

Committee Substitute for Senate Bill No. 1328

An act relating to judicial administration; requesting that the Division of Statutory Revision designate part IV of ch. 27, F.S., as "Capital Collateral Representation"; amending s. 27.702, F.S.; deleting a requirement that specifies the time for the capital collateral regional counsel to commence the representation of a person sentenced to death; creating s. 27.710, F.S.; requiring that the executive director of the Commission on the Administration of Justice in Capital Cases maintain a registry of attorneys in private practice who are available to be appointed to represent defendants in postconviction capital collateral proceedings; authorizing the executive director to obtain names of attorneys who may register for appointment; providing eligibility requirements for appointment as counsel in postconviction capital collateral proceedings; providing for appointment of an attorney selected from the registry; limiting the circumstances under which the court may permit an attorney to withdraw from representation following appointment; authorizing the court to impose sanctions; requiring that appointed counsel enter into a contract with the Comptroller; providing for the Comptroller to enforce performance of the contract; providing that more than one attorney may not be appointed at any one time to represent a capital defendant; creating s. 27.711, F.S.; requiring that an attorney appointed to represent a capital defendant file a notice of appearance; providing a schedule of fees to which the attorney is entitled for specified appearances and representations; requiring that the trial court approve the payment of costs and fees; providing that such fees constitute the exclusive means of compensation for such representation; authorizing compensation as provided by federal law under certain circumstances; authorizing the use of investigative services and the payment of fees for such services; providing that by accepting appointment to represent a capital defendant the attorney agrees to continue such representation until the defendant's sentence is reversed, reduced, or carried out; limiting the number of capital defendants that an attorney may represent; prohibiting a claim of ineffective assistance of counsel based on an action by the attorney who represents a capital defendant; prohibiting the attorney from representing the capital defendant in certain other proceedings; creating the Commission on Legislative Reform of Judicial Administration to study judicial administration reform; providing an appropriation; providing an effective date.

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

Section 1. The Division of Statutory Revision is requested to designate part IV of chapter 27, Florida Statutes, as "Capital Collateral Representation."

Section 2. Subsections (1) and (2) of section 27.702, Florida Statutes, are amended to read:

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

(1) The capital collateral regional counsel shall represent each person convicted and sentenced to death in this state for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the state courts, federal courts in this state, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court. ~~Representation by the regional counsel shall commence automatically upon termination of direct appellate proceedings in state or federal courts. Within 91 days after the date the Supreme Court issues a mandate on a direct appeal or the United States Supreme Court denies a petition for certiorari, whichever is later, the capital collateral regional counsel shall file a notice of appearance in the trial court in which the judgment and sentence were entered and shall secure all direct appeal files for collateral representation. Upon receipt of files from the public defender or other counsel, the capital collateral regional counsel shall assign each such case to personnel in his or her office for investigation, client contact, and any further action the circumstances warrant.~~ The three capital collateral regional counsels' offices shall function independently and be separate budget entities, and the regional counsels shall be the office heads for all purposes. The Justice Administrative Commission shall provide administrative support and service to the three offices to the extent requested by the regional counsels. The three regional offices shall not be subject to control, supervision, or direction by the Justice Administrative Commission in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(2) The capital collateral regional counsel shall represent persons ~~person~~ convicted and sentenced to death within the region in collateral postconviction proceedings, unless a court appoints or permits other counsel to appear as counsel of record.

Section 3. Section 27.710, Florida Statutes, is created 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 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.

(2) To be eligible for court appointment as counsel in postconviction capital collateral proceedings, an attorney must certify on an application provided by the executive director that he or she satisfies the minimum requirements for private counsel set forth in s. 27.704(2).

(3) An attorney who applies for registration and court appointment as counsel in postconviction capital collateral proceedings must certify that he or she is counsel of record in not more than four such proceedings and, if appointed to represent a person in postconviction capital collateral proceedings, shall continue such representation under the terms and conditions set forth in s. 27.711 until the sentence is reversed, reduced, or carried out or unless permitted to withdraw from representation by the trial court. The court may not permit an attorney to withdraw from representation without a finding of sufficient good cause. The court may impose appropriate sanctions if it finds that an attorney has shown bad faith with respect to continuing to represent a defendant in a postconviction capital collateral proceeding. This section does not preclude the court from reassigning a case to a capital collateral regional counsel following discontinuation of representation if a conflict of interest no longer exists with respect to the case.

(4) Each private attorney who is appointed by the court to represent a capital defendant must enter into a contract with the Comptroller. 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.

(5) Upon notification by the Attorney General that:

(a) Ninety-one days have elapsed since the Supreme Court issued a mandate on a direct appeal, or the Supreme Court of the United States has denied a petition for certiorari, whichever is later;

(b) A person under sentence of death who was previously represented by private counsel is currently unrepresented in a postconviction capital collateral proceeding; or

(c) The trial court has issued an order finding that a year and a day have elapsed since the commencement of the period for filing a motion for postconviction relief under s. 924.055(2), and the defendant's complete original motion for postconviction relief has not been filed in the trial court,

the executive director shall immediately notify the trial court that imposed the sentence of death that the court must immediately appoint an attorney, selected from the current registry, to represent such person in collateral actions challenging the legality of the judgment and sentence in the appropriate state and federal courts. The court shall have the authority to strike a notice of appearance filed by a Capital Collateral Regional Counsel, if the court finds the notice was not filed in good faith and may so notify the executive director that the client is no longer represented by the Office of Capital Collateral Regional Counsel. In making an assignment, the court shall give priority to attorneys whose experience and abilities in criminal law, especially in capital proceedings, are known by the court to be commensurate with the responsibility of representing a person sentenced to death. The trial court must issue an order of appointment which contains specific findings that the appointed counsel meets the statutory requirements and has the high ethical standards necessary to represent a person sentenced to death.

(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.

Section 4. Section 27.711, Florida Statutes, is created 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 habeas 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, 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.

(c) The attorney is entitled to \$100 per hour, up to a maximum of \$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 \$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 \$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.

(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.

(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 \$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 for miscellaneous expenses.

(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.

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

(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.

(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.

Section 5. (1)(a) There is created the Commission on Legislative Reform of Judicial Administration, which shall consist of twelve of the following members:

1. Three members appointed by the Chief Justice of the Florida Supreme Court.

2. Three members appointed by the Speaker of the House of Representatives.

3. Three members appointed by the President of the Senate.

4. One member appointed by the Governor.

5. One member appointed by the Public Defender's Attorneys Association.

6. One member appointed by the Florida Prosecuting Attorneys' Association.

(b) The Chair of the Commission shall be selected by the members.

(c) The Commission shall meet at least monthly, 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 authority.

(e) The initial members of the commission shall be appointed on or before July 15, 1998. A member's term shall expire upon submission of the report to the Legislature.

(f) The staff of the Commission of the Administration of Justice in Capital Cases shall staff the commission.

(2) The Commission shall study the feasibility of judicial administration reforms, including but not limited to, appropriate minimum standards, if any, for counsel in capital cases; the feasibility of authorizing cross circuit assignments of Public Defenders to minimize the cost of representation in conflicts-of-interest cases; the potential resolutions of the inability of the Office of the Public Defender for the Tenth Judicial Circuit to represent indigent criminal defendants on appeal in a timely fashion, and other issues regarding indigent criminal appeals; and other judicial reforms that could expedite justice and reduce costs in judicial administration. The Commission shall submit a report to the Speaker of the House of Representatives and the President of the Senate no later than January 1, 1999, containing their recommendations. The Commission's authority will expire on January 4, 1999, and the term of office of each member will expire on that date.

Section 6. There is hereby appropriated \$500,000 from the General Revenue Fund to the Justice Administration Commission for the purpose of implementing this act.

Section 7. This act shall take effect July 1, 1998.

Became a law without the Governor's approval May 24, 1998.

Filed in Office Secretary of State May 22, 1998.