



HB 5303, Engrossed 1

2014

1 A bill to be entitled
2 An act relating to counsel in proceedings for
3 executive clemency; amending ss. 27.51 and 27.511,
4 F.S.; deleting provisions concerning the power of a
5 trial court to appoint the public defender, office of
6 criminal conflict and civil regional counsel, or other
7 attorney in proceedings for relief by executive
8 clemency; correcting cross-references; amending s.
9 27.5303, F.S.; deleting provisions concerning the
10 appointment of a public defender or attorney by the
11 court to represent an indigent defendant in death
12 penalty executive clemency proceedings; amending s.
13 27.5304, F.S.; deleting provisions concerning
14 compensation of an appointed attorney representing a
15 defendant in executive clemency proceedings; creating
16 s. 940.031, F.S.; providing for clemency counsel
17 representation of defendants in executive clemency
18 proceedings; providing for compensation; amending s.
19 27.40, F.S.; conforming a cross-reference; providing
20 an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Paragraph (a) of subsection (5) of section
25 27.51, Florida Statutes, is amended to read:



26 27.51 Duties of public defender.—

27 (5) (a) When direct appellate proceedings prosecuted by a
 28 public defender on behalf of an accused and challenging a
 29 judgment of conviction and sentence of death terminate in an
 30 affirmance of such conviction and sentence, whether by the
 31 Florida Supreme Court or by the United States Supreme Court or
 32 by expiration of any deadline for filing such appeal in a state
 33 or federal court, the public defender shall notify the accused
 34 of his or her rights pursuant to Rule 3.851 ~~3.850~~, Florida Rules
 35 of Criminal Procedure, including any time limits pertinent
 36 thereto, and shall advise such person that representation in any
 37 collateral proceedings is the responsibility of the capital
 38 collateral regional counsel. The public defender shall then
 39 forward all original files on the matter to the capital
 40 collateral regional counsel, retaining such copies for his or
 41 her files as may be desired. ~~However, the trial court shall~~
 42 ~~retain the power to appoint the public defender or other~~
 43 ~~attorney not employed by the capital collateral regional counsel~~
 44 ~~to represent such person in proceedings for relief by executive~~
 45 ~~elemency pursuant to ss. 27.40 and 27.5303.~~

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

48 27.511 Offices of criminal conflict and civil regional
 49 counsel; legislative intent; qualifications; appointment;
 50 duties.—



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51 (9) When direct appellate proceedings prosecuted by the
52 office of criminal conflict and civil regional counsel on behalf
53 of an accused and challenging a judgment of conviction and
54 sentence of death terminate in an affirmance of such conviction
55 and sentence, whether by the Supreme Court or by the United
56 States Supreme Court or by expiration of any deadline for filing
57 such appeal in a state or federal court, the office of criminal
58 conflict and civil regional counsel shall notify the accused of
59 his or her rights pursuant to Rule 3.851 ~~3.850~~, Florida Rules of
60 Criminal Procedure, including any time limits pertinent thereto,
61 and shall advise such person that representation in any
62 collateral proceedings is the responsibility of the capital
63 collateral regional counsel. The office of criminal conflict and
64 civil regional counsel shall forward all original files on the
65 matter to the capital collateral regional counsel, retaining
66 such copies for his or her files as may be desired or required
67 by law. ~~However, the trial court shall retain the power to~~
68 ~~appoint the office of criminal conflict and civil regional~~
69 ~~counsel or other attorney not employed by the capital collateral~~
70 ~~regional counsel to represent such person in proceedings for~~
71 ~~relief by executive clemency pursuant to ss. 27.40 and 27.5303.~~

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

74 27.5303 Public defenders; criminal conflict and civil
75 regional counsel; conflict of interest.—



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76 (4) (a) If a defendant is convicted and the death sentence
77 is imposed, the appointed attorney shall continue representation
78 through appeal to the Supreme Court. The attorney shall be
79 compensated as provided in s. 27.5304. If the attorney first
80 appointed is unable to handle the appeal, the court shall
81 appoint another attorney and that attorney shall be compensated
82 as provided in s. 27.5304.

83 ~~(b) The public defender or an attorney appointed pursuant~~
84 ~~to this section may be appointed by the court rendering the~~
85 ~~judgment imposing the death penalty to represent an indigent~~
86 ~~defendant who has applied for executive clemency as relief from~~
87 ~~the execution of the judgment imposing the death penalty.~~

88 (b)(e) When the appointed attorney in a capital case has
89 completed the duties imposed by this section, the attorney shall
90 file a written report in the trial court stating the duties
91 performed by the attorney and apply for discharge.

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

94 27.5304 Private court-appointed counsel; compensation;
95 notice.—

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

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

100 (b)2. For noncapital, nonlife felonies represented at the



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101 trial level: \$2,500.

102 (c)~~3.~~ For life felonies represented at the trial level:
103 \$3,000.

104 (d)~~4.~~ For capital cases represented at the trial level:
105 \$15,000. For purposes of this subparagraph, a "capital case" is
106 any offense for which the potential sentence is death and the
107 state has not waived seeking the death penalty.

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

109 ~~(b) If a death sentence is imposed and affirmed on appeal~~
110 ~~to the Supreme Court, the appointed attorney shall be allowed~~
111 ~~compensation, not to exceed \$1,000, for attorney fees and costs~~
112 ~~incurred in representing the defendant as to an application for~~
113 ~~executive clemency, with compensation to be paid out of general~~
114 ~~revenue from funds budgeted to the Justice Administrative~~
115 ~~Commission.~~

116 Section 5. Section 940.031, Florida Statutes, is created
117 to read:

118 940.031 Clemency counsel when sentence of death imposed.-

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

124 (2) The appointed attorney shall be compensated by the
125 board, not to exceed \$10,000, for attorney fees and costs



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126 incurred in representing the person for relief by executive
127 clemency, with compensation to be paid out of the General
128 Revenue Fund from funds budgeted to the Parole Commission.

129 (3) It is the intent of the Legislature that the fee
130 prescribed under this section comprises the full and complete
131 compensation for appointed private counsel. It is further the
132 intent of the Legislature that the fee in this section is
133 prescribed for the purpose of providing counsel with notice of
134 the limit on the amount of compensation for representation under
135 this section. Appointment of counsel for executive clemency
136 under this section shall be at the board's sole discretion. The
137 provision of counsel for executive clemency under this section
138 does not create a statutory right to counsel in such
139 proceedings.

140 Section 6. Paragraph (a) of subsection (3) of section
141 27.40, Florida Statutes, is amended to read:

142 27.40 Court-appointed counsel; circuit registries; minimum
143 requirements; appointment by court.—

144 (3) In utilizing a registry:

145 (a) The chief judge of the circuit shall compile a list of
146 attorneys in private practice, by county and by category of
147 cases, and provide the list to the clerk of court in each
148 county. The chief judge of the circuit may restrict the number
149 of attorneys on the general registry list. To be included on a
150 registry, attorneys shall certify:



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

153 2. That they are available to represent indigent
154 defendants in cases requiring court appointment of private
155 counsel;

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

158 4. Whether they are willing to accept as full payment the
159 flat fees prescribed in s. 27.5304, notwithstanding the
160 provisions of s. 27.5304(12), except for cases brought under the
161 Racketeer Influenced and Corrupt Organizations Act and capital
162 cases as defined in s. 27.5304(5)(d) ~~27.5304(5)(a)~~4.

163
164 To be included on a registry, an attorney also must enter into a
165 contract for services with the Justice Administrative
166 Commission. Failure to comply with the terms of the contract for
167 services may result in termination of the contract and removal
168 from the registry. Each attorney on the registry shall be
169 responsible for notifying the clerk of the court and the Justice
170 Administrative Commission of any change in his or her status.
171 Failure to comply with this requirement shall be cause for
172 termination of the contract for services and removal from the
173 registry until the requirement is fulfilled. In addition to
174 general registries, the chief judge may establish limited
175 registries that include only those attorneys willing to waive



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176 compensation in excess of the flat fee prescribed in s. 27.5304,
177 notwithstanding the provisions of s. 27.5304(12).

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