

FOR CONSIDERATION By the Committee on Appropriations

576-00232E-14

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1 A bill to be entitled
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 offices of criminal
8 conflict and civil regional counsel; providing
9 requirements for appointment of counsel in circuits
10 and regions participating in the pilot program;
11 requiring reports to be submitted by specified dates;
12 requiring the Justice Administrative Commission to
13 provide specified data; providing for future
14 expiration of the pilot program; amending s. 27.5304,
15 F.S.; increasing the statutory caps for certain flat
16 fees in criminal cases; providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Subsection (3) of section 27.40, Florida
21 Statutes, is amended to read:

22 27.40 Court-appointed counsel; circuit registries; minimum
23 requirements; appointment by court.—

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

25 (a) The chief judge of the circuit shall compile a list of
26 attorneys in private practice, by county and by category of
27 cases, and provide the list to the clerk of court in each
28 county. The chief judge of the circuit may restrict the number
29 of attorneys on the general registry list. To be included on a

576-00232E-14

20147098__

30 registry, an attorney must ~~attorneys shall~~ certify that he or
31 she:

32 1. Meets ~~That they meet~~ any minimum requirements
33 established by the chief judge and by general law for court
34 appointment;

35 2. Is ~~That they are~~ available to represent indigent
36 defendants in cases requiring court appointment of private
37 counsel; and

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

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

45
46 To be included on a registry, an attorney ~~also~~ must enter into a
47 contract for services with the Justice Administrative
48 Commission. Failure to comply with the terms of the contract for
49 services may result in termination of the contract and removal
50 from the registry. Each attorney on the registry is ~~shall be~~
51 responsible for notifying the clerk of the court and the Justice
52 Administrative Commission of any change in his or her status.
53 Failure to comply with this requirement is ~~shall be~~ cause for
54 termination of the contract for services and removal from the
55 registry until the requirement is fulfilled. ~~In addition to~~
56 ~~general registries, the chief judge may establish limited~~
57 ~~registries that include only those attorneys willing to waive~~
58 ~~compensation in excess of the flat fee prescribed in s. 27.5304,~~

576-00232E-14

20147098__

59 ~~notwithstanding the provisions of s. 27.5304(12).~~

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

72 (c) If the number of attorneys on the registry in a county
73 or circuit for a particular category of cases is inadequate, the
74 chief judge of the particular circuit shall provide to the clerk
75 of court the names of at least three private attorneys who have
76 relevant experience. The clerk of court shall send an
77 application to each of these attorneys to register for
78 appointment.

79 (d) Quarterly, each chief judge shall provide a current
80 copy of each registry to the Chief Justice of the Supreme Court,
81 the state attorney and public defender in each judicial circuit,
82 the office of criminal conflict and civil regional counsel, the
83 clerk of court in each county, and the Justice Administrative
84 Commission. ~~Circuits utilizing a limited registry list as~~
85 ~~allowed by paragraph (a) shall include the race, gender, and~~
86 ~~national origin of all attorneys listed in and appointed under~~
87 ~~the limited registry.~~

576-00232E-14

20147098__

88 Section 2. Section 27.401, Florida Statutes, is created to
89 read:

90 27.401 Cross-Circuit Conflict Representation Pilot
91 Program.—

92 (1) The Cross-Circuit Conflict Representation Pilot Program
93 is established in the offices of the public defender in the
94 Sixth, Ninth, Tenth, and Thirteenth Judicial Circuits and in the
95 offices of criminal conflict and civil regional counsel in the
96 Second and Fifth Regions.

97 (2) Notwithstanding ss. 27.40 and 27.5303:

98 (a) If the public defender in the Thirteenth Judicial
99 Circuit is unable to provide representation to an indigent
100 defendant charged with a crime under s. 782.04(2), (3), or (4)
101 due to a conflict of interest and the criminal conflict and
102 civil regional counsel of the Second Region is also unable to
103 provide representation for the case due to a conflict of
104 interest, the public defender in the Sixth Judicial Circuit
105 shall be appointed. If the public defender in the Sixth Judicial
106 Circuit is unable to provide representation for the case due to
107 a conflict of interest, the criminal conflict and civil regional
108 counsel of the Fifth Region shall be appointed. If the criminal
109 conflict and civil regional counsel of the Fifth Region is
110 unable to provide representation for the case due to a conflict
111 of interest, private counsel shall be appointed.

112 (b) If the public defender in the Sixth Judicial Circuit is
113 unable to provide representation to an indigent defendant
114 charged with a crime under s. 782.04(2), (3), or (4) due to a
115 conflict of interest and the criminal conflict and civil
116 regional counsel of the Second Region is also unable to provide

576-00232E-14

20147098

117 representation for the case due to a conflict of interest, the
118 public defender in the Thirteenth Judicial Circuit shall be
119 appointed. If the public defender in the Thirteenth Judicial
120 Circuit is unable to provide representation for the case due to
121 a conflict of interest, the criminal conflict and civil regional
122 counsel of the Fifth Region shall be appointed. If the criminal
123 conflict and civil regional counsel of the Fifth Region is
124 unable to provide representation for the case due to a conflict
125 of interest, private counsel shall be appointed.

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

140 (d) If the public defender in the Tenth Judicial Circuit is
141 unable to provide representation to an indigent defendant
142 charged with a crime under s. 782.04(2), (3), or (4) due to a
143 conflict of interest and the criminal conflict and civil
144 regional counsel of the Second Region is also unable to provide
145 representation for the case due to a conflict of interest, the

576-00232E-14

20147098__

146 public defender in the Ninth Judicial Circuit shall be
147 appointed. If the public defender in the Ninth Judicial Circuit
148 is unable to provide representation for the case due to a
149 conflict of interest, the criminal conflict and civil regional
150 counsel of the Fifth Region shall be appointed. If the criminal
151 conflict and civil regional counsel of the Fifth Region is
152 unable to provide representation for the case due to a conflict
153 of interest, private counsel shall be appointed.

154 (3) The offices of the public defender in the Sixth, Ninth,
155 Tenth, and Thirteenth Circuits and the offices of criminal
156 conflict and civil regional counsel in the Second and Fifth
157 Regions shall each provide a report on the implementation of the
158 pilot program to the chairs of the legislative appropriations
159 committees by March 1, 2015, and by March 1, 2016. At a minimum,
160 the reports must include the number of cases transferred across
161 circuits, the advantages and disadvantages of cross-circuit
162 representation, the estimated cost savings of the pilot program,
163 and recommendations to improve the pilot program. The Justice
164 Administrative Commission shall provide data to assist with the
165 estimated cost savings of the pilot program.

166 (4) The Cross-Circuit Conflict Representation Pilot Program
167 shall expire on June 30, 2016, unless otherwise provided by law.
168 However, appointments made pursuant to this subsection before
169 June 30, 2016, shall continue until completion of the case.

170 Section 3. Paragraph (a) of subsection (5) of section
171 27.5304, Florida Statutes, is amended to read:

172 27.5304 Private court-appointed counsel; compensation;
173 notice.—

174 (5) The compensation for representation in a criminal

576-00232E-14

20147098__

175 proceeding shall not exceed the following:

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

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

180 3. For life felonies represented at the trial level: \$9,000
181 ~~\$3,000~~.

182 4. For capital cases represented at the trial level:
183 \$25,000 ~~\$15,000~~. For purposes of this subparagraph, a "capital
184 case" is any offense for which the potential sentence is death
185 and the state has not waived seeking the death penalty.

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

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