

1 A bill to be entitled
2 An act relating to court-appointed counsel; amending s.
3 938.29, F.S.; specifying that a lien for the cost of
4 court-appointed counsel against a parent for services
5 provided to a child does not expire upon the emancipation
6 of the child or upon the child reaching the age of
7 majority; amending s. 57.082, F.S.; clarifying proceedings
8 in which a party may qualify for court-appointed counsel;
9 revising provisions relating to the payment of an
10 application fee by a person eligible for court-appointed
11 counsel; amending s. 39.0134, F.S.; revising a cross-
12 reference relating to enforcement of liens for court-
13 ordered payment of attorney's fees and costs; specifying
14 circumstances under which a parent receiving assistance of
15 appointed counsel shall be liable for payment of an
16 application fee and attorney's fees and costs; providing
17 for payment of such fees and costs; providing for deposit
18 and disposition of fee proceeds; amending s. 28.246, F.S.;
19 providing that a clerk of court must provide certain
20 information to an attorney or collection agent employed by
21 the clerk to collect a debt owed to the clerk; providing
22 an effective date.

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24 Be It Enacted by the Legislature of the State of Florida:

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26 Section 1. Paragraph (b) of subsection (2) of section
27 938.29, Florida Statutes, is amended to read:

28 938.29 Legal assistance; lien for payment of attorney's

29 fees or costs.—

30 (2)

31 (b) A judgment showing the name and residence of the
 32 defendant-recipient or parent shall be recorded in the public
 33 record, without cost, by the clerk of the circuit court in the
 34 county where the defendant-recipient or parent resides and in
 35 each county in which such defendant-recipient or parent then
 36 owns or later acquires any property. Such judgments shall be
 37 enforced on behalf of the state by the clerk of the circuit
 38 court of the county in which assistance was rendered. The lien
 39 against a parent shall remain in force notwithstanding the child
 40 becoming emancipated or the child reaching the age of majority.

41 Section 2. Paragraph (d) of subsection (1) and subsection
 42 (5) of section 57.082, Florida Statutes, are amended to read:

43 57.082 Determination of civil indigent status.—

44 (1) APPLICATION TO THE CLERK.—A person seeking appointment
 45 of an attorney in a civil case eligible for court-appointed
 46 counsel, or seeking relief from payment of filing fees and
 47 prepayment of costs under s. 57.081, based upon an inability to
 48 pay must apply to the clerk of the court for a determination of
 49 civil indigent status using an application form developed by the
 50 Florida Clerks of Court Operations Corporation with final
 51 approval by the Supreme Court.

52 (d) A person who seeks appointment of an attorney in a
 53 ~~ease under~~ chapter 39 proceeding, at shelter or during the
 54 adjudicatory process, during the judicial review process, upon
 55 the filing of a termination of parental rights petition, or upon
 56 the filing of any appeal, or if an appointed attorney is

57 requested in a reopened proceeding, at the trial or appellate
58 ~~level,~~ for which an indigent person is eligible for court-
59 appointed representation, shall pay a \$50 application fee to the
60 clerk for each application filed. The applicant shall pay the
61 fee within 7 days after submitting the application. If the fee
62 is not paid within 7 days, the court shall enter an order
63 requiring payment and the clerk shall pursue collection under s.
64 28.246. The clerk shall transfer monthly all application fees
65 collected under this paragraph to the Department of Revenue for
66 deposit into the Indigent Civil Defense Trust Fund, to be used
67 as appropriated by the Legislature. The clerk may retain 10
68 percent of application fees collected monthly for administrative
69 costs prior to remitting the remainder to the Department of
70 Revenue. A person found to be indigent may not be refused
71 counsel. If the person cannot pay the application fee, the clerk
72 shall enroll the person in a payment plan pursuant to s. 28.246.

73 (5) APPOINTMENT OF COUNSEL.—In appointing counsel after a
74 determination that a person is indigent under this section, the
75 court shall order that any applicable application fee be paid by
76 each person requesting appointment of counsel and first appoint
77 the office of criminal conflict and civil regional counsel, as
78 provided in s. 27.511, unless specific provision is made in law
79 for the appointment of the public defender in the particular
80 civil proceeding.

81 Section 3. Section 39.0134, Florida Statutes, is amended
82 to read:

83 39.0134 Appointed counsel; compensation.—If counsel is
84 entitled to receive compensation for representation pursuant to

85 a court appointment in a dependency proceeding or a termination
86 of parental rights proceeding pursuant to this chapter,
87 compensation shall be paid in accordance with s. 27.5304. The
88 state may acquire and enforce a lien upon court-ordered payment
89 of attorney's fees and costs in accordance with s. 938.29(2)
90 ~~984.08~~.

91 (1) A parent whose child is dependent, whether or not
92 adjudication was withheld, or whose parental rights are
93 terminated, and who has received the assistance of the office of
94 criminal conflict and civil regional counsel or any other court-
95 appointed counsel or has received due process services after
96 being found indigent for costs under s. 57.082 shall be liable
97 for payment of the assessed application fee under s. 57.082,
98 together with reasonable attorney's fees and costs as determined
99 by the court.

100 (2) If reasonable attorney's fees or costs are assessed,
101 payment of the fees or costs may be made part of any case plan
102 in dependency proceedings at the court's discretion; however, no
103 case plan may remain open for the sole issue of payment of
104 attorney's fees or costs. At the court's discretion, a lien upon
105 court-ordered payment of attorney's fees and costs may be
106 ordered by the court in accordance with s. 938.29(2).

107 (3) The clerk of the court shall transfer all attorney's
108 fees and costs collected under this section monthly to the
109 Department of Revenue for deposit in the Indigent Civil Defense
110 Trust Fund, subject to legislative appropriations and consistent
111 with s. 27.5111.

112 Section 4. Subsection (6) of section 28.246, Florida
113 Statutes, is amended to read:

114 28.246 Payment of court-related fees, charges, and costs;
115 partial payments; distribution of funds.—

116 (6) A clerk of court shall pursue the collection of any
117 fees, service charges, fines, court costs, and liens for the
118 payment of attorney's fees and costs pursuant to s. 938.29 which
119 remain unpaid after 90 days by referring the account to a
120 private attorney who is a member in good standing of The Florida
121 Bar or collection agent who is registered and in good standing
122 pursuant to chapter 559. In pursuing the collection of such
123 unpaid financial obligations through a private attorney or
124 collection agent, the clerk of the court must have attempted to
125 collect the unpaid amount through a collection court,
126 collections docket, or other collections process, if any,
127 established by the court, find this to be cost-effective and
128 follow any applicable procurement practices. The collection fee,
129 including any reasonable attorney's fee, paid to any attorney or
130 collection agent retained by the clerk may be added to the
131 balance owed in an amount not to exceed 40 percent of the amount
132 owed at the time the account is referred to the attorney or
133 agent for collection. The clerk shall, upon request, give the
134 private attorney or collection agent any financial affidavit,
135 application for the appointment of court appointed counsel,
136 order appointing counsel due to indigency, or other document or
137 information that would assist in the collections,
138 notwithstanding whether or not the court file is otherwise
139 confidential from disclosure.

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2010

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Section 5. This act shall take effect July 1, 2010.