest of the fair
96 administration of justice in capital cases, the commission
97 ~~Governor~~ may reject the nominations and request submission of
98 three new nominees by the Supreme Court Judicial Nominating
99 Commission. Each capital collateral regional counsel shall be
100 appointed to a term of 3 years. Vacancies in the office of
101 capital collateral regional counsel shall be filled in the same
102 manner as appointments. A person appointed as a regional counsel
103 may not run for or accept appointment to any state office for 2
104 years following vacation of office. Each capital collateral
105 counsel shall report to and serve at the pleasure of the
106 Commission on Capital Cases.

107 ~~(2) Notwithstanding the provisions of subsection (1), the~~
108 ~~responsibilities of the regional office of capital collateral~~
109 ~~counsel for the northern region of the state shall be met through~~
110 ~~a pilot program using only attorneys from the registry of~~
111 ~~attorneys maintained pursuant to s. 27.710. Each attorney~~
112 ~~participating in the pilot must be qualified to provide~~
113 ~~representation in federal court. The Auditor General shall~~
114 ~~schedule a performance review of the pilot program to determine~~
115 ~~the effectiveness and efficiency of using attorneys from the~~
116 ~~registry compared to the capital collateral regional counsel. The~~

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117 ~~review, at a minimum, shall include comparisons of the timeliness~~
118 ~~and costs of the pilot and the counsel and shall be submitted to~~
119 ~~the President of the Senate and the Speaker of the House of~~
120 ~~Representatives by January 30, 2007. The Legislature may~~
121 ~~determine whether to convert the pilot program to a permanent~~
122 ~~program after receipt of the Auditor General's review.~~

123 Section 3. Section 27.702, Florida Statutes, is amended to
124 read:

125 27.702 Duties of the capital collateral regional counsel;
126 reports.--

127 (1) The capital collateral regional counsel shall represent
128 each person convicted and sentenced to death in this state for
129 the sole purpose of instituting and prosecuting collateral
130 actions challenging the legality of the judgment and sentence
131 imposed against such person in the state courts, federal courts
132 in this state, the United States Court of Appeals for the
133 Eleventh Circuit, and the United States Supreme Court. The
134 capital collateral regional counsel and the attorneys appointed
135 pursuant to s. 27.710 shall file only those postconviction or
136 collateral actions authorized by statute. The three capital
137 collateral regional counsel's offices shall function
138 independently and be separate budget entities, and the regional
139 counsel shall be the office heads for all purposes. The capital
140 collateral regional counsel shall be housed, for administrative
141 purposes, within the Justice Administrative Commission. The
142 Justice Administrative Commission shall provide administrative
143 support and service to the three offices to the extent requested
144 by the regional counsel. The three regional offices shall not be
145 subject to control, supervision, or direction by the Justice

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146 Administrative Commission in any manner, including, but not
147 limited to, personnel, purchasing, transactions involving real or
148 personal property, and budgetary matters.

149 (2) The capital collateral regional counsel shall represent
150 persons convicted and sentenced to death within the region in
151 collateral postconviction proceedings, unless a court appoints or
152 permits other counsel to appear as counsel of record pursuant to
153 ss. 27.710 and 27.711.

154 (3) (a) The capital collateral regional counsel shall file
155 motions seeking compensation for representation and reimbursement
156 for expenses pursuant to 18 U.S.C. s. 3006A when providing
157 representation to indigent persons in the federal courts, and
158 shall deposit all such payments received into the General Revenue
159 Fund.

160 (b) The court having jurisdiction over any nonindigent or
161 indigent-but-able-to-contribute defendant who has been receiving
162 the services of the capital collateral regional counsel may
163 assess attorney's fees and costs against the defendant at any
164 stage in the proceedings as the court may deem appropriate. The
165 determination of indigence of any defendant shall be made
166 pursuant to s. 27.52. Liability for the costs of such
167 representation may be imposed in the form of a lien against the
168 property of the nonindigent or indigent-but-able-to-contribute
169 defendant, which lien shall be enforceable as provided in s.
170 27.561 or s. 938.29.

171 (4) (a) The capital collateral regional counsel or private
172 counsel shall give written notification of each pleading filed by
173 that office and the name of the person filing the pleading to the

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174 Commission on Capital Cases and to the trial court assigned to
175 the case.

176 (b) Each capital collateral regional counsel ~~and each~~
177 ~~attorney participating in the pilot program in the northern~~
178 ~~region pursuant to s. 27.701(2)~~ shall provide a quarterly report
179 ~~to the President of the Senate, the Speaker of the House of~~
180 ~~Representatives, and~~ the Commission on Capital Cases which
181 details the number of hours worked by investigators and legal
182 counsel per case and the amounts per case expended during the
183 preceding quarter in investigating and litigating capital
184 collateral cases.

185 Section 4. Section 27.709, Florida Statutes, is amended to
186 read:

187 27.709 Commission on Capital Cases.--

188 (1)(a) There is created the Commission on Capital Cases,
189 which shall consist of the seven ~~six~~ following members:

190 1. Three ~~Two~~ members appointed by the Governor.

191 2. Two members appointed by the President of the Senate
192 from the staff membership of the Senate. One member shall be the
193 staff director of the Criminal Justice Committee ~~a member of the~~
194 ~~majority party~~, and one member shall be the staff director of the
195 Criminal and Civil Justice Appropriations Committee ~~a member of~~
196 ~~the minority party~~.

197 3. Two members appointed by the Speaker of the House of
198 Representatives from the staff membership of the House of
199 Representatives. One member shall be the staff director of the
200 Safety and Security Council ~~a member of the majority party~~, and
201 one member shall be the budget chief of the Safety and Security
202 Council ~~a member of the minority party~~.

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203 (b) The chair of the commission shall be selected by the
204 members for a term of 1 year.

205 (c) The commission shall meet quarterly, and other meetings
206 may be called by the chair upon giving at least 7 days' notice to
207 all members and the public.

208 (d) Members of the commission are entitled to per diem and
209 travel expenses to be paid by the appointing entity.

210 (e) Members of the commission shall be appointed to serve
211 terms of 4 years each, except that a member's term shall expire
212 upon leaving his or her position in ~~office as a member of~~ the
213 Senate or the House of Representatives.

214 (f) The Justice Administrative Commission ~~Office of~~
215 ~~Legislative Services~~ shall provide staff support for the
216 commission, which shall be housed therein for administrative
217 purposes.

218 (2) (a) The commission shall review the administration of
219 justice in capital collateral cases, receive relevant public
220 input, review the operation of the capital collateral regional
221 counsel and private counsel appointed pursuant to ss. 27.710 and
222 27.711, and advise and make recommendations to the Governor,
223 Legislature, and Supreme Court.

224 (b) As part of its duties, the commission shall compile and
225 analyze case-tracking reports produced by the Supreme Court. In
226 analyzing these reports, the commission shall develop statistics
227 to identify trends and changes in case management and case
228 processing, identify and evaluate unproductive points of delay,
229 and generally evaluate the way cases are progressing. The
230 commission shall report these findings to the Legislature by
231 January 1 of each year.

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232 (c) ~~In addition,~~ The commission shall receive complaints
233 regarding the practice of any office of regional counsel and
234 private counsel appointed under ~~pursuant to~~ ss. 27.710 and 27.711
235 and may investigate and ~~shall~~ refer any complaint to The Florida
236 Bar, the State Supreme Court, the Department of Law Enforcement,
237 the Chief Inspector General, or the Commission on Ethics, as
238 appropriate.

239 (d) The commission may sponsor programs of continuing legal
240 education which are devoted specifically to capital cases and
241 shall undertake any project recommended or approved by the
242 commission members.

243 (e) The commission may request each state attorney, circuit
244 court judge, and the Office of the Attorney General to submit
245 pertinent reports to the commission for its review.

246 (f) The commission may exercise subpoena powers and may
247 receive sworn testimony it deems necessary for the administration
248 of justice in capital cases.

249 (g) The commission shall appoint the capital collateral
250 regional counsel, and may terminate the employment of regional
251 counsel at any time prior to the expiration of the appointment.

252 Section 5. Section 27.710, Florida Statutes, is amended to
253 read:

254 27.710 Registry of attorneys applying to represent persons
255 in postconviction capital collateral proceedings; certification
256 of minimum requirements; appointment by trial court.--

257 (1) The executive director of the Commission on Capital
258 Cases shall compile and maintain a statewide registry of
259 attorneys in private practice who have certified that they meet
260 the ~~minimum~~ requirements of this section and s. 27.704(2), who

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261 are available for appointment by the court under this section to
262 represent persons convicted and sentenced to death in this state
263 in postconviction collateral proceedings, ~~and who have attended~~
264 ~~within the last year a continuing legal education program of at~~
265 ~~least 10 hours' duration devoted specifically to the defense of~~
266 ~~capital cases, if available. Continuing legal education programs~~
267 ~~meeting the requirements of this rule offered by The Florida Bar~~
268 ~~or another recognized provider and approved for continuing legal~~
269 ~~education credit by The Florida Bar shall satisfy this~~
270 ~~requirement. The failure to comply with this requirement may be~~
271 ~~cause for removal from the list until the requirement is~~
272 ~~fulfilled.~~ To ensure that sufficient attorneys are available for
273 appointment by the court, when the number of attorneys on the
274 registry falls below 50, the executive director shall notify the
275 chief judge of each circuit by letter and request the chief judge
276 to promptly submit the names of at least three private attorneys
277 who regularly practice criminal law in that circuit and who
278 appear to meet the minimum requirements to represent persons in
279 postconviction capital collateral proceedings. The executive
280 director shall send an application to each attorney identified by
281 the chief judge so that the attorney may register for appointment
282 as counsel in postconviction capital collateral proceedings. As
283 necessary, the executive director may also advertise in legal
284 publications and other appropriate media for qualified attorneys
285 interested in registering for appointment as counsel in
286 postconviction capital collateral proceedings. Under limited
287 circumstances, when the number of qualified lawyers on the
288 registry fall below 50, and upon the application of an attorney
289 who does not meet the minimum qualifications set forth in this

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290 section, the application may be forwarded by the executive
291 director to the full commission for its approval of the applicant
292 being included on the list of available registry attorneys. By
293 ~~Not later than~~ September 1 of each year, and as necessary
294 thereafter, the executive director shall provide to the Chief
295 Justice of the Supreme Court, the chief judge and state attorney
296 in each judicial circuit, and the Attorney General a current copy
297 of its registry of attorneys who are available for appointment as
298 counsel in postconviction capital collateral proceedings. The
299 registry must be indexed by judicial circuit and must contain the
300 requisite information submitted by the applicants in accordance
301 with this section.

302 (2) (a) To be eligible for court appointment as counsel in
303 postconviction capital collateral proceedings, an attorney must
304 certify on an application provided by the executive director that
305 he or she is a member in good standing of The Florida Bar and:

306 1. Is an active practicing attorney who has at least 5
307 years' experience in the practice of criminal law and has
308 demonstrated the proficiency necessary to represent defendants in
309 capital cases, including proficiency in the production and
310 admission of evidence, including psychiatric and forensic
311 evidence, the use of expert witnesses, and the investigation and
312 presentation of mitigation evidence;

313 2. Has attended and completed a minimum of 12 hours of
314 continuing legal education programs within the previous 2 years
315 which were devoted to the defense of capital cases and offered by
316 The Florida Bar, the Commission on Capital Cases, or another
317 authorized provider of continuing legal education courses; and

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- 318 3.a. Has tried at least nine state or federal jury trials
319 to completion, two of which must have been capital cases, and:
320 (I) Three of which must have been murder trials;
321 (II) One of which must have been a murder trial and five of
322 which must have been other felony trials; or
323 (III) One of which must have included a postconviction
324 evidentiary hearing and five of which must have been other felony
325 trials;
- 326 b. Has appealed one capital conviction and appealed:
327 (I) At least three felony convictions, one of which must
328 have been a murder conviction;
329 (II) At least three felony convictions and participated in
330 one capital postconviction evidentiary hearing; or
331 (III) At least six felony convictions, two of which must
332 have been murder convictions; or
- 333 c. Has litigated as a first chair attorney at least three
334 capital collateral evidentiary hearings.
- 335 (b) If the trial court finds that exceptional circumstances
336 exist requiring appointment of an attorney who does not meet the
337 criteria set forth in paragraph (a), the trial court shall enter
338 a written order specifying the circumstances and making explicit
339 findings that the attorney appointed is capable of providing
340 competent representation in accordance with the intent of this
341 section.
- 342 (c) Failure by an attorney to comply with any criteria set
343 forth in paragraph (a) may be cause to remove the attorney from
344 the registry until such criteria is satisfied.
- 345 (d) Compliance may be proven by submitting written
346 certification of compliance to the commission, and may be

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347 submitted by electronic mail ~~satisfies the minimum requirements~~
348 ~~for private counsel set forth in s. 27.704(2).~~

349 (3) An attorney ~~who applies for registration and court~~
350 ~~appointment as counsel in postconviction capital collateral~~
351 ~~proceedings must certify that he or she is counsel of record in~~
352 ~~not more than four such proceedings and, if appointed to~~
353 represent a person in postconviction capital collateral
354 proceedings, shall continue the ~~such~~ representation under the
355 terms and conditions set forth in s. 27.711 until the sentence is
356 reversed, reduced, or carried out or unless permitted to withdraw
357 from representation by the trial court. The court may not permit
358 an attorney to withdraw from representation without a finding of
359 sufficient good cause. The court may impose appropriate sanctions
360 if it finds that an attorney has shown bad faith with respect to
361 continuing to represent a defendant in a postconviction capital
362 collateral proceeding. This section does not preclude the court
363 from reassigning a case to a capital collateral regional counsel
364 following discontinuation of representation if a conflict of
365 interest no longer exists with respect to the case.

366 (4) (a) Each private attorney who is appointed by the court
367 to represent a capital defendant, including court-appointed
368 attorneys who elect to proceed pro bono, must enter into a
369 contract with the Chief Financial Officer. If the ~~appointed~~
370 attorney fails to execute the contract within 30 days after the
371 date the contract is mailed to the attorney, the executive
372 director of the Commission on Capital Cases shall notify the
373 trial court and remove the attorney from the registry. The Chief
374 Financial Officer shall develop the form of the contract for
375 court-appointed attorneys, function as contract manager, and

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376 enforce performance of the terms and conditions of the contract
377 consistent with the requirements of this chapter. By signing such
378 contract, the attorney certifies that he or she intends to
379 continue the representation under the terms and conditions set
380 forth in the contract until the sentence is reversed, reduced, or
381 carried out or until released by order of the trial court. A
382 court-appointed attorney may not receive state funds unless he or
383 she has executed the contract required under this paragraph.

384 (b) Each attorney appointed under this section must submit
385 a report each quarter to the commission, in the format designated
386 by the commission. If the report is not submitted within 60 days
387 after the end of the quarter, the executive director shall remove
388 the attorney from the registry and the court may impose a fine
389 for noncompliance. The court may also remove the attorney from
390 the case or cases to which he or she has been appointed under
391 this section.

392 (c) An attorney removed from the registry may, at the
393 discretion of the court, continue to represent any clients that
394 the attorney has been appointed to represent as of the date of
395 removal. If the court allows an attorney who has been removed
396 from the registry to continue to represent appointed capital
397 defendants, the court must take all necessary actions to ensure
398 compliance with the requirements of this subsection. An attorney
399 who has been removed from the registry may not accept further
400 appointments to represent any new capital defendant unless the
401 attorney is placed back on the registry as provided in paragraph
402 (d).

403 (d) After certifying to the executive director that he or
404 she will act in accordance with the provisions of this

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405 subsection, an attorney removed from the registry may, after 60
406 days, reapply for the registry as provided in subsection (2). An
407 attorney may reapply for the registry no more than two times
408 under this paragraph for failure to adhere to the requirements of
409 this subsection.

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

412 (b) Upon notification by the state attorney or the Attorney
413 General that:

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

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

420
421 the executive director shall immediately notify the trial court
422 that imposed the sentence of death that the court must
423 immediately appoint an attorney, selected from the current
424 registry, to represent such person in collateral actions
425 challenging the legality of the judgment and sentence in the
426 appropriate state and federal courts. If the attorney appointed
427 to represent a defendant under a sentence of death does not wish
428 to continue representing the defendant in federal proceedings,
429 the attorney must make a good-faith effort to assist the
430 defendant in finding an attorney who meets the criteria and is
431 willing to represent the defendant in federal proceedings. The
432 court ~~may~~ shall have the authority to strike a notice of
433 appearance filed by a Capital Collateral Regional Counsel, if the

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434 court finds the notice was not filed in good faith and may so
435 notify the executive director that the client is no longer
436 represented by the Office of Capital Collateral Regional Counsel.
437 In making an assignment, the court shall give priority to
438 attorneys whose experience and abilities in criminal law,
439 especially in capital proceedings, are known by the court to be
440 commensurate with the responsibility of representing a person
441 sentenced to death. The trial court must issue an order of
442 appointment which contains specific findings that the appointed
443 counsel meets the statutory requirements and has the high ethical
444 standards necessary to represent a person sentenced to death.

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

451 Section 6. Section 27.711, Florida Statutes, is amended to
452 read:

453 27.711 Terms and conditions of appointment of attorneys as
454 counsel in postconviction capital collateral proceedings.--

455 (1) As used in s. 27.710 and this section, the term:

456 (a) "Capital defendant" means the person who is represented
457 in postconviction capital collateral proceedings by an attorney
458 appointed under s. 27.710.

459 (b) "Executive director" means the executive director of
460 the Commission on Capital Cases.

461 (c) "Postconviction capital collateral proceedings" means
462 one series of collateral litigation of an affirmed conviction and

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463 sentence of death, including the proceedings in the trial court
464 that imposed the capital sentence, any appellate review of the
465 sentence by the Supreme Court, any certiorari review of the
466 sentence by the United States Supreme Court, and any authorized
467 federal habeas corpus litigation with respect to the sentence.
468 The term does not include repetitive or successive collateral
469 challenges to a conviction and sentence of death which is
470 affirmed by the Supreme Court and undisturbed by any collateral
471 litigation.

472 (2) After appointment by the trial court under s. 27.710,
473 the attorney must immediately file a notice of appearance with
474 the trial court indicating acceptance of the appointment to
475 represent the capital defendant throughout all postconviction
476 capital collateral proceedings, including federal habeas corpus
477 proceedings, in accordance with this section or until released by
478 order of the trial court.

479 (3) An attorney appointed to represent a capital defendant
480 is entitled to payment of the fees set forth in this section only
481 upon full performance by the attorney of the duties specified in
482 this section and approval of payment by the trial court, and the
483 submission of a payment request by the attorney, subject to the
484 availability of sufficient funding specifically appropriated for
485 this purpose. An attorney may not be compensated under this
486 section for work performed by the attorney before July 1, 2003,
487 while employed by the northern regional office of the capital
488 collateral counsel. The Chief Financial Officer shall notify the
489 executive director and the court if it appears that sufficient
490 funding has not been specifically appropriated for this purpose
491 to pay any fees which may be incurred. The attorney shall

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492 maintain appropriate documentation, including a current and
493 detailed hourly accounting of time spent representing the capital
494 defendant. The fee and payment schedule in this section is the
495 exclusive means of compensating a court-appointed attorney who
496 represents a capital defendant. When appropriate, a court-
497 appointed attorney must seek further compensation from the
498 Federal Government, as provided in 18 U.S.C. s. 3006A or other
499 federal law, in habeas corpus litigation in the federal courts.
500 An attorney who is appointed by a court to represent a capital
501 defendant on a pro bono basis is not entitled to attorney's fees
502 as provided for in subsection (4). However, after executing a
503 contract with the Chief Financial Officer, a pro bono attorney is
504 entitled to payment for investigative services as specified in
505 subsection (5) and for miscellaneous expenses actually incurred
506 on behalf of the capital defendant as specified in subsection
507 (6). If a registry attorney has been appointed to represent a
508 defendant, a payment may not be made to any other attorney who
509 volunteers to represent the same defendant on a pro bono basis.

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

513 (a) Regardless of the stage of postconviction capital
514 collateral proceedings, the attorney is entitled to \$100 per
515 hour, up to a maximum of \$2,500, before ~~after~~ accepting
516 appointment and filing a notice of appearance in order to review
517 the files and status of the case to determine whether to accept
518 an appointment under the payment schedule in this section. If,
519 after reviewing the case files, the attorney determines that
520 payment under this section does not provide adequate compensation

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521 for the foreseeable duties associated with the prospective
522 appointment, the attorney must decline the appointment.

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

528 However, an attorney is entitled to fees under this paragraph if
529 the court schedules a hearing on a matter that makes the filing
530 of the original motion for postconviction relief unnecessary or
531 if the court otherwise disposes of the case.

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

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

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

547 (f) The attorney is entitled to \$100 per hour, up to a
548 maximum of \$4,000, after the appeal of the trial court's denial
549 of the capital defendant's motion for postconviction relief and

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550 the capital defendant's state petition for writ of habeas corpus
551 become final in the Supreme Court.

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

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

563
564 The hours billed by a contracting attorney under this subsection
565 may include time devoted to representation of the defendant by
566 another attorney who is qualified under s. 27.710 and who has
567 been designated by the contracting attorney to assist him or her.

568 (5) An attorney who represents a capital defendant may use
569 the services of one or more investigators to assist in
570 representing a capital defendant. Upon approval by the trial
571 court, the attorney is entitled to payment from the Chief
572 Financial Officer of \$40 per hour, up to a maximum of \$15,000,
573 for the purpose of paying for investigative services.

574 (6) An attorney who represents a capital defendant is
575 entitled to a maximum of \$15,000 for miscellaneous expenses, such
576 as the costs of preparing transcripts, compensating expert
577 witnesses, and copying documents. Upon approval by the trial
578 court, the attorney is entitled to payment by the Chief Financial

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579 Officer of up to \$15,000 for miscellaneous expenses, except that,
580 if the trial court finds that extraordinary circumstances exist,
581 the attorney is entitled to payment in excess of \$15,000.

582 (7) A registry ~~An~~ attorney who is ~~actively~~ representing a
583 capital defendant is entitled to a maximum of \$500 per fiscal
584 year for tuition and expenses for continuing legal education that
585 pertains to the representation of capital defendants regardless
586 of the total number of capital defendants the attorney is
587 representing. Upon approval by the trial court, the attorney is
588 entitled to payment by the Chief Financial Officer for expenses
589 for such tuition and continuing legal education.

590 (8) By accepting court appointment under s. 27.710 to
591 represent a capital defendant, the attorney agrees to continue
592 such representation under the terms and conditions set forth in
593 this section until the capital defendant's sentence is reversed,
594 reduced, or carried out, and the attorney is permitted to
595 withdraw from such representation by a court of competent
596 jurisdiction. However, if an attorney is permitted to withdraw or
597 is otherwise removed from representation prior to full
598 performance of the duties specified in this section, the trial
599 court shall approve payment of fees and costs for work performed,
600 which may not exceed the amounts specified in this section. An
601 attorney who withdraws or is removed from representation shall
602 deliver all files, notes, documents, and research to the
603 successor attorney within 15 days after notice from the successor
604 attorney. The successor attorney shall bear the cost of
605 transmitting the files, notes, documents, and research.

606 (9) An attorney may not represent more than seven ~~five~~
607 defendants in capital postconviction litigation at any one time.

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608 The defendant-representation limit includes cases involving
609 capital postconviction proceedings under contract with the
610 Capital Collateral Regional Counsel, pro bono cases, registry
611 cases, and privately retained cases. An attorney may not be
612 appointed to an additional capital postconviction case until the
613 attorney's capital postconviction representation total falls
614 below the seven-case limit. An attorney may not enter into an
615 employment contract with the offices of the Capital Collateral
616 Regional Counsel if he or she currently represents more than
617 seven defendants in capital collateral litigation in the
618 categories specified in this subsection.

619 (10) This section does not authorize an attorney who
620 represents a capital defendant to file repetitive or frivolous
621 pleadings that are not supported by law or by the facts of the
622 case. An action taken by an attorney who represents a capital
623 defendant in postconviction capital collateral proceedings may
624 not be the basis for a claim of ineffective assistance of
625 counsel.

626 (11) An attorney appointed under s. 27.710 to represent a
627 capital defendant may not represent the capital defendant during
628 a retrial, a resentencing proceeding, a proceeding commenced
629 under chapter 940, a proceeding challenging a conviction or
630 sentence other than the conviction and sentence of death for
631 which the appointment was made, or any civil litigation other
632 than habeas corpus proceedings.

633 (12) The court shall monitor the performance of assigned
634 counsel to ensure that the capital defendant is receiving quality
635 representation. The court shall also receive and evaluate
636 allegations that are made regarding the performance of assigned

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637 counsel. The Chief Financial Officer, the Department of Legal
638 Affairs, the executive director, or any interested person may
639 advise the court of any circumstance that could affect the
640 quality of representation, including, but not limited to, false
641 or fraudulent billing, misconduct, failure to meet continuing
642 legal education requirements, solicitation to receive
643 compensation from the capital defendant, or failure to file
644 appropriate motions in a timely manner.

645 (13) Prior to the filing of a motion for order approving
646 payment of attorney's fees, costs, or related expenses, the
647 assigned counsel shall deliver a copy of his intended billing,
648 together with supporting affidavits and all other necessary
649 documentation, to the Chief Financial Officer's named contract
650 manager. The contract manager shall have 10 business days from
651 receipt to review the billings, affidavit, and documentation for
652 completeness and compliance with contractual and statutory
653 requirements. If the contract manager objects to any portion of
654 the proposed billing, the objection and reasons therefor shall be
655 communicated to the assigned counsel. The assigned counsel may
656 thereafter file his or her motion for order approving payment of
657 attorney's fees, costs, or related expenses together with
658 supporting affidavits and all other necessary documentation. The
659 motion must specify whether the Chief Financial Officer's
660 contract manager objects to any portion of the billing or the
661 sufficiency of documentation and, if so, the reason therefor. A
662 copy of the motion and attachments shall be served on the Chief
663 Financial Officer's contract manager, who shall have standing to
664 file pleadings and appear before the court to contest any motion
665 for order approving payment. The fact that the Chief Financial

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666 Officer's contract manager has not objected to any portion of the
667 billing or to the sufficiency of the documentation is not binding
668 on the court, which retains primary authority and responsibility
669 for determining the reasonableness of all billings for fees,
670 costs, and related expenses, subject to statutory limitations.

671 (14) If a trial court judge proposes to award attorney's
672 fees in excess of those set forth in this section, the judge must
673 include written findings of fact that state in detail the
674 extraordinary nature of the expenditures of the time, energy, and
675 talents of the attorney in the case which are not ordinarily
676 expended in other capital collateral cases, and the basis for the
677 court finding that the case is unusual compared to other capital
678 postconviction cases. ~~Each attorney participating in the pilot~~
679 ~~program in the northern region pursuant to s. 27.701(2), as a~~
680 ~~condition of payment pursuant to this section, shall report on~~
681 ~~the performance measures adopted by the Legislature for the~~
682 ~~capital collateral regional counsel.~~

683 Section 7. For the purpose of incorporating the amendments
684 made by this act to sections 27.710 and 27.711, Florida Statutes,
685 in references thereto, section 27.7002, Florida Statutes, is
686 reenacted to read:

687 27.7002 Limitation on collateral representation; lawyer
688 disqualification; use of state funds for excess fees not
689 authorized.--

690 (1) This chapter does not create any right on behalf of any
691 person, provided counsel pursuant to any provision of this
692 chapter, to challenge in any form or manner the adequacy of the
693 collateral representation provided.

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694 (2) With respect to counsel appointed to represent
695 defendants in collateral proceedings pursuant to ss. 27.710 and
696 27.711, the sole method of assuring adequacy of representation
697 provided shall be in accordance with the provisions of s.
698 27.711(12).

699 (3) No provision of this chapter shall be construed to
700 generate any right on behalf of any attorney appointed pursuant
701 to s. 27.710, or seeking appointment pursuant to s. 27.710, to be
702 compensated above the amounts provided in s. 27.711.

703 (4) No attorney may be appointed, at state expense, to
704 represent any defendant in collateral legal proceedings except as
705 expressly authorized in this chapter.

706 (5) The use of state funds for compensation of counsel
707 appointed pursuant to s. 27.710 above the amounts set forth in s.
708 27.711 is not authorized.

709 (6) The executive director of the Commission on Capital
710 Cases is authorized to permanently remove from the registry of
711 attorneys provided in ss. 27.710 and 27.711 any attorney who
712 seeks compensation for services above the amounts provided in s.
713 27.711.

714 (7) Any attorney who notifies any court, judge, state
715 attorney, the Attorney General, or the executive director of the
716 Commission on Capital Cases, that he or she cannot provide
717 adequate or proper representation under the terms and conditions
718 set forth in s. 27.711 shall be permanently disqualified from any
719 attorney registry created under this chapter unless good cause
720 arises after a change in circumstances.

721 Section 8. This act shall take effect July 1, 2008.