

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7161 PCB CCJP 10-06 Conflict Counsel

SPONSOR(S): Criminal & Civil Justice Policy Council and Adams

TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Criminal & Civil Justice Policy Council	14 Y, 0 N	Mato	Havlicak
1)				
2)				
3)				
4)				
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SUMMARY ANALYSIS

The bill amends two sections relating to the Office of Criminal Conflict and Civil Regional Counsel (OCCCRC). The OCCCRC was created in 2007 to represent indigent defendants when the public defender is unable to provide representation due to a conflict of interest. They also represent indigent parents involved in civil dependency or termination of parental rights proceedings.

The bill amends the section for determination of civil indigent status to make a \$50 fee to be paid by parents in child dependency cases, already in the statute, mandatory. The fee is to be placed in the OCCCRC's Indigent Civil Defense Trust Fund.

The bill also amends the statute relating to the compensation of appointed counsel to allow the OCCCRC to seek reasonable compensation for fees and costs at the end of a civil child dependency case.

The bill will not have any negative fiscal impact on the state or local governments. It is anticipated that the bill will increase the revenue going into the Indigent Civil Defense Trust Fund.

The bill is effective July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background / Current Situation:

The Governor signed into law CS/SB 1088 on May 24, 2007. This Act¹ created five Offices of Criminal Conflict and Civil Regional Counsel ("OCCCRC") with the primary responsibility to handle criminal conflict cases from the twenty Public Defender Offices. Under the Act, these five regional offices, which share the same geographic boundaries as the five District Courts of Appeal, began operations on October 1, 2007.

Section 27.511(5) provides that when the Office of Public Defender, representing two or more defendants, determines that it has a conflict of interest and the court grants its motion to withdraw, such indigent defendant will then be assigned to the OCCCRC for representation. These appointments constitute the bulk of the OCCCRC's workload. However, part of the OCCCRC's workload also includes representing indigent parents in civil child dependent cases under chapter 39. In both civil and criminal cases, if the regional counsel withdraws from the case for any reason, then an attorney from the circuit's registry of available private counsel is appointed.

Currently, s. 57.082, F.S., creates a process whereby an indigent person may acquire court-appointed counsel in certain civil cases under chapter 39.² The applicant must demonstrate an inability to pay based on information the applicant provides the clerk of court in a Supreme Court-approved form.³ The process includes a \$50 application fee to be paid by the applicant requesting indigent status in chapter 39 cases. The fee is to be paid upon filing the application with the clerk or within seven days after submitting the application.⁴ The application fee under this statute is to be collected by the clerk and remitted monthly to the Department of Revenue for deposit into the Indigent Civil Defense Trust Fund. No indigent person may be refused counsel. If the fee is not paid within 7 days, the court shall enter an order requiring payment and pursue collection under s. 28.246, F.S.

The OCCCRC reports that the fees currently being collected are negligible amounts. The \$50 fee is already in the statute, but not all courts currently enforce it and not all indigent persons are paying the fee as required.

¹ Chapter 2007-62, Laws of Florida

² Examples of a chapter 39 legal proceeding include: a dependency proceeding or a termination of parental rights proceeding.

³ Section 57.082(1), F.S.

⁴ Section 57.082(1)(d), F.S.

Section. 39.0134, F.S., allows an appointed attorney in a dependency proceeding or a termination of parental rights proceeding under chapter 39 to receive compensation in accordance with s. 27.5304, F.S. Additionally, the state may acquire and enforce a lien upon court-ordered payment of attorney's fees and costs pursuant to s. 984.08, F.S.⁵

Effect of the bill:

The bill amends s. 57.082, F.S., to clarify what qualifies as a chapter 39 proceeding in which case a party may qualify for court-appointed counsel. It adds "a proceeding, at shelter or during the adjudicatory process, during the judicial review process, upon the filing of a termination of parental rights petition, or upon the filing or any appeal, or if an appointed attorney is requested in a re-opened proceeding."

The bill requires that if the \$50 application fee has not been paid within the seven days, the court shall enter an order requiring payment and the clerk shall collect pursuant to s. 28.246, F.S. Similarly, the bill amends s. 57.082(5), F.S., to require the court to order the application fee upon appointing counsel to the indigent party.

The \$50 fee is already in the existing statute. This bill makes it mandatory for the court to impose the fee and for the clerk to collect the fee.

The bill amends s. 39.0134, F.S., to make a parent, who qualifies and receives the services of OCCCRC or any other court appointed attorney under a child dependency case, liable for payment of the assessed application fee under s. 57.082, F.S., along with reasonable attorney's fees and costs as determined by the court. If reasonable attorney's fees are assessed, payment of the fees or costs may be made part of any case plan in the dependency proceeding at the court's discretion. The bill provides that no case plan will remain open for the sole purpose of payment of attorney's fees. However, at the court's discretion, a lien upon court-ordered payment of attorney's fees and costs may be ordered in accordance with s. 938.29(2), F.S.

The bill also requires the clerk of court to transfer monthly all attorney's fees and costs collected under s. 39.0134, F.S. to the Department of Revenue for deposit in the Indigent Civil Defense Trust Fund.

B. SECTION DIRECTORY:

Section 1 – amends s. 57.082, F.S., relating to determination of civil indigent status.

Section 2 – amends s. 39.0134, F.S., relating to appointed counsel; compensation.

Section 3 – provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Justice Administrative Commission reports the following amounts were collected and deposited in the OCCCRC's Indigent Civil Defense Trust Fund in FY 2008-09 and YTD for FY 2009-10.

⁵ Section 984.08, F.S., provides: "The court may appoint an attorney to represent a parent or legal guardian under this chapter only upon a finding that the parent or legal guardian is indigent pursuant to s. 57.082. If an attorney is appointed, the parent or legal guardian shall be enrolled in a payment plan pursuant to s. 28.246."

DISTRICT	AMOUNT
01	\$1,660.00
02	\$ 800.00
03	\$ 0.00
04	\$ 400.00
05	\$ 0.00
FY 2008-09 TOTAL	\$2,860.00

DISTRICT	AMOUNT
01	\$1,124.89
02	\$ 0.00
03	\$ 0.00
04	\$ 0.00
05	\$ 200.00
FY 2009-10 TOTAL⁶	\$1,324.89

It is anticipated that the provisions of the bill that require the court to order and the clerk to collect the payment of the application fee under s. 57.082, F.S., along with reasonable attorney's fees and costs as determined by the court, will increase the revenue going into the Indigent Civil Defense Trust Fund.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁶ As of March 12, 2010.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 16, 2010, the Criminal & Civil Justice Policy Council adopted an amendment that allowed for collection of court-ordered payment of attorney's fees and costs in accordance with s. 938.29(2), F.S. instead of s. 984.08, F.S.