

CHAPTER 2014-59

House Bill No. 5303

An act relating to counsel in proceedings for executive clemency; amending ss. 27.51 and 27.511, F.S.; deleting provisions concerning the power of a trial court to appoint the public defender, office of criminal conflict and civil regional counsel, or other attorney in proceedings for relief by executive clemency; correcting cross-references; amending s. 27.5303, F.S.; deleting provisions concerning the appointment of a public defender or attorney by the court to represent an indigent defendant in death penalty executive clemency proceedings; amending s. 27.5304, F.S.; deleting provisions concerning compensation of an appointed attorney representing a defendant in executive clemency proceedings; creating s. 940.031, F.S.; providing for clemency counsel representation of defendants in executive clemency proceedings; providing for compensation; amending s. 27.40, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (a) of subsection (5) of section 27.51, Florida Statutes, is amended to read:

27.51 Duties of public defender.—

(5)(a) When direct appellate proceedings prosecuted by a public defender on behalf of an accused and challenging a judgment of conviction and sentence of death terminate in an affirmance of such conviction and sentence, whether by the Florida Supreme Court or by the United States Supreme Court or by expiration of any deadline for filing such appeal in a state or federal court, the public defender shall notify the accused of his or her rights pursuant to Rule ~~3.851~~ 3.850, Florida Rules of Criminal Procedure, including any time limits pertinent thereto, and shall advise such person that representation in any collateral proceedings is the responsibility of the capital collateral regional counsel. The public defender shall then forward all original files on the matter to the capital collateral regional counsel, retaining such copies for his or her files as may be desired. ~~However, the trial court shall retain the power to appoint the public defender or other attorney not employed by the capital collateral regional counsel to represent such person in proceedings for relief by executive clemency pursuant to ss. 27.40 and 27.5303.~~

Section 2. Subsection (9) of section 27.511, Florida Statutes, is amended to read:

27.511 Offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.—

(9) When direct appellate proceedings prosecuted by the office of criminal conflict and civil regional counsel on behalf of an accused and challenging a judgment of conviction and sentence of death terminate in an affirmance of such conviction and sentence, whether by the Supreme Court or by the United States Supreme Court or by expiration of any deadline for filing such appeal in a state or federal court, the office of criminal conflict and civil regional counsel shall notify the accused of his or her rights pursuant to Rule ~~3.851~~ 3-850, Florida Rules of Criminal Procedure, including any time limits pertinent thereto, and shall advise such person that representation in any collateral proceedings is the responsibility of the capital collateral regional counsel. The office of criminal conflict and civil regional counsel shall forward all original files on the matter to the capital collateral regional counsel, retaining such copies for his or her files as may be desired or required by law. ~~However, the trial court shall retain the power to appoint the office of criminal conflict and civil regional counsel or other attorney not employed by the capital collateral regional counsel to represent such person in proceedings for relief by executive clemency pursuant to ss. 27.40 and 27.5303.~~

Section 3. Subsection (4) of section 27.5303, Florida Statutes, is amended to read:

27.5303 Public defenders; criminal conflict and civil regional counsel; conflict of interest.—

(4)(a) If a defendant is convicted and the death sentence is imposed, the appointed attorney shall continue representation through appeal to the Supreme Court. The attorney shall be compensated as provided in s. 27.5304. If the attorney first appointed is unable to handle the appeal, the court shall appoint another attorney and that attorney shall be compensated as provided in s. 27.5304.

~~(b) The public defender or an attorney appointed pursuant to this section may be appointed by the court rendering the judgment imposing the death penalty to represent an indigent defendant who has applied for executive clemency as relief from the execution of the judgment imposing the death penalty.~~

~~(b)(e)~~ When the appointed attorney in a capital case has completed the duties imposed by this section, the attorney shall file a written report in the trial court stating the duties performed by the attorney and apply for discharge.

Section 4. Subsection (5) of section 27.5304, Florida Statutes, is 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.

(b)2. For noncapital, nonlife felonies represented at the trial level: \$2,500.

(c)3. For life felonies represented at the trial level: \$3,000.

(d)4. For capital cases represented at the trial level: \$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.

(e)5. For representation on appeal: \$2,000.

~~(b) If a death sentence is imposed and affirmed on appeal to the Supreme Court, the appointed attorney shall be allowed compensation, not to exceed \$1,000, for attorney fees and costs incurred in representing the defendant as to an application for executive clemency, with compensation to be paid out of general revenue from funds budgeted to the Justice Administrative Commission.~~

Section 5. Section 940.031, Florida Statutes, is created to read:

940.031 Clemency counsel when sentence of death imposed.—

(1) The Board of Executive Clemency may appoint private counsel to represent a person sentenced to death for relief by executive clemency at such time as the board deems appropriate for clemency consideration. The board shall maintain a list of private counsel available for appointment under this section.

(2) The appointed attorney shall be compensated by the board, not to exceed \$10,000, for attorney fees and costs incurred in representing the person for relief by executive clemency, with compensation to be paid out of the General Revenue Fund from funds budgeted to the Parole Commission.

(3) It is the intent of the Legislature that the fee prescribed under this section comprises the full and complete compensation for appointed private counsel. It is further the intent of the Legislature that the fee in this section is prescribed for the purpose of providing counsel with notice of the limit on the amount of compensation for representation under this section. Appointment of counsel for executive clemency under this section shall be at the board’s sole discretion. The provision of counsel for executive clemency under this section does not create a statutory right to counsel in such proceedings.

Section 6. Paragraph (a) of 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 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, attorneys shall certify:

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

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

3. 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)(d) ~~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 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 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).

Section 7. This act shall take effect July 1, 2014.

Approved by the Governor June 2, 2014.

Filed in Office Secretary of State June 2, 2014.