

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 collateral cases are  
5           extraordinary or unusual; amending s. 27.701, F.S.;  
6           requiring that regional counsel report to and serve at  
7           the pleasure of the Commission on Capital Cases;  
8           amending s. 27.702, F.S.; revising the quarterly  
9           reporting requirements for each capital collateral  
10          regional counsel; amending s. 27.709, F.S.;  
11          authorizing the commission to sponsor programs of  
12          continuing legal education that are devoted  
13          specifically to capital cases; authorizing the  
14          commission to issue subpoenas and hold hearings it  
15          considers appropriate for the administration of  
16          justice in capital cases; authorizing the commission  
17          to appoint capital collateral regional counsel and to  
18          terminate the appointment of a capital collateral  
19          regional counsel before the end of the counsel's term;  
20          amending s. 27.710, F.S.; revising the criteria  
21          required for an attorney to be eligible to be placed  
22          on the registry of attorneys qualified to represent  
23          defendants in postconviction capital collateral  
24          proceedings; providing certain limited exceptions;  
25          requiring attorneys to file a detailed application to  
26          be eligible for court appointment as counsel in  
27          postconviction capital collateral proceedings;  
28          requiring attorneys to sign a contract with the Chief  
29          Financial Officer in order to receive funds from the

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

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

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

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59 read:

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

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

76 27.701 Capital collateral regional counsel.—

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

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88 member in good standing of The Florida Bar or a similar  
89 organization in another state. Each capital collateral regional  
90 counsel shall be appointed by the Governor, and is subject to  
91 confirmation by the Senate. The Supreme Court Judicial  
92 Nominating Commission shall recommend to the Governor three  
93 qualified candidates for each appointment as regional counsel.  
94 The Governor shall appoint a regional counsel for each region  
95 from among the recommendations, or, if it is in the best  
96 interest of the fair administration of justice in capital cases,  
97 the Governor may reject the nominations and request submission  
98 of 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 Section 3. Subsections (2) and (4) of section 27.702,  
108 Florida Statutes, are amended to read:

109 27.702 Duties of the capital collateral regional counsel;  
110 reports.—

111 (2) The capital collateral regional counsel shall represent  
112 persons convicted and sentenced to death within the region in  
113 collateral postconviction proceedings, unless a court appoints  
114 or permits other counsel to appear as counsel of record pursuant  
115 to ss. 27.710 and 27.711.

116 (4) (a) The capital collateral regional counsel or private

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117 counsel shall give written notification of each pleading filed  
118 by that office and the name of the person filing the pleading to  
119 the Commission on Capital Cases and to the trial court assigned  
120 to the case.

121 (b) Each capital collateral regional counsel ~~and each~~  
122 ~~attorney participating in the pilot program in the northern~~  
123 ~~region pursuant to s. 27.701(2)~~ shall provide a quarterly report  
124 to ~~the President of the Senate, the Speaker of the House of~~  
125 ~~Representatives,~~ and the Commission on Capital Cases which  
126 details the number of hours worked by investigators and legal  
127 counsel per case and the amounts per case expended during the  
128 preceding quarter in investigating and litigating capital  
129 collateral cases.

130 Section 4. Paragraph (c) of subsection (1) and subsection  
131 (2) of section 27.709, Florida Statutes, are amended to read:

132 27.709 Commission on Capital Cases.—

133 (1)

134 (c) The commission shall meet upon the call of the chair  
135 ~~quarterly~~, and other meetings may be called by the chair upon  
136 giving at least 7 days' notice to all members and the public.

137 (2) (a) The commission shall review the administration of  
138 justice in capital collateral cases, receive relevant public  
139 input, review the operation of the capital collateral regional  
140 counsel and private counsel appointed pursuant to ss. 27.710 and  
141 27.711, and advise and make recommendations to the Governor,  
142 Legislature, and Supreme Court.

143 (b) As part of its duties, the commission shall compile and  
144 analyze case-tracking reports produced by the Supreme Court. In  
145 analyzing these reports, the commission shall develop statistics

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146 to identify trends and changes in case management and case  
147 processing, identify and evaluate unproductive points of delay,  
148 and generally evaluate the way cases are progressing. The  
149 commission shall report these findings to the Legislature by  
150 January 1 of each year.

151 (c) ~~In addition,~~ The commission shall receive complaints  
152 regarding the practice of any office of regional counsel and  
153 private counsel appointed pursuant to ss. 27.710 and 27.711 and  
154 may investigate and shall refer any complaint to The Florida  
155 Bar, the State Supreme Court, the Department of Law Enforcement,  
156 the Chief Inspector General, or the Commission on Ethics, as  
157 appropriate.

158 (d) The commission may sponsor programs of continuing legal  
159 education which are devoted specifically to capital cases and  
160 shall undertake any project recommended or approved by the  
161 commission members.

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

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

168 (g) The commission shall appoint the capital collateral  
169 regional counsel, and may terminate the employment of regional  
170 counsel at any time before the expiration of the appointment.

171 Section 5. Section 27.710, Florida Statutes, is amended to  
172 read:

173 27.710 Registry of attorneys applying to represent persons  
174 in postconviction capital collateral proceedings; certification

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175 of minimum requirements; appointment by trial court.-

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

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204 qualified attorneys interested in registering for appointment as  
205 counsel in postconviction capital collateral proceedings. Under  
206 limited circumstances, when the number of qualified lawyers on  
207 the registry fall below 50, and upon the application of an  
208 attorney who does not meet the minimum qualifications set forth  
209 in this section, the application may be forwarded by the  
210 executive director to the full commission for its approval of  
211 the applicant being included on the list of available registry  
212 attorneys. By ~~Not later than~~ September 1 of each year, and as  
213 necessary thereafter, the executive director shall provide to  
214 the Chief Justice of the Supreme Court, the chief judge and  
215 state attorney in each judicial circuit, and the Attorney  
216 General a current copy of its registry of attorneys who are  
217 available for appointment as counsel in postconviction capital  
218 collateral proceedings. The registry must be indexed by judicial  
219 circuit and must contain the requisite information submitted by  
220 the applicants in accordance with this section.

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

226 1. Is an active practicing attorney who has at least 5  
227 years' experience in the practice of criminal law and has  
228 demonstrated the proficiency necessary to represent defendants  
229 in capital cases, including proficiency in the production and  
230 admission of evidence, including psychiatric and forensic  
231 evidence, the use of expert witnesses, and the investigation and  
232 presentation of mitigation evidence;



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233       2. Has attended and completed a minimum of 12 hours of  
234 continuing legal education programs within the previous 2 years  
235 which were devoted to the defense of capital cases and offered  
236 by The Florida Bar, the Commission on Capital Cases, or another  
237 authorized provider of continuing legal education courses; and  
238       3.a. Has tried at least nine state or federal jury trials  
239 to completion, two of which must have been capital cases, and:  
240       (I) Three of which must have been murder trials;  
241       (II) One of which must have been a murder trial and five of  
242 which must have been other felony trials; or  
243       (III) One of which must have included a postconviction  
244 evidentiary hearing and five of which must have been other  
245 felony trials;  
246       b. Has appealed one capital conviction and appealed:  
247       (I) At least three felony convictions, one of which must  
248 have been a murder conviction;  
249       (II) At least three felony convictions and participated in  
250 one capital postconviction evidentiary hearing; or  
251       (III) At least six felony convictions, two of which must  
252 have been murder convictions; or  
253       c. Has litigated as a first-chair attorney at least three  
254 capital collateral evidentiary hearings.  
255       (b) If the trial court finds that exceptional circumstances  
256 exist requiring appointment of an attorney who does not meet the  
257 criteria set forth in paragraph (a), the trial court shall enter  
258 a written order specifying the circumstances and making explicit  
259 findings that the attorney appointed is capable of providing  
260 competent representation in accordance with the intent of this  
261 section.

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262        (c) Failure by an attorney to comply with any criteria set  
263 forth in paragraph (a) may be cause to remove the attorney from  
264 the registry until such criteria is satisfied.

265        (d) Compliance may be proven by submitting written  
266 certification of compliance to the commission, and may be  
267 submitted by electronic mail ~~satisfies the minimum requirements~~  
268 ~~for private counsel set forth in s. 27.704(2).~~

269        (3) An attorney ~~who applies for registration and court~~  
270 ~~appointment as counsel in postconviction capital collateral~~  
271 ~~proceedings must certify that he or she is counsel of record in~~  
272 ~~not more than four such proceedings and, if appointed to~~  
273 represent a person in postconviction capital collateral  
274 proceedings, shall continue the ~~such~~ representation under the  
275 terms and conditions set forth in s. 27.711 until the sentence  
276 is reversed, reduced, or carried out or unless permitted to  
277 withdraw from representation by the trial court. The court may  
278 not permit an attorney to withdraw from representation without a  
279 finding of sufficient good cause. The court may impose  
280 appropriate sanctions if it finds that an attorney has shown bad  
281 faith with respect to continuing to represent a defendant in a  
282 postconviction capital collateral proceeding. This section does  
283 not preclude the court from reassigning a case to a capital  
284 collateral regional counsel following discontinuation of  
285 representation if a conflict of interest no longer exists with  
286 respect to the case.

287        (4) (a) Each private attorney who is appointed by the court  
288 to represent a capital defendant, including court-appointed  
289 attorneys who elect to proceed pro bono, must enter into a  
290 contract with the Chief Financial Officer. If the ~~appointed~~

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291 attorney fails to execute the contract within 30 days after the  
292 date the contract is mailed to the attorney, the executive  
293 director of the Commission on Capital Cases shall notify the  
294 trial court and remove the attorney from the registry. The Chief  
295 Financial Officer shall develop the form of the contract for  
296 court-appointed attorneys, function as contract manager, and  
297 enforce performance of the terms and conditions of the contract  
298 consistent with the requirements of this chapter. By signing the  
299 ~~such~~ contract, the attorney certifies that he or she intends to  
300 continue the representation under the terms and conditions set  
301 forth in the contract until the sentence is reversed, reduced,  
302 or carried out or until released by order of the trial court.

303 (b) Each attorney appointed under this section must submit  
304 a report each quarter to the commission, in the format  
305 designated by the commission. If the report is not submitted  
306 within 60 days after the end of the quarter, the executive  
307 director shall remove the attorney from the registry and the  
308 court may impose a fine for noncompliance. The court may also  
309 remove the attorney from the case or cases to which he or she  
310 has been appointed under this section.

311 (c) An attorney removed from the registry may, at the  
312 discretion of the court, continue to represent any clients that  
313 the attorney has been appointed to represent as of the date of  
314 removal. If the court allows an attorney who has been removed  
315 from the registry to continue to represent appointed capital  
316 defendants, the court must take all necessary actions to ensure  
317 compliance with the requirements of this subsection. An attorney  
318 who has been removed from the registry may not accept further  
319 appointments to represent any new capital defendant unless the

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320 attorney is placed back on the registry as provided in paragraph  
321 (d).

322 (d) After certifying to the executive director that he or  
323 she will act in accordance with the provisions of this  
324 subsection, an attorney removed from the registry may, after 60  
325 days, reapply for the registry as provided in subsection (2). An  
326 attorney may reapply for the registry no more than two times  
327 under this paragraph for failure to adhere to the requirements  
328 of this subsection.

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

331 (b) Upon notification by the state attorney or the Attorney  
332 General that:

333 1. Thirty days have elapsed since appointment of the  
334 capital collateral regional counsel and no entry of appearance  
335 has been filed pursuant to s. 924.056; or

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

339  
340 the executive director shall immediately notify the trial court  
341 that imposed the sentence of death that the court must  
342 immediately appoint an attorney, selected from the current  
343 registry, to represent such person in collateral actions  
344 challenging the legality of the judgment and sentence in the  
345 appropriate state and federal courts. If the attorney appointed  
346 to represent a defendant under a sentence of death does not wish  
347 to continue representing the defendant in federal proceedings,  
348 the attorney must make a good faith effort to assist the

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349 defendant in finding an attorney who meets the criteria and is  
350 willing to represent the defendant in federal proceedings. The  
351 court ~~may shall have the authority to~~ strike a notice of  
352 appearance filed by a capital collateral regional counsel, if  
353 the court finds the notice was not filed in good faith and may  
354 so notify the executive director that the client is no longer  
355 represented by the Office of Capital Collateral Regional  
356 Counsel. In making an assignment, the court shall give priority  
357 to attorneys whose experience and abilities in criminal law,  
358 especially in capital proceedings, are known by the court to be  
359 commensurate with the responsibility of representing a person  
360 sentenced to death. The trial court must issue an order of  
361 appointment which contains specific findings that the appointed  
362 counsel meets the statutory requirements and has the high  
363 ethical standards necessary to represent a person sentenced to  
364 death.

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

371 Section 6. Section 27.711, Florida Statutes, is amended to  
372 read:

373 27.711 Terms and conditions of appointment of attorneys as  
374 counsel in postconviction capital collateral proceedings.—

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

376 (a) "Capital defendant" means the person who is represented  
377 in postconviction capital collateral proceedings by an attorney

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378 appointed under s. 27.710.

379 (b) "Executive director" means the executive director of  
380 the Commission on Capital Cases.

381 (c) "Postconviction capital collateral proceedings" means  
382 one series of collateral litigation of an affirmed conviction  
383 and sentence of death, including the proceedings in the trial  
384 court that imposed the capital sentence, any appellate review of  
385 the sentence by the Supreme Court, any certiorari review of the  
386 sentence by the United States Supreme Court, and any authorized  
387 federal habeas corpus litigation with respect to the sentence.  
388 The term does not include repetitive or successive collateral  
389 challenges to a conviction and sentence of death which is  
390 affirmed by the Supreme Court and undisturbed by any collateral  
391 litigation.

392 (2) After appointment by the trial court under s. 27.710,  
393 the attorney must immediately file a notice of appearance with  
394 the trial court indicating acceptance of the appointment to  
395 represent the capital defendant throughout all postconviction  
396 capital collateral proceedings, including federal habeas corpus  
397 proceedings, in accordance with this section or until released  
398 by order of the trial court.

399 (3) An attorney appointed to represent a capital defendant  
400 is entitled to payment of the fees set forth in this section  
401 only upon full performance by the attorney of the duties  
402 specified in this section and approval of payment by the trial  
403 court, and the submission of a payment request by the attorney,  
404 subject to the availability of sufficient funding specifically  
405 appropriated for this purpose. An attorney may not be  
406 compensated under this section for work performed by the

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407 attorney before July 1, 2003, while employed by the northern  
408 regional office of the capital collateral counsel. The Chief  
409 Financial Officer shall notify the executive director and the  
410 court if it appears that sufficient funding has not been  
411 specifically appropriated for this purpose to pay any fees which  
412 may be incurred. The attorney shall maintain appropriate  
413 documentation, including a current and detailed hourly  
414 accounting of time spent representing the capital defendant. The  
415 fee and payment schedule in this section is the exclusive means  
416 of compensating a court-appointed attorney who represents a  
417 capital defendant. When appropriate, a court-appointed attorney  
418 must seek further compensation from the Federal Government, as  
419 provided in 18 U.S.C. s. 3006A or other federal law, in habeas  
420 corpus litigation in the federal courts. An attorney who is  
421 appointed by a court to represent a capital defendant on a pro  
422 bono basis is not entitled to attorney's fees as provided for in  
423 subsection (4). However, after executing a contract with the  
424 Chief Financial Officer, a pro bono attorney is entitled to  
425 payment for investigative services as specified in subsection  
426 (5) and for miscellaneous expenses actually incurred on behalf  
427 of the capital defendant as specified in subsection (6). If a  
428 registry attorney has been appointed to represent a defendant, a  
429 payment may not be made to any other attorney who volunteers to  
430 represent the same defendant on a pro bono basis.

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

434 (a) Regardless of the stage of postconviction capital  
435 collateral proceedings, the attorney is entitled to \$100 per

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436 hour, up to a maximum of \$2,500, before ~~after~~ accepting  
437 appointment and filing a notice of appearance in order to review  
438 the files and status of the case to determine whether to accept  
439 an appointment under the payment schedule in this section. If,  
440 after reviewing the case files, the attorney determines that  
441 payment under this section does not provide adequate  
442 compensation for the foreseeable duties associated with the  
443 prospective appointment, the attorney must decline the  
444 appointment.

445 (b) The attorney is entitled to \$100 per hour, up to a  
446 maximum of \$20,000, after timely filing in the trial court the  
447 capital defendant's complete original motion for postconviction  
448 relief under the Florida Rules of Criminal Procedure. The motion  
449 must raise all issues to be addressed by the trial court.  
450 However, an attorney is entitled to fees under this paragraph if  
451 the court schedules a hearing on a matter that makes the filing  
452 of the original motion for postconviction relief unnecessary or  
453 if the court otherwise disposes of the case.

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

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

464 (e) The attorney is entitled to \$100 per hour, up to a



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465 maximum of \$10,000, after the trial court issues an order  
466 following, ~~pursuant to~~ a remand from the Supreme Court, which  
467 directs the trial court to hold further proceedings on the  
468 capital defendant's motion for postconviction relief.

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

474 (g) At the conclusion of the capital defendant's  
475 postconviction capital collateral proceedings in state court,  
476 the attorney is entitled to \$100 per hour, up to a maximum of  
477 \$2,500, for the preparation of the initial federal pleading  
478 ~~after filing a petition for writ of certiorari in the Supreme~~  
479 ~~Court of the United States.~~

480 (h) If, at any time, a death warrant is issued, the  
481 attorney is entitled to \$100 per hour, up to a maximum of  
482 \$5,000. This payment is ~~shall be~~ full compensation for  
483 attorney's fees and costs for representing the capital defendant  
484 throughout the proceedings before the state courts of Florida.

485  
486 The hours billed by a contracting attorney under this subsection  
487 may include time devoted to representation of the defendant by  
488 another attorney who is qualified under s. 27.710 and who has  
489 been designated by the contracting attorney to assist him or  
490 her.

491 (5) An attorney who represents a capital defendant may use  
492 the services of one or more investigators to assist in  
493 representing a capital defendant. Upon approval by the trial

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494 court, the attorney is entitled to payment from the Chief  
495 Financial Officer of \$40 per hour, up to a maximum of \$15,000,  
496 for the purpose of paying for investigative services.

497 (6) An attorney who represents a capital defendant is  
498 entitled to a maximum of \$15,000 for miscellaneous expenses,  
499 such as the costs of preparing transcripts, compensating expert  
500 witnesses, and copying documents. Upon approval by the trial  
501 court, the attorney is entitled to payment by the Chief  
502 Financial Officer of up to \$15,000 for miscellaneous expenses,  
503 except that, if the trial court finds that extraordinary  
504 circumstances exist, the attorney is entitled to payment in  
505 excess of \$15,000.

506 (7) A registry ~~An~~ attorney who is ~~actively~~ representing a  
507 capital defendant is entitled to a maximum of \$500 per fiscal  
508 year for tuition and expenses for continuing legal education  
509 that pertains to the representation of capital defendants  
510 regardless of the total number of capital defendants the  
511 attorney is representing. Upon approval by the trial court, the  
512 attorney is entitled to payment by the Chief Financial Officer  
513 for expenses for such tuition and continuing legal education.

514 (8) By accepting court appointment under s. 27.710 to  
515 represent a capital defendant, the attorney agrees to continue  
516 such representation under the terms and conditions set forth in  
517 this section until the capital defendant's sentence is reversed,  
518 reduced, or carried out, and the attorney is permitted to  
519 withdraw from such representation by a court of competent  
520 jurisdiction. However, if an attorney is permitted to withdraw  
521 or is otherwise removed from representation prior to full  
522 performance of the duties specified in this section, the trial

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523 court shall approve payment of fees and costs for work  
524 performed, which may not exceed the amounts specified in this  
525 section. An attorney who withdraws or is removed from  
526 representation shall deliver all files, notes, documents, and  
527 research to the successor attorney within 15 days after notice  
528 from the successor attorney. The successor attorney shall bear  
529 the cost of transmitting the files, notes, documents, and  
530 research.

531 (9) An attorney may not represent more than seven ~~five~~  
532 defendants in capital postconviction litigation at any one time.  
533 The defendant-representation limit includes cases involving  
534 capital postconviction proceedings under contract with the  
535 capital collateral regional counsel, pro bono cases, registry  
536 cases, and privately retained cases. An attorney may not be  
537 appointed to an additional capital postconviction case until the  
538 attorney's capital postconviction representation total falls  
539 below the seven-case limit.

540 (10) This section does not authorize an attorney who  
541 represents a capital defendant to file repetitive or frivolous  
542 pleadings that are not supported by law or by the facts of the  
543 case. An action taken by an attorney who represents a capital  
544 defendant in postconviction capital collateral proceedings may  
545 not be the basis for a claim of ineffective assistance of  
546 counsel.

547 (11) An attorney appointed under s. 27.710 to represent a  
548 capital defendant may not represent the capital defendant during  
549 a retrial, a resentencing proceeding, a proceeding commenced  
550 under chapter 940, a proceeding challenging a conviction or  
551 sentence other than the conviction and sentence of death for

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552 which the appointment was made, or any civil litigation other  
553 than habeas corpus proceedings.

554 (12) The court shall monitor the performance of assigned  
555 counsel to ensure that the capital defendant is receiving  
556 quality representation. The court shall also receive and  
557 evaluate allegations that are made regarding the performance of  
558 assigned counsel. The Chief Financial Officer, the Department of  
559 Legal Affairs, the executive director, or any interested person  
560 may advise the court of any circumstance that could affect the  
561 quality of representation, including, but not limited to, false  
562 or fraudulent billing, misconduct, failure to meet continuing  
563 legal education requirements, solicitation to receive  
564 compensation from the capital defendant, or failure to file  
565 appropriate motions in a timely manner.

566 (13) Before ~~Prior to the~~ filing of a motion for an order  
567 approving payment of attorney's fees, costs, or related  
568 expenses, the assigned counsel shall deliver a copy of his or  
569 her intended billing, together with supporting affidavits and  
570 all other necessary documentation, to the Chief Financial  
571 Officer's named contract manager. The contract manager has ~~shall~~  
572 ~~have~~ 10 business days following ~~from~~ receipt to review the  
573 billings, affidavit, and documentation for completeness and  
574 compliance with contractual and statutory requirements. If the  
575 contract manager objects to any portion of the proposed billing,  
576 the objection and reasons therefor shall be communicated to the  
577 assigned counsel. The assigned counsel may thereafter file his  
578 or her motion for order approving payment of attorney's fees,  
579 costs, or related expenses together with supporting affidavits  
580 and all other necessary documentation. The motion must specify

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581 whether the Chief Financial Officer's contract manager objects  
582 to any portion of the billing or the sufficiency of  
583 documentation and, if so, the reason therefor. A copy of the  
584 motion and attachments shall be served on the Chief Financial  
585 Officer's contract manager, who shall have standing to file  
586 pleadings and appear before the court to contest any motion for  
587 order approving payment. The fact that the Chief Financial  
588 Officer's contract manager has not objected to any portion of  
589 the billing or to the sufficiency of the documentation is not  
590 binding on the court, which retains primary authority and  
591 responsibility for determining the reasonableness of all  
592 billings for fees, costs, and related expenses, subject to  
593 statutory limitations.

594 (14) If a trial court judge proposes to award attorney's  
595 fees in excess of those set forth in this section, the judge  
596 must include written findings of fact that state in detail the  
597 extraordinary nature of the expenditures of the time, energy,  
598 and talents of the attorney in the case which are not ordinarily  
599 expended in other capital collateral cases, and the basis for  
600 the court finding that the case is unusual compared to other  
601 capital postconviction cases. ~~Each attorney participating in the~~  
602 ~~pilot program in the northern region pursuant to s. 27.701(2),~~  
603 ~~as a condition of payment pursuant to this section, shall report~~  
604 ~~on the performance measures adopted by the Legislature for the~~  
605 ~~capital collateral regional counsel.~~

606 Section 7. For the purpose of incorporating the amendments  
607 made by this act to sections 27.710 and 27.711, Florida  
608 Statutes, in references thereto, section 27.7002, Florida  
609 Statutes, is reenacted to read:

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610 27.7002 Limitation on collateral representation; lawyer  
611 disqualification; use of state funds for excess fees not  
612 authorized.—

613 (1) This chapter does not create any right on behalf of any  
614 person, provided counsel pursuant to any provision of this  
615 chapter, to challenge in any form or manner the adequacy of the  
616 collateral representation provided.

617 (2) With respect to counsel appointed to represent  
618 defendants in collateral proceedings pursuant to ss. 27.710 and  
619 27.711, the sole method of assuring adequacy of representation  
620 provided shall be in accordance with the provisions of s.  
621 27.711(12).

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

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

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

632 (6) The executive director of the Commission on Capital  
633 Cases is authorized to permanently remove from the registry of  
634 attorneys provided in ss. 27.710 and 27.711 any attorney who  
635 seeks compensation for services above the amounts provided in s.  
636 27.711.

637 (7) Any attorney who notifies any court, judge, state  
638 attorney, the Attorney General, or the executive director of the

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639 Commission on Capital Cases, that he or she cannot provide  
640 adequate or proper representation under the terms and conditions  
641 set forth in s. 27.711 shall be permanently disqualified from  
642 any attorney registry created under this chapter unless good  
643 cause arises after a change in circumstances.

644 Section 8. This act shall take effect July 1, 2010.