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1
2 An act relating to court-appointed counsel; amending
3 s. 27.40, F.S.; eliminating the limited registry for
4 private counsel willing to accept a flat fee; creating
5 s. 27.401, F.S.; establishing the Cross-Circuit
6 Conflict Representation Pilot Program in specified
7 offices of the public defender and criminal conflict
8 and civil regional counsel; providing requirements for
9 appointment of counsel in the circuits and region
10 participating in the pilot program; requiring reports
11 to be submitted by specified dates; requiring the
12 Justice Administrative Commission to provide specified
13 data; providing for future expiration of the pilot
14 program; amending s. 27.5304, F.S.; increasing the
15 statutory caps for certain flat fees in criminal
16 cases; eliminating a requirement for the state courts
17 system to pay certain excess fees to court-appointed
18 counsel from court funds; providing for the Justice
19 Administrative Commission to make such payments from
20 specified funds appropriated to the commission;
21 eliminating a requirement for the commission to
22 provide certain data on cases involving court-
23 appointed counsel and compensation of such counsel;
24 providing an effective date.

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

27
28 Section 1. Subsection (3) of section 27.40, Florida
29 Statutes, is amended to read:

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30 27.40 Court-appointed counsel; circuit registries; minimum
31 requirements; appointment by court.—

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

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

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

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

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

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

53
54 To be included on a registry, an attorney ~~also~~ must enter into a
55 contract for services with the Justice Administrative
56 Commission. Failure to comply with the terms of the contract for
57 services may result in termination of the contract and removal
58 from the registry. Each attorney on the registry is ~~shall be~~

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59 responsible for notifying the clerk of the court and the Justice
60 Administrative Commission of any change in his or her status.
61 Failure to comply with this requirement is ~~shall be~~ cause for
62 termination of the contract for services and removal from the
63 registry until the requirement is fulfilled. ~~In addition to~~
64 ~~general registries, the chief judge may establish limited~~
65 ~~registries that include only those attorneys willing to waive~~
66 ~~compensation in excess of the flat fee prescribed in s. 27.5304,~~
67 ~~notwithstanding the provisions of s. 27.5304(12).~~

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

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

87 (d) Quarterly, each chief judge shall provide a current

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88 copy of each registry to the Chief Justice of the Supreme Court,
89 the state attorney and public defender in each judicial circuit,
90 the office of criminal conflict and civil regional counsel, the
91 clerk of court in each county, and the Justice Administrative
92 Commission. The registry shall be provided to the Justice
93 Administrative Commission in the form and manner provided by the
94 commission ~~Circuits utilizing a limited registry list as allowed~~
95 ~~by paragraph (a) shall include the race, gender, and national~~
96 ~~origin of all attorneys listed in and appointed under the~~
97 ~~limited registry.~~

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

100 27.401 Cross-Circuit Conflict Representation Pilot
101 Program.-

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

107 (2) Notwithstanding ss. 27.40 and 27.5305:

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

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117 a conflict of interest, the criminal conflict and civil regional
118 counsel in the Fifth Region shall be appointed. If the criminal
119 conflict and civil regional counsel in the Fifth Region is
120 unable to provide representation due to a conflict of interest,
121 private counsel shall be appointed.

122 (b) If the public defender in the Thirteenth Judicial
123 Circuit is unable to provide representation to an indigent
124 defendant charged with a crime under s. 782.04(2), (3), or (4)
125 due to a conflict of interest and the criminal conflict and
126 civil regional counsel of the Second Region is also unable to
127 provide representation for the case due to a conflict of
128 interest, the public defender in the Tenth Judicial Circuit
129 shall be appointed. If the public defender in the Tenth Judicial
130 Circuit is unable to provide representation for the case due to
131 a conflict of interest, the criminal conflict and civil regional
132 counsel in the Fifth Region shall be appointed. If the criminal
133 conflict and civil regional counsel in the Fifth Region is
134 unable to provide representation due to a conflict of interest,
135 private counsel shall be appointed.

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

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146 Administrative Commission shall provide data to assist with the
147 estimated cost savings of the pilot program.

148 (4) The Cross-Circuit Conflict Representation Pilot Program
149 shall expire on June 30, 2016, unless otherwise provided by law.
150 However, appointments made pursuant to this section before June
151 30, 2016, shall continue until completion of the case.

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

155 27.5304 Private court-appointed counsel; compensation;
156 notice.—

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

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

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

163 3. For life felonies represented at the trial level: \$9,000
164 ~~\$3,000~~.

165 4. For capital cases represented at the trial level:
166 \$25,000 ~~\$15,000~~. For purposes of this subparagraph, a "capital
167 case" is any offense for which the potential sentence is death
168 and the state has not waived seeking the death penalty.

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

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

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

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175 follows:

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

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

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

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

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

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

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

201 (g)(h) The Justice Administrative Commission shall provide
202 monthly to the Office of the State Courts Administrator data
203 concerning the number of cases approved for compensation in

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204 excess of the flat fee and the amount of these awards by circuit
205 and by judge. The Justice Administrative Commission shall report
206 the data quarterly in an electronic format to the chairs of the
207 legislative appropriations committees and the Office of the
208 State Courts Administrator.

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