

CHAPTER 2014-49

Senate Bill No. 2510

An act relating to court-appointed counsel; amending s. 27.40, F.S.; eliminating the limited registry for private counsel willing to accept a flat fee; creating s. 27.401, F.S.; establishing the Cross-Circuit Conflict Representation Pilot Program in specified offices of the public defender and criminal conflict and civil regional counsel; providing requirements for appointment of counsel in the circuits and region participating in the pilot program; requiring reports to be submitted by specified dates; requiring the Justice Administrative Commission to provide specified data; providing for future expiration of the pilot program; amending s. 27.5304, F.S.; increasing the statutory caps for certain flat fees in criminal cases; eliminating a requirement for the state courts system to pay certain excess fees to court-appointed counsel from court funds; providing for the Justice Administrative Commission to make such payments from specified funds appropriated to the commission; eliminating a requirement for the commission to provide certain data on cases involving court-appointed counsel and compensation of such counsel; providing an effective date.

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

Section 1. Subsection (3) of section 27.40, Florida Statutes, is amended to read:

27.40 Court-appointed counsel; circuit registries; minimum requirements; appointment by court.—

(3) In ~~using~~ utilizing a registry:

(a) The chief judge of the circuit shall compile a list of attorneys in private practice, by county and by category of cases, and provide the list to the clerk of court in each county. The chief judge of the circuit may restrict the number of attorneys on the general registry list. To be included on a registry, an attorney must ~~attorneys shall~~ certify that he or she:

1. ~~Meets That they meet~~ any minimum requirements established by the chief judge and by general law for court appointment;

2. ~~Is That they are~~ available to represent indigent defendants in cases requiring court appointment of private counsel; and

3. ~~Is That they are~~ willing to abide by the terms of the contract for services; ~~and~~

4. ~~Whether they are willing to accept as full payment the flat fees prescribed in s. 27.5304, notwithstanding the provisions of s. 27.5304(12), except for cases brought under the Racketeer Influenced and Corrupt Organizations Act and capital cases as defined in s. 27.5304(5)(a)4.~~

To be included on a registry, an attorney also must enter into a contract for services with the Justice Administrative Commission. Failure to comply with the terms of the contract for services may result in termination of the contract and removal from the registry. Each attorney on the registry is shall be responsible for notifying the clerk of the court and the Justice Administrative Commission of any change in his or her status. Failure to comply with this requirement is shall be cause for termination of the contract for services and removal from the registry until the requirement is fulfilled. ~~In~~ addition to general registries, the chief judge may establish limited registries that include only those attorneys willing to waive compensation in excess of the flat fee prescribed in s. 27.5304, notwithstanding the provisions of s. 27.5304(12).

(b) The court shall appoint attorneys in rotating order in the order in which names appear on the applicable registry, unless the court makes a finding of good cause on the record for appointing an attorney out of order. ~~If a chief judge establishes a limited registry of attorneys willing to waive compensation in excess of the flat fee, the court shall appoint attorneys from that limited registry unless there are no attorneys available to accept the appointment on the limited registry.~~ The clerk of court shall maintain the registry and provide to the court the name of the attorney for appointment. An attorney not appointed in the order in which his or her name appears on the list shall remain next in order.

(c) If the number of attorneys on the registry in a county or circuit for a particular category of cases is inadequate, the chief judge of the particular circuit shall provide to the clerk of court the names of at least three private attorneys who have relevant experience. The clerk of court shall send an application to each of these attorneys to register for appointment.

(d) Quarterly, each chief judge shall provide a current copy of each registry to the Chief Justice of the Supreme Court, the state attorney and public defender in each judicial circuit, the office of criminal conflict and civil regional counsel, the clerk of court in each county, and the Justice Administrative Commission. The registry shall be provided to the Justice Administrative Commission in the form and manner provided by the commission ~~Circuits utilizing a limited registry list as allowed by paragraph (a)~~ shall include the race, gender, and national origin of all attorneys listed in and appointed under the limited registry.

Section 2. Section 27.401, Florida Statutes, is created to read:

27.401 Cross-Circuit Conflict Representation Pilot Program.—

(1) The Cross-Circuit Conflict Representation Pilot Program is established in the offices of the public defender in the Tenth and Thirteenth Judicial Circuits and the office of the criminal conflict and civil regional counsel in the Fifth Region.

(2) Notwithstanding ss. 27.40 and 27.5305:

(a) If the public defender in the Tenth Judicial Circuit is unable to provide representation to an indigent defendant charged with a crime under s. 782.04(2), (3), or (4) due to a conflict of interest and the criminal conflict and civil regional counsel of the Second Region is also unable to provide representation for the case due to a conflict of interest, the public defender in the Thirteenth Judicial Circuit shall be appointed. If the public defender in the Thirteenth Judicial Circuit is unable to provide representation for the case due to a conflict of interest, the criminal conflict and civil regional counsel in the Fifth Region shall be appointed. If the criminal conflict and civil regional counsel in the Fifth Region is unable to provide representation due to a conflict of interest, private counsel shall be appointed.

(b) If the public defender in the Thirteenth Judicial Circuit is unable to provide representation to an indigent defendant charged with a crime under s. 782.04(2), (3), or (4) due to a conflict of interest and the criminal conflict and civil regional counsel of the Second Region is also unable to provide representation for the case due to a conflict of interest, the public defender in the Tenth Judicial Circuit shall be appointed. If the public defender in the Tenth Judicial Circuit is unable to provide representation for the case due to a conflict of interest, the criminal conflict and civil regional counsel in the Fifth Region shall be appointed. If the criminal conflict and civil regional counsel in the Fifth Region is unable to provide representation due to a conflict of interest, private counsel shall be appointed.

(3) The offices of the public defender in the Tenth and Thirteenth Judicial Circuits and the office of the criminal conflict and civil regional counsel in the Fifth Region shall each provide a report on the implementation of the pilot program to the chairs of the legislative appropriations committees by March 1, 2015, and by March 1, 2016. At a minimum, the reports must include the number of cases transferred across circuits, the advantages and disadvantages of cross-circuit representation, the estimated cost savings of the pilot program, and recommendations to improve the pilot program. The Justice Administrative Commission shall provide data to assist with the estimated cost savings of the pilot program.

(4) The Cross-Circuit Conflict Representation Pilot Program shall expire on June 30, 2016, unless otherwise provided by law. However, appointments made pursuant to this section before June 30, 2016, shall continue until completion of the case.

Section 3. Paragraph (a) of subsection (5) and paragraphs (f) through (h) of subsection (12) of section 27.5304, Florida Statutes, are amended to read:

27.5304 Private court-appointed counsel; compensation; notice.—

(5) The compensation for representation in a criminal proceeding shall not exceed the following:

(a)1. For misdemeanors and juveniles represented at the trial level: \$1,000.

2. For noncapital, nonlife felonies represented at the trial level: \$6,000 ~~\$2,500~~.

3. For life felonies represented at the trial level: \$9,000 ~~\$3,000~~.

4. For capital cases represented at the trial level: \$25,000 ~~\$15,000~~. For purposes of this subparagraph, a "capital case" is any offense for which the potential sentence is death and the state has not waived seeking the death penalty.

5. For representation on appeal: \$9,000 ~~\$2,000~~.

(12) The Legislature recognizes that on rare occasions an attorney may receive a case that requires extraordinary and unusual effort.

(f) For criminal cases only, if the court orders payment in excess of the flat fee established by law, fees shall be paid as follows:

1. The flat fee shall be paid from funds appropriated to the Justice Administrative Commission in the General Appropriations Act.

2. The amount ordered by the court in excess of the flat fee shall be paid by the Justice Administrative Commission in a special category designated for that purpose in the General Appropriations Act.

3. If, during the fiscal year, all funds designated in the special category for payment under subparagraph 2. of the amount ordered by the court in excess of the flat fee are spent, the amount of payments in excess of the flat fee shall be made from the due process contingency funds, or other funds as necessary, appropriated to the Justice Administrative Commission state courts system in the General Appropriations Act. ~~Funds from the state courts system must be used in a manner approved by the Chief Justice and administered by the Trial Court Budget Commission.~~

~~(g) The Justice Administrative Commission shall provide to the Office of the State Courts Administrator monthly data by statewide uniform case number, attorney, and defendant name concerning:~~

~~1. Private court-appointed cases opened;~~

~~2. Cases paid and the amount of payment, including any amount in excess of the flat fee; and~~

~~3. Cases for which compensation was waived.~~

~~(g)(h)~~ The Justice Administrative Commission shall provide monthly to the Office of the State Courts Administrator data concerning the number of cases approved for compensation in excess of the flat fee and the amount of these awards by circuit and by judge. The Justice Administrative Commission shall report the data quarterly in an electronic format to the chairs of the

legislative appropriations committees and the Office of the State Courts Administrator.

Section 4. This act shall take effect July 1, 2014.

Approved by the Governor June 2, 2014.

Filed in Office Secretary of State June 2, 2014.