

Amendment No.

CHAMBER ACTION

Senate

House

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The Conference Committee on HB 5303 offered the following:

Conference Committee Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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

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15 of his or her rights pursuant to Rule 3.851 ~~3.850~~, Florida Rules
16 of Criminal Procedure, including any time limits pertinent
17 thereto, and shall advise such person that representation in any
18 collateral proceedings is the responsibility of the capital
19 collateral regional counsel. The public defender shall then
20 forward all original files on the matter to the capital
21 collateral regional counsel, retaining such copies for his or
22 her files as may be desired. ~~However, the trial court shall~~
23 ~~retain the power to appoint the public defender or other~~
24 ~~attorney not employed by the capital collateral regional counsel~~
25 ~~to represent such person in proceedings for relief by executive~~
26 ~~emergency pursuant to ss. 27.40 and 27.5303.~~

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

29 27.511 Offices of criminal conflict and civil regional
30 counsel; legislative intent; qualifications; appointment;
31 duties.—

32 (9) When direct appellate proceedings prosecuted by the
33 office of criminal conflict and civil regional counsel on behalf
34 of an accused and challenging a judgment of conviction and
35 sentence of death terminate in an affirmance of such conviction
36 and sentence, whether by the Supreme Court or by the United
37 States Supreme Court or by expiration of any deadline for filing
38 such appeal in a state or federal court, the office of criminal
39 conflict and civil regional counsel shall notify the accused of
40 his or her rights pursuant to Rule 3.851 ~~3.850~~, Florida Rules of

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41 Criminal Procedure, including any time limits pertinent thereto,
42 and shall advise such person that representation in any
43 collateral proceedings is the responsibility of the capital
44 collateral regional counsel. The office of criminal conflict and
45 civil regional counsel shall forward all original files on the
46 matter to the capital collateral regional counsel, retaining
47 such copies for his or her files as may be desired or required
48 by law. ~~However, the trial court shall retain the power to~~
49 ~~appoint the office of criminal conflict and civil regional~~
50 ~~counsel or other attorney not employed by the capital collateral~~
51 ~~regional counsel to represent such person in proceedings for~~
52 ~~relief by executive clemency pursuant to ss. 27.40 and 27.5303.~~

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

55 27.5303 Public defenders; criminal conflict and civil
56 regional counsel; conflict of interest.—

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

64 ~~(b) The public defender or an attorney appointed pursuant~~
65 ~~to this section may be appointed by the court rendering the~~
66 ~~judgment imposing the death penalty to represent an indigent~~

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67 ~~defendant who has applied for executive clemency as relief from~~
68 ~~the execution of the judgment imposing the death penalty.~~

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

73 Section 4. Subsection (5) of section 27.5304, Florida
74 Statutes, is amended to read:

75 27.5304 Private court-appointed counsel; compensation;
76 notice.—

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

79 (a)~~1.~~ For misdemeanors and juveniles represented at the
80 trial level: \$1,000.

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

83 (c)~~3.~~ For life felonies represented at the trial level:
84 \$3,000.

85 (d)~~4.~~ For capital cases represented at the trial level:
86 \$15,000. For purposes of this subparagraph, a "capital case" is
87 any offense for which the potential sentence is death and the
88 state has not waived seeking the death penalty.

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

90 ~~(b) If a death sentence is imposed and affirmed on appeal~~
91 ~~to the Supreme Court, the appointed attorney shall be allowed~~
92 ~~compensation, not to exceed \$1,000, for attorney fees and costs~~

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93 ~~incurred in representing the defendant as to an application for~~
94 ~~executive clemency, with compensation to be paid out of general~~
95 ~~revenue from funds budgeted to the Justice Administrative~~
96 ~~Commission.~~

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

99 940.031 Clemency counsel when sentence of death imposed.-

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

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

110 (3) It is the intent of the Legislature that the fee
111 prescribed under this section comprises the full and complete
112 compensation for appointed private counsel. It is further the
113 intent of the Legislature that the fee in this section is
114 prescribed for the purpose of providing counsel with notice of
115 the limit on the amount of compensation for representation under
116 this section. Appointment of counsel for executive clemency
117 under this section shall be at the board's sole discretion. The
118 provision of counsel for executive clemency under this section

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119 does not create a statutory right to counsel in such
120 proceedings.

121 Section 6. Paragraph (a) of subsection (3) of section
122 27.40, Florida Statutes, is amended to read:

123 27.40 Court-appointed counsel; circuit registries; minimum
124 requirements; appointment by court.—

125 (3) In utilizing a registry:

126 (a) The chief judge of the circuit shall compile a list of
127 attorneys in private practice, by county and by category of
128 cases, and provide the list to the clerk of court in each
129 county. The chief judge of the circuit may restrict the number
130 of attorneys on the general registry list. To be included on a
131 registry, attorneys shall certify:

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

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

137 3. That they are willing to abide by the terms of the
138 contract for services; and

139 4. Whether they are willing to accept as full payment the
140 flat fees prescribed in s. 27.5304, notwithstanding the
141 provisions of s. 27.5304(12), except for cases brought under the
142 Racketeer Influenced and Corrupt Organizations Act and capital
143 cases as defined in s. 27.5304(5)(d) ~~27.5304(5)(a)~~ 4.
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145 To be included on a registry, an attorney also must enter into a
 146 contract for services with the Justice Administrative
 147 Commission. Failure to comply with the terms of the contract for
 148 services may result in termination of the contract and removal
 149 from the registry. Each attorney on the registry shall be
 150 responsible for notifying the clerk of the court and the Justice
 151 Administrative Commission of any change in his or her status.
 152 Failure to comply with this requirement shall be cause for
 153 termination of the contract for services and removal from the
 154 registry until the requirement is fulfilled. In addition to
 155 general registries, the chief judge may establish limited
 156 registries that include only those attorneys willing to waive
 157 compensation in excess of the flat fee prescribed in s. 27.5304,
 158 notwithstanding the provisions of s. 27.5304(12).

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

161 -----
 162 **T I T L E A M E N D M E N T**

163 Remove everything before the enacting clause and insert:

164 A bill to be entitled

165 An act relating to counsel in proceedings for
 166 executive clemency; amending ss. 27.51 and 27.511,
 167 F.S.; deleting provisions concerning the power of a
 168 trial court to appoint the public defender, office of
 169 criminal conflict and civil regional counsel, or other
 170 attorney in proceedings for relief by executive

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171 clemency; correcting cross-references; amending s.
172 27.5303, F.S.; deleting provisions concerning the
173 appointment of a public defender or attorney by the
174 court to represent an indigent defendant in death
175 penalty executive clemency proceedings; amending s.
176 27.5304, F.S.; deleting provisions concerning
177 compensation of an appointed attorney representing a
178 defendant in executive clemency proceedings; creating
179 s. 940.031, F.S.; providing for clemency counsel
180 representation of defendants in executive clemency
181 proceedings; providing for compensation; amending s.
182 27.40, F.S.; conforming a cross-reference; providing
183 an effective date.

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