

By the Committees on Justice Appropriations; Criminal Justice;
and Senator Campbell

604-2164-06

1 A bill to be entitled
2 An act relating to the Commission on Capital
3 Cases; amending s. 27.701, F.S.; specifying
4 that the capital collateral regional counsels
5 are a part of the legislative branch; providing
6 for the appointment of the capital collateral
7 regional counsels by the President of the
8 Senate and the Speaker of the House of
9 Representatives; amending s. 27.702, F.S.;
10 removing the requirement that the Justice
11 Administrative Commission provide
12 administrative support to the capital
13 collateral regional counsels; amending s.
14 27.709, F.S.; specifying that the Commission on
15 Capital Cases is a part of the legislative
16 branch; authorizing the Commission on Capital
17 Cases to sponsor continuing legal education
18 programs devoted specifically to capital cases;
19 amending s. 27.710, F.S.; specifying criteria
20 that a private attorney must satisfy in order
21 to be eligible to be appointed as counsel in a
22 postconviction capital collateral proceeding;
23 providing that a judge may appoint an attorney
24 who does not meet the appointment criteria if
25 exceptional circumstances exist; providing that
26 an attorney may be removed from the capital
27 collateral registry if the attorney does not
28 meet the criteria; directing the executive
29 director of the commission to remove an
30 attorney from the registry if the attorney
31 fails to timely file an executed contract;

1 requiring a private attorney appointed by a
2 court to represent a capital defendant to
3 submit a report each quarter to the commission;
4 requiring that the executive director remove an
5 attorney from the registry if the attorney does
6 not submit the report within a specified time;
7 requiring that an attorney make reasonable
8 efforts to assist the person under a sentence
9 of death in finding an attorney under certain
10 circumstances; amending s. 27.711, F.S.;
11 providing that an attorney who is listed on the
12 registry and representing at least one capital
13 defendant is entitled to tuition and expenses
14 for continuing legal education courses;
15 providing that an attorney may represent no
16 more than 7 inmates in capital postconviction
17 cases at any one time; authorizing a trial
18 judge to award fees exceeding those set by law;
19 requiring a judge intending to award such fees
20 to make specific written findings of fact;
21 amending s. 216.011, F.S.; providing that the
22 capital collateral regional counsels are not a
23 state agency; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsection (1) of section 27.701, Florida
28 Statutes, is amended to read:

29 27.701 Capital collateral regional counsels.--
30 (1) There are created three regional offices of
31 capital collateral counsel, which shall be located in a

1 northern, middle, and southern region of the state. The
2 capital collateral counsels shall be a part of the legislative
3 branch of government. The northern region shall consist of the
4 First, Second, Third, Fourth, Eighth, and Fourteenth Judicial
5 Circuits; the middle region shall consist of the Fifth, Sixth,
6 Seventh, Ninth, Tenth, Twelfth, Thirteenth, and Eighteenth
7 Judicial Circuits; and the southern region shall consist of
8 the Eleventh, Fifteenth, Sixteenth, Seventeenth, Nineteenth,
9 and Twentieth Judicial Circuits. Each regional office shall be
10 administered by a regional counsel. A regional counsel must
11 be, and must have been for the preceding 5 years, a member in
12 good standing of The Florida Bar or a similar organization in
13 another state. Each capital collateral regional counsel shall
14 be appointed by the President of the Senate and the Speaker of
15 the House of Representatives ~~Governor~~, and is subject to
16 confirmation by the Senate. The Supreme Court Judicial
17 Nominating Commission shall recommend to the President of the
18 Senate and the Speaker of the House of Representatives
19 ~~Governor~~ three qualified candidates for each appointment as
20 regional counsel. The President of the Senate and the Speaker
21 of the House of Representatives ~~Governor~~ shall appoint a
22 regional counsel for each region from among the
23 recommendations, or, if it is in the best interest of the fair
24 administration of justice in capital cases, they ~~the Governor~~
25 may reject the nominations and request submission of three new
26 nominees by the Supreme Court Judicial Nominating Commission.
27 Each capital collateral regional counsel shall be appointed to
28 a term of 3 years. Vacancies in the office of capital
29 collateral regional counsel shall be filled in the same manner
30 as appointments. A person appointed as a regional counsel may
31

1 | not run for or accept appointment to any state office for 2
2 | years following vacation of office.

3 | Section 2. Subsection (1) of section 27.702, Florida
4 | Statutes, is amended to read:

5 | 27.702 Duties of the capital collateral regional
6 | counsel; reports.--

7 | (1) The capital collateral regional counsel shall
8 | represent each person convicted and sentenced to death in this
9 | state for the sole purpose of instituting and prosecuting
10 | collateral actions challenging the legality of the judgment
11 | and sentence imposed against such person in the state courts,
12 | federal courts in this state, the United States Court of
13 | Appeals for the Eleventh Circuit, and the United States
14 | Supreme Court. The capital collateral regional counsel and the
15 | attorneys appointed pursuant to s. 27.710 shall file only
16 | those postconviction or collateral actions authorized by
17 | statute. The three capital collateral regional counsels'
18 | offices shall function independently and be separate budget
19 | entities, and the regional counsels shall be the office heads
20 | for all purposes. ~~The Justice Administrative Commission shall~~
21 | ~~provide administrative support and service to the three~~
22 | ~~offices to the extent requested by the regional counsels. The~~
23 | ~~three regional offices shall not be subject to control,~~
24 | ~~supervision, or direction by the Justice Administrative~~
25 | ~~Commission in any manner, including, but not limited to,~~
26 | ~~personnel, purchasing, transactions involving real or personal~~
27 | ~~property, and budgetary matters.~~

28 | Section 3. Paragraph (a) of subsection (1) of section
29 | 27.709, Florida Statutes, is amended, and paragraph (d) is
30 | added to subsection (2) of that section, to read:

31 | 27.709 Commission on Capital Cases.--

1 (1)(a) There is created within the legislative branch
2 of government the Commission on Capital Cases, which shall
3 consist of the six following members:

4 1. Two members appointed by the Governor.

5 2. Two members appointed by the President of the
6 Senate from the membership of the Senate. One member shall be
7 a member of the majority party, and one member shall be a
8 member of the minority party.

9 3. Two members appointed by the Speaker of the House
10 of Representatives from the membership of the House of
11 Representatives. One member shall be a member of the majority
12 party, and one member shall be a member of the minority party.

13 (2)

14 (d) The commission may sponsor programs of continuing
15 legal education which are devoted specifically to capital
16 cases and shall undertake any project recommended or approved
17 by the commission members.

18 Section 4. Section 27.710, Florida Statutes, is
19 amended to read:

20 27.710 Registry of attorneys applying to represent
21 persons in postconviction capital collateral proceedings;
22 certification of minimum requirements; appointment by trial
23 court.--

24 (1) The executive director of the Commission on
25 Capital Cases shall compile and maintain a statewide registry
26 of attorneys in private practice who have certified that they
27 meet the ~~minimum~~ requirements of this section and s-
28 ~~27.704(2)~~, who are available for appointment by the court
29 under this section to represent persons convicted and
30 sentenced to death in this state in postconviction collateral
31 proceedings, ~~and who have attended within the last year a~~

1 ~~continuing legal education program of at least 10 hours'~~
2 ~~duration devoted specifically to the defense of capital cases,~~
3 ~~if available. Continuing legal education programs meeting the~~
4 ~~requirements of this rule offered by The Florida Bar or~~
5 ~~another recognized provider and approved for continuing legal~~
6 ~~education credit by The Florida Bar shall satisfy this~~
7 ~~requirement. The failure to comply with this requirement may~~
8 ~~be cause for removal from the list until the requirement is~~
9 ~~fulfilled.~~ To ensure that sufficient attorneys are available
10 for appointment by the court, when the number of attorneys on
11 the registry falls below 50, the executive director shall
12 notify the chief judge of each circuit by letter and request
13 the chief judge to promptly submit the names of at least three
14 private attorneys who regularly practice criminal law in that
15 circuit and who appear to meet the minimum requirements to
16 represent persons in postconviction capital collateral
17 proceedings. The executive director shall send an application
18 to each attorney identified by the chief judge so that the
19 attorney may register for appointment as counsel in
20 postconviction capital collateral proceedings. As necessary,
21 the executive director may also advertise in legal
22 publications and other appropriate media for qualified
23 attorneys interested in registering for appointment as counsel
24 in postconviction capital collateral proceedings. Not later
25 than September 1 of each year, and as necessary thereafter,
26 the executive director shall provide to the Chief Justice of
27 the Supreme Court, the chief judge and state attorney in each
28 judicial circuit, and the Attorney General a current copy of
29 its registry of attorneys who are available for appointment as
30 counsel in postconviction capital collateral proceedings. The
31 registry must be indexed by judicial circuit and must contain

1 the requisite information submitted by the applicants in
2 accordance with this section.

3 (2)(a) To be eligible for court appointment as counsel
4 in postconviction capital collateral proceedings, an attorney
5 must certify on an application provided by the executive
6 director that he or she is a member in good standing of The
7 Florida Bar and:

8 1. Is an active practitioner who has at least 5 years'
9 experience in the practice of criminal law, is familiar with
10 the production of evidence and the use of expert witnesses,
11 including psychiatric and forensic evidence, and has
12 demonstrated the proficiency necessary for representation in
13 capital cases, including the investigation and presentation of
14 mitigation evidence;

15 2. Has attended a minimum of 12 hours of continuing
16 legal education programs within the previous 2 years which
17 were devoted to the defense of capital cases and offered by
18 The Florida Bar or another recognized provider of continuing
19 legal education courses; and

20 3.a. Has tried at least nine state or federal jury
21 trials to completion, two of which must have been capital
22 cases and:

23 (I) Three of which must have been murder trials;

24 (II) One of which must have been a murder trial and
25 five of which must have been other felony trials; or

26 (III) One of which must have included a postconviction
27 evidentiary hearing and five of which must have been other
28 felony trials; or

29 b. Has appealed one capital conviction and appealed:

30 (I) At least three felony convictions, one of which
31 must have been a murder;

1 (II) At least three felony convictions and
2 participated in one capital postconviction evidentiary
3 hearing; or

4 (III) At least six felony convictions, two of which
5 must have been murders.

6 (b) If the trial court finds that exceptional
7 circumstances exist requiring appointment of an attorney who
8 does not meet the criteria set forth in paragraph (a), the
9 trial court shall enter a written order specifying the
10 exceptional circumstances requiring appointment of the
11 attorney and explicit findings that the attorney chosen will
12 provide competent representation in accordance with the intent
13 of this section.

14 (c) A failure to comply with any criterion set forth
15 in paragraph (a) may be cause to remove the attorney from the
16 registry until the criterion is satisfied.

17 (d) Satisfaction of the criterion may be proven by
18 submitting a written certification to the commission. The
19 certification is complete upon submission of the application
20 by electronic mail without a signature ~~satisfies the minimum~~
21 requirements for private counsel set forth in s. 27.704(2).

22 (3) An attorney ~~who applies for registration and court~~
23 ~~appointment as counsel in postconviction capital collateral~~
24 ~~proceedings must certify that he or she is counsel of record~~
25 ~~in not more than four such proceedings and, if appointed to~~
26 represent a person in postconviction capital collateral
27 proceedings, shall continue the such representation under the
28 terms and conditions set forth in s. 27.711 until the sentence
29 is reversed, reduced, or carried out or unless permitted to
30 withdraw from representation by the trial court. The court may
31 not permit an attorney to withdraw from representation without

1 a finding of sufficient good cause. The court may impose
2 appropriate sanctions if it finds that an attorney has shown
3 bad faith with respect to continuing to represent a defendant
4 in a postconviction capital collateral proceeding. This
5 section does not preclude the court from reassigning a case to
6 a capital collateral regional counsel following
7 discontinuation of representation if a conflict of interest no
8 longer exists with respect to the case.

9 (4)(a) Each private attorney who is appointed by the
10 court to represent a capital defendant must enter into a
11 contract with the Chief Financial Officer. If the appointed
12 attorney fails to execute the contract within 30 days after
13 the date the contract is mailed to the attorney, the executive
14 director of the Commission on Capital Cases shall notify the
15 trial court and shall remove the attorney from the registry
16 list. The Chief Financial Officer shall develop the form of
17 the contract, function as contract manager, and enforce
18 performance of the terms and conditions of the contract. By
19 signing such contract, the attorney certifies that he or she
20 intends to continue the representation under the terms and
21 conditions set forth in the contract until the sentence is
22 reversed, reduced, or carried out or until released by order
23 of the trial court.

24 (b) Each private attorney appointed by a court to
25 represent a capital defendant shall submit a report each
26 quarter to the commission in the format designated by the
27 commission. If the attorney does not submit the report within
28 30 days after the end of the quarter, the executive director
29 shall remove the attorney from the registry and the court may
30 impose a fine or remove the attorney from the case.

1 (5)(a) Upon the motion of the capital collateral
2 regional counsel to withdraw pursuant to s. 924.056(1)(a); or

3 (b) Upon notification by the state attorney or the
4 Attorney General that:

5 1. Thirty days have elapsed since appointment of the
6 capital collateral regional counsel and no entry of appearance
7 has been filed under ~~pursuant to~~ s. 924.056; or

8 2. A person under sentence of death who was previously
9 represented by private counsel is currently unrepresented in a
10 postconviction capital collateral proceeding,

11
12 the executive director shall immediately notify the trial
13 court that imposed the sentence of death that the court must
14 immediately appoint an attorney, selected from the current
15 registry, to represent the ~~such~~ person in collateral actions
16 challenging the legality of the judgment and sentence in the
17 appropriate state and federal courts. If the attorney
18 appointed to represent a person under a sentence of death does
19 not wish to continue representing the person in federal
20 proceedings, the attorney must make reasonable efforts to
21 assist the person in finding an attorney who meets the federal
22 criteria to represent the person in any federal proceedings.

23 The court shall have the authority to strike a notice of
24 appearance filed by a Capital Collateral Regional Counsel, if
25 the court finds the notice was not filed in good faith and may
26 so notify the executive director that the client is no longer
27 represented by the Office of Capital Collateral Regional
28 Counsel. In making an assignment, the court shall give
29 priority to attorneys whose experience and abilities in
30 criminal law, especially in capital proceedings, are known by
31 the court to be commensurate with the responsibility of

1 | representing a person sentenced to death. The trial court must
2 | issue an order of appointment which contains specific findings
3 | that the appointed counsel meets the statutory requirements
4 | and has the high ethical standards necessary to represent a
5 | person sentenced to death.

6 | (6) More than one attorney may not be appointed and
7 | compensated at any one time under s. 27.711 to represent a
8 | person in postconviction capital collateral proceedings.

9 | However, an attorney appointed under this section may
10 | designate another attorney to assist him or her if the
11 | designated attorney meets the qualifications of this section.

12 | Section 5. Subsections (4), (7), and (9) of section
13 | 27.711, Florida Statutes, are amended, and subsection (15) is
14 | added to that section, to read:

15 | 27.711 Terms and conditions of appointment of
16 | attorneys as counsel in postconviction capital collateral
17 | proceedings.--

18 | (4) Upon approval by the trial court, an attorney
19 | appointed to represent a capital defendant under s. 27.710 is
20 | entitled to payment of the following fees by the Chief
21 | Financial Officer:

22 | (a) Regardless of the stage of postconviction capital
23 | collateral proceedings, the attorney is entitled to \$100 per
24 | hour, up to a maximum of \$2,500, after accepting appointment
25 | and filing a notice of appearance.

26 | (b) The attorney is entitled to \$100 per hour, up to a
27 | maximum of \$20,000, after timely filing in the trial court the
28 | capital defendant's complete original motion for
29 | postconviction relief under the Florida Rules of Criminal
30 | Procedure. The motion must raise all issues to be addressed by
31 | the trial court. However, an attorney is entitled to fees

1 under this paragraph if the court schedules a hearing on a
2 matter that makes the filing of the original motion for
3 postconviction relief unnecessary or if the court otherwise
4 disposes of the case.

5 (c) The attorney is entitled to \$100 per hour, up to a
6 maximum of \$20,000, after the final hearing on ~~trial court~~
7 ~~issues a final order granting or denying~~ the capital
8 defendant's motion for postconviction relief.

9 (d) The attorney is entitled to \$100 per hour, up to a
10 maximum of \$20,000, after timely filing in the Supreme Court
11 the capital defendant's brief or briefs that address the trial
12 court's final order granting or denying the capital
13 defendant's motion for postconviction relief and the state
14 petition for writ of habeas corpus.

15 (e) The attorney is entitled to \$100 per hour, up to a
16 maximum of \$10,000, after the trial court issues an order,
17 following ~~pursuant to~~ a remand from the Supreme Court, which
18 directs the trial court to hold further proceedings on the
19 capital defendant's motion for postconviction relief.

20 (f) The attorney is entitled to \$100 per hour, up to a
21 maximum of \$4,000, after the appeal of the trial court's
22 denial of the capital defendant's motion for postconviction
23 relief and the capital defendant's state petition for writ of
24 habeas corpus become final in the Supreme Court.

25 (g) At the conclusion of the capital defendant's
26 postconviction capital collateral proceedings in state court,
27 the attorney is entitled to \$100 per hour, up to a maximum of
28 \$2,500, for the preparation of the initial federal pleading
29 ~~after filing a petition for writ of certiorari in the Supreme~~
30 ~~Court of the United States.~~

31

1 (h) If, at any time, a death warrant is issued, the
2 attorney is entitled to \$100 per hour, up to a maximum of
3 \$5,000. This payment shall be full compensation for attorney's
4 fees and costs for representing the capital defendant
5 throughout the proceedings before the state courts of Florida.
6

7 The hours billed by a contracting attorney under this
8 subsection may include time devoted to representation of the
9 defendant by another attorney who is qualified under s. 27.710
10 and who has been designated by the contracting attorney to
11 assist him or her.

12 (7) Each registry An attorney who is representing at
13 least one capital defendant ~~actively representing a capital~~
14 ~~defendant~~ is entitled to a maximum of \$500 per fiscal year for
15 tuition and expenses for continuing legal education that
16 pertains to the representation of capital defendants,
17 regardless of the total number of capital defendants the
18 attorney is representing. Upon approval by the trial court,
19 the attorney is entitled to payment by the Chief Financial
20 Officer for expenses for such tuition and continuing legal
21 education.

22 (9) An attorney may not represent more than 7 inmates
23 ~~five defendants~~ in capital postconviction litigation at any
24 one time. The 7-inmate-representation limit includes capital
25 postconviction cases proceeding under contract with the
26 capital collateral regional counsel, inmates represented pro
27 bono, and inmates privately retaining the attorney. An
28 attorney may not be appointed to additional capital
29 postconviction cases until the attorney's representation total
30 falls below the 7-case limit.
31

1 (15) A trial judge may award fees that exceed those
2 outlined in this section. If a trial court judge intends to
3 award attorney fees in excess of those outlined in this
4 section, the judge must include written findings of fact that
5 specifically state the extraordinary nature of the
6 expenditures of the time, energy, and talents of the attorney
7 in the case which are not ordinarily expended in other capital
8 collateral cases.

9 Section 6. Paragraph (qq) of subsection (1) of section
10 216.011, Florida Statutes, is amended to read:

11 216.011 Definitions.--

12 (1) For the purpose of fiscal affairs of the state,
13 appropriations acts, legislative budgets, and approved
14 budgets, each of the following terms has the meaning
15 indicated:

16 (qq) "State agency" or "agency" means any official,
17 officer, commission, board, authority, council, committee, or
18 department of the executive branch of state government. For
19 purposes of this chapter and chapter 215, "state agency" or
20 "agency" includes, but is not limited to, state attorneys,
21 public defenders, ~~the capital collateral regional counsels,~~
22 the Justice Administrative Commission, the Florida Housing
23 Finance Corporation, and the Florida Public Service
24 Commission. Solely for the purposes of implementing s. 19(h),
25 Art. III of the State Constitution, the terms "state agency"
26 or "agency" include the judicial branch.

27 Section 7. This act shall take effect July 1, 2006.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS for Senate Bill 360
4 Removes proposed language finding that all capital collateral
5 cases are not extraordinary.
6 States that the capital collateral regional counsels are a
7 part of the legislative branch of government and shall be
8 appointed by the President of the Senate and the Speaker of
9 the House.
10 Deletes provisions requiring the Justice Administrative
11 Commission to provide administrative support to the capital
12 collateral regional counsels.
13 States that the Commission on Capital Cases is a part of the
14 legislative branch of government.
15 Removes a provision that would require the state to reimburse
16 attorneys for case costs that take capital collateral cases
17 pro-bono.
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