

FOR CONSIDERATION By the Committee on Budget

576-02384B-11

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1 A bill to be entitled
2 An act relating to the state judicial system; creating
3 the Judicial Caseload Incentive Plan; prescribing the
4 purpose of the plan; providing for performance goals
5 for each judicial circuit; authorizing financial
6 awards to certain judges based on the performance of
7 the circuit in meeting the goals; amending s. 27.511,
8 F.S.; authorizing each office of criminal conflict and
9 civil regional counsel to create a direct-support
10 organization; prescribing requirements related to the
11 creation and operation of the direct-support
12 organization; amending s. 27.5304, F.S.; authorizing
13 the Office of the State Courts Administrator to pay
14 private court-appointed counsel if a court orders
15 payment above specified flat-fee amounts; providing
16 for a portion of such payments to be paid from funds
17 appropriated to the office for that purpose; amending
18 s. 28.37, F.S.; deleting a provision requiring clerks
19 of court to deposit certain fine revenue into the
20 Public Records Modernization Trust Fund; amending s.
21 318.18, F.S.; requiring the clerk of court and the
22 Florida Clerks of Court Operations Corporation to
23 submit reports on local traffic assessments in an
24 electronic format; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Judicial Caseload Incentive Plan.—

29 (1) PURPOSE.—There is created the Judicial Caseload

576-02384B-11

20117120__

30 Incentive Plan, the purpose of which is to resolve civil
31 disputes in a timely manner and reduce legal costs in the state
32 courts system by allowing certain judges within each judicial
33 circuit meeting the established performance goals to earn a
34 nonrecurring award.

35 (2) PERFORMANCE GOALS.—The Legislature shall prescribe
36 annual performance goals in the General Appropriations Act for
37 specified case types in each judicial circuit. The Office of the
38 State Courts Administrator shall calculate the performance of a
39 circuit toward meeting its performance goal using data collected
40 from the clerks of court. The office shall divide the annual
41 performance goals into equal quarterly goals.

42 (3) AWARDS.—

43 (a) Based on data collected from the clerks of court, the
44 Office of the State Courts Administrator shall collect data to
45 determine if a circuit meets all of the performance goals for a
46 quarter. The office:

47 1. Shall evaluate performance relating to each goal
48 separately; and

49 2. May not consider performance data from prior quarters.

50 (b)1. If the office determines that a circuit meets all of
51 the performance goals for a quarter, each judge assigned the
52 types of cases specified in the General Appropriations Act as
53 part of the Judicial Caseload Incentive Plan shall receive an
54 award for that quarter equal to \$3,000. The office shall prorate
55 the award of a judge who takes office during the quarter for
56 which the circuit meets its quarterly goals or transfers into or
57 out of the relevant divisions handling the types of cases
58 specified in the Judicial Caseload Incentive Plan.

576-02384B-11

20117120__

59 2. A judge may not receive more than one full award per
60 quarter.

61 3. An award under this section is contingent upon the
62 appropriation of, and shall be paid from, funds in the General
63 Appropriations Act.

64 (4) REPORTS.—Within 30 days after the end of each quarter,
65 the Office of the State Courts Administrator shall report
66 electronically to the chairs of the appropriations committees of
67 the Senate and the House of Representatives the progress of each
68 circuit in meeting performance goals for the quarter and the
69 number and amount of awards provided.

70 Section 2. Subsection (10) is added to section 27.511,
71 Florida Statutes, to read:

72 27.511 Offices of criminal conflict and civil regional
73 counsel; legislative intent; qualifications; appointment;
74 duties.—

75 (10) Each office of criminal conflict and civil regional
76 counsel may create a direct-support organization.

77 (a) The direct-support organization must be registered in
78 this state as a nonprofit corporation under chapter 617. The
79 direct-support organization shall be exempt from the filing fees
80 under s. 617.0122.

81 (b) The direct-support organization shall be organized and
82 operated to conduct programs and activities; raise funds;
83 request and receive grants, gifts, and bequests of moneys;
84 acquire, receive, hold, invest, and administer, in its own name,
85 securities, funds, objects of value, or other property, real or
86 personal; and make expenditures to or for the direct or indirect
87 benefit of the office of criminal conflict and civil regional

576-02384B-11

20117120__

88 counsel.

89 (c) The direct-support organization shall operate under a
90 written contract with the regional counsel. The written contract
91 must, at a minimum, provide for:

92 1. Approval of the articles of incorporation and bylaws of
93 the direct-support organization by the regional counsel.

94 2. Submission of an annual budget for the approval by the
95 regional counsel.

96 3. The reversion without penalty to the office of criminal
97 conflict and civil regional counsel, or to the state if the
98 office ceases to exist, of all moneys and property held in trust
99 by the direct-support organization for the office if the direct-
100 support organization ceases to exist or if the contract is
101 terminated.

102 4. The fiscal year of the direct-support organization,
103 which must begin July 1 of each year and end June 30 of the
104 following year.

105 5. The disclosure of material provisions of the contract
106 and the distinction between the regional counsel and the direct-
107 support organization to donors of gifts, contributions, or
108 bequests, as well as on all promotional and fundraising
109 publications.

110 (d) If the regional counsel determines that the direct-
111 support organization is operating in a manner that is
112 inconsistent with the goals and purposes of the office of
113 criminal conflict and civil regional counsel or is not acting in
114 the best interest of the state, the regional counsel may
115 terminate the contract, and thereafter the organization may not
116 use the name of the office.

576-02384B-11

20117120__

117 (e) The regional counsel shall appoint a board of directors
118 for the direct-support organization. The regional counsel may
119 designate employees of the office of criminal conflict and civil
120 regional counsel to serve on the board of directors. Members of
121 the board shall serve at the pleasure of the regional counsel.

122 (f) The regional counsel:

123 1. May authorize the use of facilities and property other
124 than money which are owned by the office of criminal conflict
125 and civil regional counsel to be used by the direct-support
126 organization.

127 2. May authorize the use of personnel services provided by
128 employees of the office.

129 3. May prescribe the conditions by which the direct-support
130 organization may use property, facilities, or personnel services
131 of the office.

132 4. May not authorize the use of property, facilities, or
133 personnel services of the direct-support organization if the
134 organization does not provide equal employment opportunities to
135 all persons, regardless of race, color, religion, sex, age, or
136 national origin.

137
138 For the purposes of this paragraph, the term "personnel
139 services" includes full-time personnel and part-time personnel
140 as well as payroll processing.

141 (g) Moneys of the direct-support organization may be held
142 in a depository account in the name of the direct-support
143 organization which is separate from the accounts of the office,
144 but which is subject to the provisions of the contract with the
145 regional counsel.

576-02384B-11

20117120

146 (h) The direct-support organization shall provide for an
147 annual financial audit in accordance with s. 215.981.

148 (i) The direct-support organization may not exercise any
149 power under s. 617.0302(12) or (16). A state employee may not
150 receive compensation from the direct-support organization for
151 service on the board of directors or for services rendered to
152 the direct-support organization.

153 Section 3. Subsections (1) and (12) of section 27.5304,
154 Florida Statutes, are amended to read:

155 27.5304 Private court-appointed counsel; compensation.—

156 (1) Private court-appointed counsel shall be compensated by
157 the Justice Administrative Commission and the Office of the
158 State Courts Administrator as provided in this section and the
159 General Appropriations Act. The flat fees prescribed in this
160 section are limitations on compensation. The specific flat fee
161 amounts for compensation shall be established annually in the
162 General Appropriations Act. The attorney also shall be
163 reimbursed for reasonable and necessary expenses in accordance
164 with s. 29.007. If the attorney is representing a defendant
165 charged with more than one offense in the same case, the
166 attorney shall be compensated at the rate provided for the most
167 serious offense for which he or she represented the defendant.
168 This section does not allow stacking of the fee limits
169 established by this section.

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

173 (a) If counsel seeks compensation that exceeds the limits
174 prescribed under this section and the General Appropriations

576-02384B-11

20117120__

175 Act, he or she must file a motion with the chief judge for an
176 order approving payment of attorney's fees in excess of these
177 limits.

178 1. Prior to filing the motion, the counsel shall deliver a
179 copy of the intended billing, together with supporting
180 affidavits and all other necessary documentation, to the Justice
181 Administrative Commission.

182 2. The Office of the State Courts Administrator ~~Justice~~
183 ~~Administrative Commission~~ shall review the billings, affidavit,
184 and documentation for completeness and compliance with
185 contractual and statutory requirements. If the State Courts
186 Administrator ~~Justice Administrative Commission~~ objects to any
187 portion of the proposed billing, the objection and reasons
188 therefor shall be communicated in writing to the private court-
189 appointed counsel. The counsel may thereafter file his or her
190 motion, which must specify whether the State Courts
191 Administrator ~~commission~~ objects to any portion of the billing
192 or the sufficiency of documentation, and shall attach the
193 ~~commission's~~ letter stating its objection.

194 (b) Following receipt of the motion to exceed the fee
195 limits, the chief judge or a designee shall hold an evidentiary
196 hearing.

197 1. At the hearing, the attorney seeking compensation must
198 prove by competent and substantial evidence that the case
199 required extraordinary and unusual efforts. The chief judge or
200 designee shall consider criteria such as the number of
201 witnesses, the complexity of the factual and legal issues, and
202 the length of trial. The fact that a trial was conducted in a
203 case does not, by itself, constitute competent substantial

576-02384B-11

20117120__

204 evidence of an extraordinary and unusual effort. In a criminal
205 case, relief under this section may not be granted if the number
206 of work hours does not exceed 75 or the number of the state's
207 witnesses deposed does not exceed 20.

208 2. The chief judge or designee shall enter a written order
209 detailing his or her findings and identifying the extraordinary
210 nature of the time and efforts of the attorney in the case which
211 warrant exceeding the flat fee established by this section and
212 the General Appropriations Act.

213 ~~(c) A copy of the motion and attachments shall be served on~~
214 ~~the Justice Administrative Commission at least 5 business days~~
215 ~~prior to the date of a hearing. The Justice Administrative~~
216 ~~Commission shall have standing to appear before the court,~~
217 ~~including at the hearing under paragraph (b), to contest any~~
218 ~~motion for an order approving payment of attorney's fees, costs,~~
219 ~~or related expenses and may participate in a hearing on the~~
220 ~~motion by use of telephonic or other communication equipment~~
221 ~~unless ordered otherwise. The Justice Administrative Commission~~
222 ~~may contract with other public or private entities or~~
223 ~~individuals to appear before the court for the purpose of~~
224 ~~contesting any motion for an order approving payment of~~
225 ~~attorney's fees, costs, or related expenses. The fact that the~~
226 ~~Justice Administrative Commission has not objected to any~~
227 ~~portion of the billing or to the sufficiency of the~~
228 ~~documentation is not binding on the court.~~

229 (c) ~~(d)~~ If the chief judge or designee finds that counsel
230 has proved by competent and substantial evidence that the case
231 required extraordinary and unusual efforts, the chief judge or
232 designee shall order the compensation to be paid to the attorney

576-02384B-11

20117120__

233 at a percentage above the flat fee rate, depending on the extent
234 of the unusual and extraordinary effort required. The percentage
235 shall be only the rate necessary to ensure that the fees paid
236 are not confiscatory under common law. The percentage may not
237 exceed 200 percent of the established flat fee, absent a
238 specific finding that 200 percent of the flat fee in the case
239 would be confiscatory. If the chief judge or designee determines
240 that 200 percent of the flat fee would be confiscatory, he or
241 she shall order the amount of compensation using an hourly rate
242 not to exceed \$75 per hour for a noncapital case and \$100 per
243 hour for a capital case. However, the compensation calculated by
244 using the hourly rate shall be only that amount necessary to
245 ensure that the total fees paid are not confiscatory.

246 (d) ~~(e)~~ Any order granting relief under this subsection must
247 be attached to the final request for a payment submitted to the
248 Office of the State Courts Administrator ~~Justice Administrative~~
249 ~~Commission~~.

250 (e) ~~(f)~~ ~~The Justice Administrative Commission shall provide~~
251 ~~to the Office of the State Courts Administrator data concerning~~
252 ~~the number of cases approved for compensation in excess of the~~
253 ~~limitation and the amount of these awards by circuit and by~~
254 ~~judge.~~ The Office of the State Courts Administrator shall report
255 the number of cases paid and the amount paid per case by circuit
256 ~~data~~ quarterly to the President of the Senate, the Speaker of
257 the House of Representatives, the Chief Justice of the Supreme
258 Court, and the chief judge of each circuit.

259 (f) The portion of compensation paid to private court-
260 appointed counsel under this subsection which exceeds the
261 compensation limits prescribed elsewhere under this section and

576-02384B-11

20117120__

262 the General Appropriations Act shall be paid from funds
263 appropriated to the Office of the State Courts Administrator for
264 this purpose.

265 Section 4. Subsection (2) of section 28.37, Florida
266 Statutes, is amended to read:

267 28.37 Fines, fees, service charges, and costs remitted to
268 the state.—

269 (2) Except as otherwise provided in ss. 28.241 and 34.041,
270 all court-related fines, fees, service charges, and costs are
271 considered state funds and shall be remitted by the clerk to the
272 Department of Revenue for deposit into the Clerks of the Court
273 Trust Fund within the Justice Administrative Commission.
274 ~~However, 10 percent of all court-related fines collected by the~~
275 ~~clerk shall be deposited into the clerk's Public Records~~
276 ~~Modernization Trust Fund to be used exclusively for additional~~
277 ~~clerk court-related operational needs and program enhancements.~~

278 Section 5. Paragraph (b) of subsection (13) of section
279 318.18, Florida Statutes, is amended to read:

280 318.18 Amount of penalties.—The penalties required for a
281 noncriminal disposition pursuant to s. 318.14 or a criminal
282 offense listed in s. 318.17 are as follows:

283 (13)

284 (b) A county may impose a surcharge under subparagraph
285 (a)1., subparagraph(a)2., or subparagraph(a)3., but may not
286 impose more than one surcharge under this subsection. A county
287 may elect to impose a different authorized surcharge but may not
288 impose more than one surcharge at a time. The clerk of court
289 shall report, no later than 30 days after the end of the
290 quarter, the amount of funds collected under this subsection

576-02384B-11

20117120__

291 during each quarter of the fiscal year. The clerk shall submit
292 the report, in an electronic ~~a~~ format developed by the Florida
293 Clerks of Court Operations Corporation ~~Office of State Courts~~
294 ~~Administrator~~, to the chief judge of the circuit and the Florida
295 Clerks of Court Operations Corporation. The corporation shall
296 submit the report in an electronic format to the Governor, the
297 President of the Senate, the Speaker of the House of
298 Representatives, and the board of county commissioners.

299 Section 6. This act shall take effect July 1, 2011.