

CHAPTER 99-221

Committee Substitute for Committee Substitute for Senate Bill No. 2054

An act relating to capital collateral representation; amending s. 27.702, F.S.; redesignating the Commission on the Administration of Justice in Capital Cases as the Commission on Capital Cases; amending s. 27.703, F.S.; requiring private counsel appointments to be in accordance with specified provisions; amending s. 27.709, F.S.; conforming provisions to changes made by the act; amending s. 27.710, F.S.; requiring notification of the trial court if an appointed attorney fails to execute a contract within a specified period; authorizing an attorney appointed to represent a defendant in a postconviction capital collateral proceeding to designate another attorney to assist in the representation; amending s. 27.711, F.S.; revising provisions governing the award of attorney's fees; providing that an additional payment for miscellaneous expenses may be paid under extraordinary circumstances from a separate budget allocation; providing for payment of certain tuition and other expenses for an attorney who is actively representing a capital defendant; providing for the payment of attorneys fees and costs when an attorney is permitted to withdraw or is otherwise removed from representation; providing for the transmittal of files and documents to the successor attorney; requiring the court to monitor the performance of counsel appointed to represent a capital defendant in a postconviction proceeding; providing for payment of attorneys' miscellaneous expenses which were incurred before a specified date; providing an effective date.

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

Section 1. Subsection (4) of section 27.702, Florida Statutes, 1998 Supplement, is amended to read:

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

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

(b) Each capital collateral regional counsel shall provide a quarterly report to the President of the Senate, the Speaker of the House of Representatives, and the Commission on ~~the Administration of Justice in Capital Cases~~ which details the number of hours worked by investigators and legal counsel per case and the amounts per case expended during the preceding quarter in investigating and litigating capital collateral cases.

Section 2. Subsection (2) of section 27.703, Florida Statutes, is amended to read:

27.703 Conflict of interest and substitute counsel.—

(2) Appointed counsel shall be paid from funds appropriated to the Justice Administrative Commission. The hourly rate may not exceed \$100. However, effective July 1, 1999, all appointments of private counsel under this section shall be in accordance with ss. 27.710 and 27.711.

Section 3. Section 27.709, Florida Statutes, 1998 Supplement, is amended to read:

27.709 Commission on ~~the Administration of Justice in~~ Capital Cases.—

(1)(a) There is created the Commission on ~~the Administration of Justice in~~ Capital Cases, which shall consist of the six following members:

1. Two members appointed by the Governor.

2. Two members appointed by the President of the Senate from the membership of the Senate. One member shall be a member of the majority party, and one member shall be a member of the minority party.

3. Two members appointed by the Speaker of the House of Representatives from the membership of the House of Representatives. One member shall be a member of the majority party, and one member shall be a member of the minority party.

(b) The chair of the commission shall be selected by the members for a term of 1 year.

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

(d) Members of the commission are entitled to per diem and travel expenses to be paid by the appointing entity.

(e) The initial members of the commission must be appointed on or before October 1, 1997. Members of the commission shall be appointed to serve terms of 4 years each, except that a member's term shall expire upon leaving office as a member of the Senate or the House of Representatives. Two of the initial members, one from the Senate and one from the House of Representatives, shall be appointed for terms of 2 years each. Two of the initial members, one from the Senate and one from the House of Representatives, shall be appointed for terms of 3 years each.

(f) The Office of Legislative Services shall provide staff support for the commission.

(2) The commission shall review the administration of justice in capital collateral cases, receive relevant public input, review the operation of the capital collateral regional counsel, and advise and make recommendations to the Governor, Legislature, and Supreme Court. In addition, the commission shall receive complaints regarding the practice of any office of regional

counsel and shall refer any complaint to The Florida Bar, the State Supreme Court, or the Commission on Ethics, as appropriate.

(3) ~~The Commission on the Administration of Justice in Capital Cases~~ shall conduct a study to evaluate whether the elimination of state postconviction proceedings in death penalty cases will reduce delays in carrying out a sentence of death in capital cases. In conducting the study, the commission shall take public testimony from any interested party. The commission shall review the average number of postconviction motions and writs filed in capital cases, prior legislative and judicial attempts to reduce delays in capital cases, and the length of time required for capital postconviction claims in state and federal court. The commission shall consider average delays in capital cases, whether those delays have increased in the last 10 years, and the reasons for any increase in delays. The study shall include a report which addresses the legal, fiscal, and practical considerations concerning the elimination of state postconviction proceedings, and the recommendation of the commission. Public notice shall be provided, in a manner agreed to by the commission, for all hearings where the commission intends to hear public testimony concerning the elimination of state postconviction proceedings in death penalty cases for purposes of this study. The report shall be submitted to the Speaker of the House of Representatives, the President of the Senate, and the minority leaders in the House and the Senate by December 1, 1998.

Section 4. Subsections (1), (4), and (6) of section 27.710, Florida Statutes, 1998 Supplement, are amended to read:

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

(1) ~~The Commission on the Administration of Justice in Capital Cases~~ shall compile and maintain a statewide registry of attorneys in private practice who have certified that they meet the minimum requirements of s. 27.704(2) and who are available for appointment by the court under this section to represent persons convicted and sentenced to death in this state in postconviction capital collateral proceedings. To ensure that sufficient attorneys are available for appointment by the court, when the number of attorneys on the registry falls below 50, the executive director shall notify the chief judge of each circuit by letter and request the chief judge to promptly submit the names of at least three private attorneys who regularly practice criminal law in that circuit and who appear to meet the minimum requirements to represent persons in postconviction capital collateral proceedings. The executive director shall send an application to each attorney identified by the chief judge so that the attorney may register for appointment as counsel in postconviction capital collateral proceedings. As necessary, the executive director may also advertise in legal publications and other appropriate media for qualified attorneys interested in registering for appointment as counsel in postconviction capital collateral proceedings. Not later than September 1 of each year, and as necessary thereafter, the executive director shall provide to the Chief Justice of the Supreme Court, the chief judge and state attorney in each judicial circuit, and the Attorney

General a current copy of its registry of attorneys who are available for appointment as counsel in postconviction capital collateral proceedings. The registry must be indexed by judicial circuit and must contain the requisite information submitted by the applicants in accordance with this section.

(4) Each private attorney who is appointed by the court to represent a capital defendant must enter into a contract with the Comptroller. If the appointed attorney fails to execute the contract within 30 days after the date the contract is mailed to the attorney, the executive director of the Commission on Capital Cases shall notify the trial court. The executive director of the Commission on ~~the Administration of Justice in~~ Capital Cases shall develop the form of the contract, and the Comptroller shall function as contract manager and shall enforce performance of the terms and conditions of the contract. By signing such contract, the attorney certifies that he or she intends to continue the representation under the terms and conditions set forth in the contract until the sentence is reversed, reduced, or carried out or until released by order of the trial court.

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

Section 5. Section 27.711, Florida Statutes, 1998 Supplement, is amended to read:

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

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

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

(b) “Executive director” means the executive director of the Commission on ~~the Administration of Justice in~~ Capital Cases.

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

(2) After appointment by the trial court under s. 27.710, the attorney must immediately file a notice of appearance with the trial court indicating acceptance of the appointment to represent the capital defendant throughout all postconviction capital collateral proceedings, including federal ha-

beas corpus proceedings, in accordance with this section or until released by order of the trial court.

(3) An attorney appointed to represent a capital defendant is entitled to payment of the fees set forth in this section only upon full performance by the attorney of the duties specified in this section and approval of payment by the trial court, and the submission of a payment request by the attorney, subject to the availability of sufficient funding specifically appropriated for this purpose. The Justice Administrative Commission shall notify the executive director and the court if it appears that sufficient funding has not been specifically appropriated for this purpose to pay any fees which may be incurred. The attorney shall maintain appropriate documentation, including a current and detailed hourly accounting of time spent representing the capital defendant. The fee and payment schedule in this section is the exclusive means of compensating a court-appointed attorney who represents a capital defendant. When appropriate, a court-appointed attorney must seek further compensation from the Federal Government, as provided in 18 U.S.C. s. 3006A or other federal law, in habeas corpus litigation in the federal courts.

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

(a) Regardless of the stage of postconviction capital collateral proceedings, the attorney is entitled to \$100 per hour, up to a maximum of \$2,500, after upon accepting appointment and filing a notice of appearance. ~~This fee is in the nature of a fee for a retainer agreement.~~

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

(c) The attorney is entitled to \$100 per hour, up to a maximum of \$20,000 ~~\$10,000~~, after the trial court issues a final order granting or denying the capital defendant's motion for postconviction relief.

(d) The attorney is entitled to \$100 per hour, up to a maximum of \$20,000 ~~\$4,000~~, after timely filing in the Supreme Court the capital defendant's brief or briefs that address the trial court's final order granting or denying the capital defendant's motion for postconviction relief and the state petition for writ of habeas corpus.

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

~~(f)(e)~~ The attorney is entitled to \$100 per hour, up to a maximum of ~~\$4,000~~ ~~\$20,000~~, after the appeal of the trial court's denial of the capital defendant's motion for postconviction relief and the capital defendant's state petition for writ of habeas corpus become final in the Supreme Court.

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

~~(h)(g)~~ If, at any time, the Supreme Court of the United States accepts for review the capital defendant's collateral challenge of the conviction and sentence of death, the attorney is entitled to \$100 per hour, up to a maximum of \$5,000. This payment shall be full compensation for representing the capital defendant throughout the certiorari proceedings before the United States Supreme Court.

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

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

(6) An attorney who represents a capital defendant is entitled to a maximum of ~~\$15,000~~ ~~\$5,000~~ for miscellaneous expenses, such as the costs of preparing transcripts, compensating expert witnesses, and copying documents. Upon approval by the trial court, the attorney is entitled to payment by the Comptroller of up to \$15,000 for miscellaneous expenses, except that, if the trial court finds that extraordinary circumstances exist, the attorney is entitled to payment in excess of \$15,000.

(7) An attorney who is actively representing a capital defendant is entitled to a maximum of \$500 per fiscal year for tuition and expenses for continuing legal education that pertains to the representation of capital defendants. Upon approval by the trial court, the attorney is entitled to payment by the Comptroller for expenses for such tuition and continuing legal education.

~~(8)(7)~~ By accepting court appointment under s. 27.710 to represent a capital defendant, the attorney agrees to continue such representation under the terms and conditions set forth in this section until the capital defendant's sentence is reversed, reduced, or carried out, and the attorney is permitted to withdraw from such representation by a court of competent jurisdiction. However, if an attorney is permitted to withdraw or is otherwise removed from representation prior to full performance of the duties specified in this section, the trial court shall approve payment of fees and costs for work performed, which may not exceed the amounts specified in

this section. An attorney who withdraws or is removed from representation shall deliver all files, notes, documents, and research to the successor attorney within 15 days after notice from the successor attorney. The successor attorney shall bear the cost of transmitting the files, notes, documents, and research.

~~(9)(8)~~ An attorney may not represent more than five capital defendants at any one time.

~~(10)(9)~~ This section does not authorize an attorney who represents a capital defendant to file repetitive or frivolous pleadings that are not supported by law or by the facts of the case. An action taken by an attorney who represents a capital defendant in postconviction capital collateral proceedings may not be the basis for a claim of ineffective assistance of counsel.

~~(11)(10)~~ An attorney appointed under s. 27.710 to represent a capital defendant may not represent the capital defendant during a retrial, a resentencing proceeding, a proceeding commenced under chapter 940, a proceeding challenging a conviction or sentence other than the conviction and sentence of death for which the appointment was made, or any civil litigation other than habeas corpus proceedings.

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

Section 6. Any attorney who incurred miscellaneous expenses under section 27.711(6), Florida Statutes, before July 1, 1999, is entitled to payment for such miscellaneous expenses up to the amount specified in this act.

Section 7. This act shall take effect July 1, 1999.

Approved by the Governor May 26, 1999.

Filed in Office Secretary of State May 26, 1999.