

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/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) | Criminal & Civil Justice Appropriations Committee | 11 Y, 0 N, As CS | Darity | Davis |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

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

The bill makes it mandatory for the parents in child dependency cases to pay a \$50 application fee for deposit in the Indigent Civil Defense Trust Fund.

The bill 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. Liens imposed upon parents for payment of attorney fees or costs will remain in force notwithstanding the child becoming emancipated or upon reaching the age of majority.

The bill should have a positive fiscal impact on the Indigent Civil Defense Trust Fund due to making the existing \$50 application fee mandatory, as well as allowing compensation for fees and costs, and increased collection efforts by the clerks.

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:

Chapter 2007-62, Laws of Florida created five Offices of Criminal Conflict and Civil Regional Counsel ("OCCCRC") with the primary responsibility of handling criminal conflict cases from the twenty Public Defender Offices. The five regional offices share the same geographic boundaries as the five District Courts of Appeal, and began operations on October 1, 2007.

Section 27.511(5), F.S. 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.

Section 57.082, F.S., created a process whereby an indigent person may acquire court-appointed counsel in certain civil cases under chapter 39.¹ The applicant must demonstrate an inability to pay based on information the applicant provides the clerk of court in a Supreme Court-approved form.² 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.³ 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. A person found to be indigent may not be refused counsel. While the \$50 application fee is already in the statute, not all courts currently enforce it and not all indigent persons are paying the fee as required.

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,

¹ Examples of a chapter 39 legal proceeding include: a dependency proceeding or a termination of parental rights proceeding.

² Section 57.082(1), F.S.

³ Section 57.082(1)(d), F.S.

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.⁴

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 makes it mandatory for the court to impose the existing \$50 application fee and if the fee has not been paid within the seven days, requires the court to enter an order requiring payment and that 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 bill amends s. 39.0134, F.S., to make a parent who qualifies and receives the services of OCCRC 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.

Section 938.29, F.S., is amended to provide that the judicial lien for attorney's fees or costs imposed under s. 938.29, F.S., shall remain in force notwithstanding the emancipation of the child or the child reaching the age of majority.

B. SECTION DIRECTORY:

Section 1 – amends s. 938.29, F.S., relating to legal assistance; lien for payment of attorney's fees or costs.

Section 2 – amends s. 57.082, F.S., relating to determination of civil indigent status.

Section 3 – amends s. 39.0134, F.S., relating to appointed counsel; compensation.

Section 4 – provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

⁴ 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."

None.

2. Expenditures:

To the extent the clerks pursue and enforce collections, their offices could experience an insignificant increase in workload.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Because the \$50 fee has not been enforced in all courts and not all indigent persons are paying the fee, the collections have been extremely low. The Justice Administrative Commission reports that \$2,900 was collected in the 2008-09 fiscal year and to date, \$1,300 has been collected this current fiscal year.

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 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. Based on the number of indigent defendants represented in the current year, and if all defendants paid the \$50 mandatory fee, \$250,000 would be collected and deposited into the Indigent Civil Defense Trust Fund.

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.

The Criminal & Civil Justice Appropriations Committee, on March 25, 2010, adopted an amendment which provides judicial liens imposed under s. 938.29, F.S., remain in force even after the child is emancipated or reaches the age of majority. This analysis reflects the bill as amended.