

Senate Bill No. 1568

An act relating to capital collateral proceedings; amending s. 27.7001, F.S.; providing legislative intent; creating s. 27.7002, F.S., relating to adequacy of capital collateral representation; relating to compensation of attorneys; requiring appointment in accordance with chapter; authorizing removal of attorney from registry under certain circumstances; providing for permanent disqualification from attorney registry under certain circumstances; amending s. 27.710, F.S.; providing an additional requirement for attorneys who may be listed on the statewide registry of attorneys in private practice who are available for appointment to represent persons convicted and sentenced to death in this state in postconviction capital collateral proceedings; amending s. 27.711, F.S.; revising language with respect to fees for representing certain capital defendants; providing an effective date.

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

Section 1. Section 27.7001, Florida Statutes, is amended to read:

27.7001 Legislative intent and findings.—It is the intent of the Legislature to create part IV of this chapter, consisting of ss. 27.7001-27.711 ~~27.708~~, inclusive, to provide for the collateral representation of any person convicted and sentenced to death in this state, so that collateral legal proceedings to challenge any Florida capital conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice. It is the further intent of the Legislature that collateral representation shall not include representation during retrials, resentencings, proceedings commenced under chapter 940, or civil litigation.

Section 2. Section 27.7002, Florida Statutes, is created to read:

27.7002. Limitation on collateral representation, lawyer disqualification, use of state funds for excess fees not authorized.—

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

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

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

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

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

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

(7) Any attorney who notifies any court, judge, state attorney, the Attorney General, or the executive director of the Commission on Capital Cases, that he or she cannot provide adequate or proper representation under the terms and conditions set forth in s. 27.711, shall be permanently disqualified from any attorney registry created under this chapter, unless good cause arises after a change in circumstances.

Section 3. Subsection (1) of section 27.710, Florida Statutes, is 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 executive director of the Commission on 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), who are available for appointment by the court under this section to represent persons convicted and sentenced to death in this state in postconviction collateral proceedings, and have attended within the last year a continuing legal education program of at least 10 hours' duration devoted specifically to the defense of capital cases, if available. Continuing legal education programs meeting the requirements of this rule offered by The Florida Bar or another recognized provider and approved for continuing legal education credit by The Florida Bar shall satisfy this requirement. The failure to comply with this requirement may be cause for removal from the list until the requirement is fulfilled 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.

Section 4. Subsection (4) of section 27.711, Florida Statutes, is amended to read:

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

(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 accepting appointment and filing a notice of appearance.

(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, 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, 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) The attorney is entitled to \$100 per hour, up to a maximum of \$4,000, 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) 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) If, at any time, ~~a death warrant is issued 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 attorney's fees and costs for representing the capital defendant throughout the certiorari proceedings before the state courts of Florida ~~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.

Section 5. This act shall take effect July 1, 2002.

Approved by the Governor April 16, 2002.

Filed in Office Secretary of State April 16, 2002.