

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  
4           finding that not all capital cases are extraordinary  
5           or unusual; amending s. 27.701, F.S.; extending the  
6           term of years regional counsel are appointed to serve;  
7           providing a deadline for the appointment of counsel;  
8           deleting the 2-year prohibition against former  
9           regional counsel running for state office or accepting  
10          another state appointment; requiring that regional  
11          counsel be appointed by and serve at the pleasure of  
12          the Commission on Capital Cases; removing provisions  
13          establishing a pilot program in the northern region of  
14          the state; amending s. 27.702, F.S.; clarifying the  
15          administrative roles and functions of the Justice  
16          Administrative Commission, the Commission on Capital  
17          Cases, and the Capital Collateral Regional Counsel;  
18          amending s. 27.709, F.S.; increasing and revising the  
19          membership of the Commission on Capital Cases;  
20          relocating the commission from the Office of  
21          Legislative Services to the Justice Administrative  
22          Commission for purposes of administration; authorizing  
23          the commission to sponsor programs of continuing legal  
24          education on capital cases; authorizing the commission  
25          to issue subpoenas and hold hearings it considers  
26          appropriate for the administration of justice in  
27          capital cases; authorizing the commission to terminate  
28          the appointment of a capital collateral regional  
29          counsel before the end of the counsel's term; amending

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30 s. 27.710, F.S.; changing the terms of the capital  
31 collateral regional counsel; eliminating the  
32 restriction for running for or appointment to a state  
33 office; revising the criteria required for an attorney  
34 to be eligible to be placed on the registry of  
35 attorneys qualified to represent defendants in  
36 postconviction capital collateral proceedings;  
37 providing certain limited exceptions; requiring  
38 attorneys to sign a contract with the Chief Financial  
39 Officer in order to receive funds from the state;  
40 requiring each private attorney appointed by a court  
41 to represent a capital defendant to submit a report  
42 each quarter to the commission; providing for removal  
43 from and reinstatement to the registry of attorneys;  
44 amending s. 27.711, F.S.; providing terms and  
45 conditions for appointment of counsel in  
46 postconviction capital collateral proceedings;  
47 providing for pro bono attorneys to receive  
48 reimbursement for certain specified expenses; limiting  
49 representation by a court-appointed attorney to seven  
50 defendants; prohibiting an attorney from entering into  
51 an employment contract with the offices of the Capital  
52 Collateral Regional Counsel if he or she represents  
53 seven or more defendants in capital collateral  
54 litigation; requiring a trial court judge who proposes  
55 to award attorney's fees in excess of those set forth  
56 in law to make written findings of fact that state the  
57 extraordinary nature of the expenditures of time,  
58 energy, and talents of the attorney in the case which

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59 are not ordinarily expended in other capital  
60 collateral cases and how the case is unusual;  
61 reenacting s. 27.7002, F.S., relating to the  
62 limitation of cases on collateral representation, to  
63 incorporate the amendments made to ss. 27.710 and  
64 27.711, F.S., in references thereto; providing an  
65 effective date.

66  
67 Be It Enacted by the Legislature of the State of Florida:

68  
69 Section 1. Section 27.7001, Florida Statutes, is amended to  
70 read:

71 27.7001 Legislative intent and findings.—It is the intent  
72 of the Legislature to create part IV of this chapter, consisting  
73 of ss. 27.7001-27.711, inclusive, to provide for the collateral  
74 representation of any person convicted and sentenced to death in  
75 this state, so that collateral legal proceedings to challenge  
76 any Florida capital conviction and sentence may be commenced in  
77 a timely manner and so as to assure the people of this state  
78 that the judgments of its courts may be regarded with the  
79 finality to which they are entitled in the interests of justice.  
80 It is the further intent of the Legislature that collateral  
81 representation shall not include representation during retrials,  
82 resentencings, proceedings commenced under chapter 940, or civil  
83 litigation. The Legislature further finds that not all capital  
84 collateral cases are extraordinary or unusual.

85 Section 2. Subsection (1) of section 27.701, Florida  
86 Statutes, is amended to read:

87 27.701 Capital collateral regional counsel.—

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88 (1) There are created three regional offices of capital  
89 collateral counsel, which shall be located in a northern,  
90 middle, and southern region of the state. The northern region  
91 shall consist of the First, Second, Third, Fourth, Eighth, and  
92 Fourteenth Judicial Circuits; the middle region shall consist of  
93 the Fifth, Sixth, Seventh, Ninth, Tenth, Twelfth, Thirteenth,  
94 and Eighteenth Judicial Circuits; and the southern region shall  
95 consist of the Eleventh, Fifteenth, Sixteenth, Seventeenth,  
96 Nineteenth, and Twentieth Judicial Circuits. Each regional  
97 office shall be administered by a regional counsel. A regional  
98 counsel must be, and must have been for the preceding 5 years, a  
99 member in good standing of The Florida Bar or a similar  
100 organization in another state. Each capital collateral regional  
101 counsel shall be appointed by the Governor, and is subject to  
102 confirmation by the Senate. The Supreme Court Judicial  
103 Nominating Commission shall recommend to the Governor three  
104 qualified candidates for each appointment as regional counsel.  
105 The Governor shall appoint a regional counsel for each region  
106 from among the recommendations, or, if it is in the best  
107 interest of the fair administration of justice in capital cases,  
108 the Governor may reject the nominations and request submission  
109 of three new nominees by the Supreme Court Judicial Nominating  
110 Commission. Each capital collateral regional counsel shall be  
111 appointed to a term of 4 ~~3~~ years. Vacancies in the office of  
112 capital collateral regional counsel shall be filled in the same  
113 manner as appointments. The appointment process shall be  
114 completed within 120 days, notwithstanding confirmation. Each  
115 capital collateral counsel shall report to and serve at the  
116 pleasure of the Governor. A person appointed as a regional

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117 ~~counsel may not run for or accept appointment to any state~~  
118 ~~office for 2 years following vacation of office.~~

119 Section 3. Subsections (2) and (4) of section 27.702,  
120 Florida Statutes, is amended to read:

121 27.702 Duties of the capital collateral regional counsel;  
122 reports.—

123 (2) The capital collateral regional counsel shall represent  
124 persons convicted and sentenced to death within the region in  
125 collateral postconviction proceedings, unless a court appoints  
126 or permits other counsel to appear as counsel of record pursuant  
127 to ss. 27.710 and 27.711.

128 (4) (a) The capital collateral regional counsel or private  
129 counsel shall give written notification of each pleading filed  
130 by that office and the name of the person filing the pleading to  
131 the Commission on Capital Cases and to the trial court assigned  
132 to the case.

133 (b) Each capital collateral regional counsel ~~and each~~  
134 ~~attorney participating in the pilot program in the northern~~  
135 ~~region pursuant to s. 27.701(2)~~ shall provide a quarterly report  
136 ~~to the President of the Senate, the Speaker of the House of~~  
137 ~~Representatives, and the Commission on Capital Cases which~~  
138 details the number of hours worked by investigators and legal  
139 counsel per case and the amounts per case expended during the  
140 preceding quarter in investigating and litigating capital  
141 collateral cases.

142 Section 4. Subsection (2) of section 27.709, Florida  
143 Statutes, is amended to read:

144 27.709 Commission on Capital Cases.—

145 (2) (a) The commission shall review the administration of

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146 justice in capital collateral cases, receive relevant public  
147 input, review the operation of the capital collateral regional  
148 counsel and private counsel appointed pursuant to ss. 27.710 and  
149 27.711, and advise and make recommendations to the Governor,  
150 Legislature, and Supreme Court.

151 (b) As part of its duties, the commission shall compile and  
152 analyze case-tracking reports produced by the Supreme Court. In  
153 analyzing these reports, the commission shall develop statistics  
154 to identify trends and changes in case management and case  
155 processing, identify and evaluate unproductive points of delay,  
156 and generally evaluate the way cases are progressing. The  
157 commission shall report these findings to the Legislature by  
158 January 1 of each year.

159 (c) ~~In addition,~~ The commission shall receive complaints  
160 regarding the practice of any office of regional counsel and  
161 private counsel appointed pursuant to ss. 27.710 and 27.711 and  
162 may investigate and shall refer any complaint to The Florida  
163 Bar, the State Supreme Court, the Department of Law Enforcement,  
164 the Chief Inspector General, or the Commission on Ethics, as  
165 appropriate.

166 (d) The commission may sponsor programs of continuing legal  
167 education which are devoted specifically to capital cases and  
168 shall undertake any project recommended or approved by the  
169 commission members.

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

173 (f) The commission may exercise subpoena powers and may  
174 receive sworn testimony it deems necessary for the

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175 administration of justice in capital cases.

176 (g) The commission shall appoint the capital collateral  
177 regional counsel by a majority vote, and may terminate the  
178 employment of regional counsel by a super majority vote, at any  
179 time prior to the expiration of the appointment.

180 Section 5. Section 27.710, Florida Statutes, is amended to  
181 read:

182 27.710 Registry of attorneys applying to represent persons  
183 in postconviction capital collateral proceedings; certification  
184 of minimum requirements; appointment by trial court.—

185 (1) The executive director of the Commission on Capital  
186 Cases shall compile and maintain a statewide registry of  
187 attorneys in private practice who have certified that they meet  
188 the ~~minimum~~ requirements of this section and s. 27.704(2), who  
189 are available for appointment by the court under this section to  
190 represent persons convicted and sentenced to death in this state  
191 in postconviction collateral proceedings, ~~and who have attended~~  
192 ~~within the last year a continuing legal education program of at~~  
193 ~~least 10 hours' duration devoted specifically to the defense of~~  
194 ~~capital cases, if available. Continuing legal education programs~~  
195 ~~meeting the requirements of this rule offered by The Florida Bar~~  
196 ~~or another recognized provider and approved for continuing legal~~  
197 ~~education credit by The Florida Bar shall satisfy this~~  
198 ~~requirement. The failure to comply with this requirement may be~~  
199 ~~cause for removal from the list until the requirement is~~  
200 ~~fulfilled.~~ To ensure that sufficient attorneys are available for  
201 appointment by the court, when the number of attorneys on the  
202 registry falls below 50, the executive director shall notify the  
203 chief judge of each circuit by letter and request the chief

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204 judge to promptly submit the names of at least three private  
205 attorneys who regularly practice criminal law in that circuit  
206 and who appear to meet the minimum requirements to represent  
207 persons in postconviction capital collateral proceedings. The  
208 executive director shall send an application to each attorney  
209 identified by the chief judge so that the attorney may register  
210 for appointment as counsel in postconviction capital collateral  
211 proceedings. As necessary, the executive director may also  
212 advertise in legal publications and other appropriate media for  
213 qualified attorneys interested in registering for appointment as  
214 counsel in postconviction capital collateral proceedings. Under  
215 limited circumstances, when the number of qualified lawyers on  
216 the registry falls below 50, and upon the application of an  
217 attorney who does not meet the minimum qualifications set forth  
218 in this section, the application may be forwarded by the  
219 executive director to the full commission for its approval of  
220 the applicant being included on the list of available registry  
221 attorneys. By ~~Not later than~~ September 1 of each year, and as  
222 necessary thereafter, the executive director shall provide to  
223 the Chief Justice of the Supreme Court, the chief judge and  
224 state attorney in each judicial circuit, and the Attorney  
225 General a current copy of its registry of attorneys who are  
226 available for appointment as counsel in postconviction capital  
227 collateral proceedings. The registry must be indexed by judicial  
228 circuit and must contain the requisite information submitted by  
229 the applicants in accordance with this section.

230 (2) (a) To be eligible for court appointment as counsel in  
231 postconviction capital collateral proceedings, an attorney must  
232 certify on an application provided by the executive director



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233 that he or she is a member in good standing of the Florida Bar  
234 and:

235 1. Is an active practicing attorney who has at least 5  
236 years' experience in the practice of criminal law and has  
237 demonstrated the proficiency necessary to represent defendants  
238 in capital cases, including proficiency in the production and  
239 admission of evidence, including psychiatric and forensic  
240 evidence, the use of expert witnesses, and the investigation and  
241 presentation of mitigation evidence;

242 2. Has attended and completed a minimum of 12 hours of  
243 continuing legal education programs within the previous 2 years  
244 which were devoted to the defense of capital cases and offered  
245 by the Florida Bar, the Commission on Capital Cases, or another  
246 authorized provider of continuing legal education courses; and

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

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

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

252 (III) One of which must have included a postconviction  
253 evidentiary hearing and five of which must have been other  
254 felony trials;

255 b. Has appealed one capital conviction and appealed:

256 (I) At least three felony convictions, one of which must  
257 have been a murder conviction;

258 (II) At least three felony convictions and participated in  
259 one capital postconviction evidentiary hearing; or

260 (III) At least six felony convictions, two of which must  
261 have been murder convictions; or

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262 c. Has litigated as a first chair attorney at least three  
263 capital collateral evidentiary hearings.

264 (b) If the trial court finds that exceptional circumstances  
265 exist requiring appointment of an attorney who does not meet the  
266 criteria set forth in paragraph (a), the trial court shall enter  
267 a written order specifying the circumstances and making explicit  
268 findings that the attorney appointed is capable of providing  
269 competent representation in accordance with the intent of this  
270 section.

271 (c) Failure by an attorney to comply with any criteria set  
272 forth in paragraph (a) may be cause to remove the attorney from  
273 the registry until such criteria are satisfied.

274 (d) Compliance may be proven by submitting written  
275 certification of compliance to the commission, which may be  
276 submitted by electronic mail ~~satisfies the minimum requirements~~  
277 ~~for private counsel set forth in s. 27.704(2).~~

278 ~~(3) An attorney who applies for registration and court~~  
279 ~~appointment as counsel in postconviction capital collateral~~  
280 ~~proceedings must certify that he or she is counsel of record in~~  
281 ~~not more than four such proceedings and, if appointed to~~  
282 ~~represent a person in postconviction capital collateral~~  
283 ~~proceedings, shall continue the such representation under the~~  
284 ~~terms and conditions set forth in s. 27.711 until the sentence~~  
285 ~~is reversed, reduced, or carried out or unless permitted to~~  
286 ~~withdraw from representation by the trial court. The court may~~  
287 ~~not permit an attorney to withdraw from representation without a~~  
288 ~~finding of sufficient good cause. The court may impose~~  
289 ~~appropriate sanctions if it finds that an attorney has shown bad~~  
290 ~~faith with respect to continuing to represent a defendant in a~~

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291 postconviction capital collateral proceeding. This section does  
292 not preclude the court from reassigning a case to a capital  
293 collateral regional counsel following discontinuation of  
294 representation if a conflict of interest no longer exists with  
295 respect to the case.

296 (4) (a) Each private attorney who is appointed by the court  
297 to represent a capital defendant, including court-appointed  
298 attorneys who elect to proceed pro bono, must enter into a  
299 contract with the Chief Financial Officer. If the ~~appointed~~  
300 attorney fails to execute the contract within 30 days after the  
301 date the contract is mailed to the attorney, the executive  
302 director of the Commission on Capital Cases shall notify the  
303 trial court and remove the attorney from the registry. The Chief  
304 Financial Officer shall develop the form of the contract for  
305 court-appointed attorneys, function as contract manager, and  
306 enforce performance of the terms and conditions of the contract  
307 consistent with the requirements of this chapter. By signing  
308 such contract, the attorney certifies that he or she intends to  
309 continue the representation under the terms and conditions set  
310 forth in the contract until the sentence is reversed, reduced,  
311 or carried out or until released by order of the trial court. An  
312 attorney may not receive state funds for any fee or expense  
313 incurred under this section unless he or she has been appointed  
314 by the trial court to represent the inmate and has executed the  
315 contract required under this paragraph.

316 (b) Each attorney appointed under this section must submit  
317 a report each quarter to the commission, in the format  
318 designated by the commission. If the report is not submitted  
319 within 60 days after the end of the quarter, the executive

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320 director shall remove the attorney from the registry and the  
321 court may impose a fine for noncompliance. The court may also  
322 remove the attorney from the case or cases to which he or she  
323 has been appointed under this section.

324 (c) An attorney removed from the registry may, at the  
325 discretion of the court, continue to represent any clients that  
326 the attorney has been appointed to represent as of the date of  
327 removal. If the court allows an attorney who has been removed  
328 from the registry to continue to represent appointed capital  
329 defendants, the court must take all necessary actions to ensure  
330 compliance with the requirements of this subsection. An attorney  
331 who has been removed from the registry may not accept further  
332 appointments to represent any new capital defendant unless the  
333 attorney is placed back on the registry as provided in paragraph  
334 (d).

335 (d) After certifying to the executive director that he or  
336 she will act in accordance with the provisions of this  
337 subsection, an attorney removed from the registry may, after 60  
338 days, reapply for inclusion in the registry as provided in  
339 subsection (2). An attorney may reapply for inclusion in the  
340 registry no more than two times under this paragraph for failure  
341 to adhere to the requirements of this subsection.

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

344 (b) Upon notification by the state attorney or the Attorney  
345 General that:

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

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349           2. A person under sentence of death who was previously  
350 represented by private counsel is currently unrepresented in a  
351 postconviction capital collateral proceeding,  
352  
353 the executive director shall immediately notify the trial court  
354 that imposed the sentence of death that the court must  
355 immediately appoint an attorney, selected from the current  
356 registry, to represent such person in collateral actions  
357 challenging the legality of the judgment and sentence in the  
358 appropriate state and federal courts. If the attorney appointed  
359 to represent a defendant under a sentence of death does not wish  
360 to continue representing the defendant in federal proceedings,  
361 the attorney must make a good faith effort to assist the  
362 defendant in finding an attorney who meets the criteria and is  
363 willing to represent the defendant in federal proceedings. The  
364 court may ~~shall have the authority to~~ strike a notice of  
365 appearance filed by a Capital Collateral Regional Counsel, if  
366 the court finds the notice was not filed in good faith and may  
367 so notify the executive director that the client is no longer  
368 represented by the Office of Capital Collateral Regional  
369 Counsel. In making an assignment, the court shall give priority  
370 to attorneys whose experience and abilities in criminal law,  
371 especially in capital proceedings, are known by the court to be  
372 commensurate with the responsibility of representing a person  
373 sentenced to death. The trial court must issue an order of  
374 appointment which contains specific findings that the appointed  
375 counsel meets the statutory requirements and has the high  
376 ethical standards necessary to represent a person sentenced to  
377 death.

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

384 Section 6. Section 27.711, Florida Statutes, is amended to  
385 read:

386 27.711 Terms and conditions of appointment of attorneys as  
387 counsel in postconviction capital collateral proceedings.—

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

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

392 (b) "Executive director" means the executive director of  
393 the Commission on Capital Cases.

394 (c) "Postconviction capital collateral proceedings" means  
395 one series of collateral litigation of an affirmed conviction  
396 and sentence of death, including the proceedings in the trial  
397 court that imposed the capital sentence, any appellate review of  
398 the sentence by the Supreme Court, any certiorari review of the  
399 sentence by the United States Supreme Court, and any authorized  
400 federal habeas corpus litigation with respect to the sentence.  
401 The term does not include repetitive or successive collateral  
402 challenges to a conviction and sentence of death which is  
403 affirmed by the Supreme Court and undisturbed by any collateral  
404 litigation.

405 (2) After appointment by the trial court under s. 27.710,  
406 the attorney must immediately file a notice of appearance with

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407 the trial court indicating acceptance of the appointment to  
408 represent the capital defendant throughout all postconviction  
409 capital collateral proceedings, including federal habeas corpus  
410 proceedings, in accordance with this section or until released  
411 by order of the trial court.

412 (3) An attorney appointed to represent a capital defendant  
413 is entitled to payment of the fees set forth in this section  
414 only upon full performance by the attorney of the duties  
415 specified in this section and approval of payment by the trial  
416 court, and the submission of a payment request by the attorney,  
417 subject to the availability of sufficient funding specifically  
418 appropriated for this purpose. An attorney may not be  
419 compensated under this section for work performed by the  
420 attorney before July 1, 2003, while employed by the northern  
421 regional office of the capital collateral counsel. The Chief  
422 Financial Officer shall notify the executive director and the  
423 court if it appears that sufficient funding has not been  
424 specifically appropriated for this purpose to pay any fees which  
425 may be incurred. The attorney shall maintain appropriate  
426 documentation, including a current and detailed hourly  
427 accounting of time spent representing the capital defendant. The  
428 fee and payment schedule in this section is the exclusive means  
429 of compensating a court-appointed attorney who represents a  
430 capital defendant. When appropriate, a court-appointed attorney  
431 must seek further compensation from the Federal Government, as  
432 provided in 18 U.S.C. s. 3006A or other federal law, in habeas  
433 corpus litigation in the federal courts. An attorney who is  
434 appointed by a court to represent a capital defendant on a pro  
435 bono basis is not entitled to attorney's fees as provided for in

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436 subsection (4). However, after executing a contract with the  
437 Chief Financial Officer, a pro bono attorney is entitled to  
438 payment for investigative services as specified in subsection  
439 (5) and for miscellaneous expenses actually incurred on behalf  
440 of the capital defendant as specified in subsection (6). If a  
441 registry attorney has been appointed to represent a defendant, a  
442 payment may not be made to any other attorney who volunteers to  
443 represent the same defendant on a pro bono basis.

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

447 (a) Regardless of the stage of postconviction capital  
448 collateral proceedings, the attorney is entitled to \$100 per  
449 hour, up to a maximum of \$2,500, before ~~after~~ accepting  
450 appointment and filing a notice of appearance in order to review  
451 the files and status of the case to determine whether to accept  
452 an appointment under the payment schedule in this section. If,  
453 after reviewing the case files, the attorney determines that  
454 payment under this section does not provide adequate  
455 compensation for the foreseeable duties associated with the  
456 prospective appointment, the attorney must decline the  
457 appointment.

458 (b) The attorney is entitled to \$100 per hour, up to a  
459 maximum of \$20,000, after timely filing in the trial court the  
460 capital defendant's complete original motion for postconviction  
461 relief under the Florida Rules of Criminal Procedure. The motion  
462 must raise all issues to be addressed by the trial court.  
463 However, an attorney is entitled to fees under this paragraph if  
464 the court schedules a hearing on a matter that makes the filing



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465 of the original motion for postconviction relief unnecessary or  
466 if the court otherwise disposes of the case.

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

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

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

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

487 (g) At the conclusion of the capital defendant's  
488 postconviction capital collateral proceedings in state court,  
489 the attorney is entitled to \$100 per hour, up to a maximum of  
490 \$2,500, for the preparation of the initial federal pleading  
491 ~~after filing a petition for writ of certiorari in the Supreme~~  
492 ~~Court of the United States.~~

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

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494 attorney is entitled to \$100 per hour, up to a maximum of  
495 \$5,000. This payment is ~~shall be~~ full compensation for  
496 attorney's fees and costs for representing the capital defendant  
497 throughout the proceedings before the state courts of Florida.

498

499 The hours billed by a contracting attorney under this subsection  
500 may include time devoted to representation of the defendant by  
501 another attorney who is qualified under s. 27.710 and who has  
502 been designated by the contracting attorney to assist him or  
503 her.

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

510 (6) An attorney who represents a capital defendant is  
511 entitled to a maximum of \$15,000 for miscellaneous expenses,  
512 such as the costs of preparing transcripts, compensating expert  
513 witnesses, and copying documents. Upon approval by the trial  
514 court, the attorney is entitled to payment by the Chief  
515 Financial Officer of up to \$15,000 for miscellaneous expenses,  
516 except that, if the trial court finds that extraordinary  
517 circumstances exist, the attorney is entitled to payment in  
518 excess of \$15,000.

519 (7) A registry ~~An~~ attorney who is ~~actively~~ representing a  
520 capital defendant is entitled to a maximum of \$500 per fiscal  
521 year for tuition and expenses for continuing legal education  
522 that pertains to the representation of capital defendants

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523 regardless of the total number of capital defendants the  
524 attorney is representing. Upon approval by the trial court, the  
525 attorney is entitled to payment by the Chief Financial Officer  
526 for expenses for such tuition and continuing legal education.

527 (8) By accepting court appointment under s. 27.710 to  
528 represent a capital defendant, the attorney agrees to continue  
529 such representation under the terms and conditions set forth in  
530 this section until the capital defendant's sentence is reversed,  
531 reduced, or carried out, and the attorney is permitted to  
532 withdraw from such representation by a court of competent  
533 jurisdiction. However, if an attorney is permitted to withdraw  
534 or is otherwise removed from representation prior to full  
535 performance of the duties specified in this section, the trial  
536 court shall approve payment of fees and costs for work  
537 performed, which may not exceed the amounts specified in this  
538 section. An attorney who withdraws or is removed from  
539 representation shall deliver all files, notes, documents, and  
540 research to the successor attorney within 15 days after notice  
541 from the successor attorney. The successor attorney shall bear  
542 the cost of transmitting the files, notes, documents, and  
543 research.

544 (9) An attorney may not represent more than seven ~~five~~  
545 defendants in capital postconviction litigation at any one time.  
546 The defendant-representation limit includes cases involving  
547 capital postconviction proceedings under contract with the  
548 Capital Collateral Regional Counsel, pro bono cases, registry  
549 cases, and privately retained cases. An attorney may not be  
550 appointed to an additional capital postconviction case until the  
551 attorney's capital postconviction representation total falls

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552 below the seven-case limit.

553 (10) This section does not authorize an attorney who  
554 represents a capital defendant to file repetitive or frivolous  
555 pleadings that are not supported by law or by the facts of the  
556 case. An action taken by an attorney who represents a capital  
557 defendant in postconviction capital collateral proceedings may  
558 not be the basis for a claim of ineffective assistance of  
559 counsel.

560 (11) An attorney appointed under s. 27.710 to represent a  
561 capital defendant may not represent the capital defendant during  
562 a retrial, a resentencing proceeding, a proceeding commenced  
563 under chapter 940, a proceeding challenging a conviction or  
564 sentence other than the conviction and sentence of death for  
565 which the appointment was made, or any civil litigation other  
566 than habeas corpus proceedings.

567 (12) The court shall monitor the performance of assigned  
568 counsel to ensure that the capital defendant is receiving  
569 quality representation. The court shall also receive and  
570 evaluate allegations that are made regarding the performance of  
571 assigned counsel. The Chief Financial Officer, the Department of  
572 Legal Affairs, the executive director, or any interested person  
573 may advise the court of any circumstance that could affect the  
574 quality of representation, including, but not limited to, false  
575 or fraudulent billing, misconduct, failure to meet continuing  
576 legal education requirements, solicitation to receive  
577 compensation from the capital defendant, or failure to file  
578 appropriate motions in a timely manner.

579 (13) Prior to the filing of a motion for order approving  
580 payment of attorney's fees, costs, or related expenses, the

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581 assigned counsel shall deliver a copy of his intended billing,  
582 together with supporting affidavits and all other necessary  
583 documentation, to the Chief Financial Officer's named contract  
584 manager. The contract manager shall have 10 business days from  
585 receipt to review the billings, affidavit, and documentation for  
586 completeness and compliance with contractual and statutory  
587 requirements. If the contract manager objects to any portion of  
588 the proposed billing, the objection and reasons therefor shall  
589 be communicated to the assigned counsel. The assigned counsel  
590 may thereafter file his or her motion for order approving  
591 payment of attorney's fees, costs, or related expenses together  
592 with supporting affidavits and all other necessary  
593 documentation. The motion must specify whether the Chief  
594 Financial Officer's contract manager objects to any portion of  
595 the billing or the sufficiency of documentation and, if so, the  
596 reason for the objection ~~therefor~~. A copy of the motion and  
597 attachments shall be served on the Chief Financial Officer's  
598 contract manager, who shall have standing to file pleadings and  
599 appear before the court to contest any motion for order  
600 approving payment. The fact that the Chief Financial Officer's  
601 contract manager has not objected to any portion of the billing  
602 or to the sufficiency of the documentation is not binding on the  
603 court, which retains primary authority and responsibility for  
604 determining the reasonableness of all billings for fees, costs,  
605 and related expenses, subject to statutory limitations.

606 (14) If a trial court judge proposes to award attorney's  
607 fees in excess of those set forth in this section, the judge  
608 must include written findings of fact that state in detail the  
609 extraordinary nature of the expenditures of the time, energy,

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610 and talents of the attorney in the case which are not ordinarily  
611 expended in other capital collateral cases, and the basis for  
612 the court finding that the case is unusual compared to other  
613 capital postconviction cases. ~~Each attorney participating in the~~  
614 ~~pilot program in the northern region pursuant to s. 27.701(2),~~  
615 ~~as a condition of payment pursuant to this section, shall report~~  
616 ~~on the performance measures adopted by the Legislature for the~~  
617 ~~capital collateral regional counsel.~~

618 Section 7. For the purpose of incorporating the amendments  
619 made by this act to sections 27.710 and 27.711, Florida  
620 Statutes, in references thereto, section 27.7002, Florida  
621 Statutes, is reenacted to read:

622 27.7002 Limitation on collateral representation; lawyer  
623 disqualification; use of state funds for excess fees not  
624 authorized.-

625 (1) This chapter does not create any right on behalf of any  
626 person, provided counsel pursuant to any provision of this  
627 chapter, to challenge in any form or manner the adequacy of the  
628 collateral representation provided.

629 (2) With respect to counsel appointed to represent  
630 defendants in collateral proceedings pursuant to ss. 27.710 and  
631 27.711, the sole method of assuring adequacy of representation  
632 provided shall be in accordance with the provisions of s.  
633 27.711(12).

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

638 (4) No attorney may be appointed, at state expense, to

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639 represent any defendant in collateral legal proceedings except  
640 as expressly authorized in this chapter.

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

644 (6) The executive director of the Commission on Capital  
645 Cases is authorized to permanently remove from the registry of  
646 attorneys provided in ss. 27.710 and 27.711 any attorney who  
647 seeks compensation for services above the amounts provided in s.  
648 27.711.

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

656 Section 8. This act shall take effect July 1, 2009.