

1 A bill to be entitled
2 An act relating to the state judicial system;
3 amending ss. 27.5204 and 29.015, F.S.; providing for
4 the payment of attorney's fees that exceed the limits
5 prescribed by law from certain appropriations and
6 organizations interested in the fiscally responsible
7 administration of capital justice; providing an
8 effective date.

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10 Be It Enacted by the Legislature of the State of Florida:

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12 Section 1. Subsection (12) of section 27.5304, Florida
13 Statutes, is amended to read:

14 27.5304 Private court-appointed counsel; compensation.—

15 (12) The Legislature recognizes that on rare occasions an
16 attorney may receive a case that requires extraordinary and
17 unusual effort.

18 (a) If counsel seeks compensation that exceeds the limits
19 prescribed by law ~~under this section and the General~~
20 ~~Appropriations Act~~, he or she must file a motion with the ~~chief~~
21 trial judge for an order approving payment of attorney's fees in
22 excess of these limits.

23 1. Prior to filing the motion, the counsel shall deliver a
24 copy of the intended billing, together with supporting affidavits
25 and all other necessary documentation, to the Justice
26 Administrative Commission.

27 2. The Justice Administrative Commission shall review the
28 billings, affidavit, and documentation for completeness and
29 compliance with contractual and statutory requirements. If the
30 Justice Administrative Commission objects to any portion of the
31 proposed billing, the objection and reasons therefor shall be
32 communicated in writing to the private court-appointed counsel.
33 The counsel may thereafter file his or her motion, which must
34 specify whether the commission objects to any portion of the
35 billing or the sufficiency of documentation, and shall attach the
36 commission's letter stating its objection.

37 (b) Following receipt of the motion to exceed the fee
38 limits, the ~~chief~~ trial judge ~~or a designee~~ shall hold an
39 evidentiary hearing.

40 1. At the hearing, the attorney seeking compensation must
41 prove by competent and substantial evidence that the case required
42 extraordinary and unusual efforts. The ~~chief~~ trial judge ~~or~~

43 ~~designee~~ shall consider criteria such as the number of witnesses,
44 the complexity of the factual and legal issues, and the length of
45 trial. The fact that a trial was conducted in a case does not, by
46 itself, constitute competent substantial evidence of an
47 extraordinary and unusual effort. In a criminal case, relief under
48 this section may not be granted if the number of work hours does
49 not exceed 75 or the number of the state's witnesses deposed does
50 not exceed 20.

51 2. The ~~chief~~ trial judge ~~or designee~~ shall enter a written
52 order detailing his or her findings and identifying the
53 extraordinary nature of the time and efforts of the attorney in
54 the case which warrant exceeding the flat fee established by this
55 section and the General Appropriations Act.

56 (c) A copy of the motion and attachments shall be served on
57 the Justice Administrative Commission at least 5 business days
58 prior to the date of a hearing. The Justice Administrative
59 Commission shall have standing to appear before the court,
60 including at the hearing under paragraph (b), to contest any
61 motion for an order approving payment of attorney's fees, costs,
62 or related expenses and may participate in a hearing on the motion
63 by use of telephonic or other communication equipment unless
64 ordered otherwise. The Justice Administrative Commission may
65 contract with other public or private entities or individuals to
66 appear before the court for the purpose of contesting any motion
67 for an order approving payment of attorney's fees, costs, or
68 related expenses. The fact that the Justice Administrative
69 Commission has not objected to any portion of the billing or to
70 the sufficiency of the documentation is not binding on the court.

71 (d) If the ~~chief~~ trial judge ~~or designee~~ finds that counsel
72 has proved by competent and substantial evidence that the case
73 required extraordinary and unusual efforts, the ~~chief~~ trial judge
74 ~~or designee~~ shall order the compensation to be paid to the
75 attorney at a percentage above the flat fee rate, depending on the
76 extent of the unusual and extraordinary effort required. The
77 percentage shall be only the rate necessary to ensure that the
78 fees paid are not confiscatory under common law. The percentage
79 may not exceed 200 percent of the established flat fee, absent a
80 specific finding that 200 percent of the flat fee in the case
81 would be confiscatory. If the ~~chief~~ trial judge ~~or designee~~
82 determines that 200 percent of the flat fee would be confiscatory,
83 he or she shall order the amount of compensation using an hourly
84 rate not to exceed \$75 per hour for a noncapital case and \$100 per

85 hour for a capital case. However, the compensation calculated by
86 using the hourly rate shall be only that amount necessary to
87 ensure that the total fees paid are not confiscatory.

88 (e) Any order granting relief under this subsection must be
89 attached to the final request for a payment submitted to the
90 Justice Administrative Commission.

91 (f) For capital criminal cases only, the payment of fees
92 when the court orders payment in excess of the flat fee
93 established by law, shall be paid as follows:

94 1. The flat fee shall be paid from funds appropriated to
95 the Justice Administrative Commission in the General
96 Appropriations Act.

97 2. The amount ordered by the court in excess of the flat
98 fee shall be paid by the Justice Administrative Commission in a
99 special category designated for that purpose in the General
100 Appropriations Act.

101 3. If, during the fiscal year, all funds designated for
102 payment of the amount ordered by the court in excess of the flat
103 fee are spent, the amount of payments in excess of the flat fee
104 shall be made as follows:

105 a. 50% from due process funds, or other funds as
106 necessary, appropriated to the State Attorney's Office in the
107 General Appropriations Act, assessed first against those judicial
108 circuits in which the capital cases responsible for the excess
109 fees are brought, then in accordance with procedures in section
110 29.015, Florida Statutes.

111 b. 30% from funds appropriated to the Department of Law
112 Enforcement in the General Appropriations Act.

113 c. 20% from funds appropriated to Victims Services in the
114 General Appropriations Act as follows:

115 (i) 20% from a special category designated for Victim
116 Services in the General Appropriations Act.

117 (ii) 30% from a special category designated for Contracted
118 Services in the General Appropriations Act.

119 (iii) 50% from a special category designated for Grants and
120 Aids for Minority Communities Crime Prevention Programs.

121 (iv) If, during the fiscal year, all funds in any of the
122 above Victim Services special categories are spent, the
123 outstanding portion of attorney's fees shall be paid from the
124 other referenced Victim Services special categories pro rata or
125 from other funds appropriated to Victims Services in the General
126 Appropriations Act as necessary.

127 4. For purposes of this subsection, a "capital case" is any
128 offense for which the potential sentence is death and the state
129 has not yet, if ever, waived seeking the death penalty.

130 (g) ~~(f)~~ The Justice Administrative Commission shall provide
131 to the Office of the State Courts Administrator data concerning
132 the number of cases approved for compensation in excess of the
133 limitation and the amount of these awards by circuit and by judge.
134 The Office of the State Courts Administrator shall report the data
135 quarterly in an electronic format to the chairs ~~President~~ of the
136 Senate ~~and, the Speaker of the~~ House of Representatives
137 appropriations committees, the Chief Justice of the Supreme Court,
138 and the chief judge of each circuit.

139 Section 2. Subsection (5) of 29.015, Florida Statutes, is
140 amended to read:

141 29.015 Contingency funds; limitation of authority to
142 transfer funds in contracted due process services appropriations
143 categories—

144 (5) Notwithstanding any provisions in chapter 216 to the
145 contrary, no office shall transfer funds from a contracted due
146 process services appropriation category or from a contingency fund
147 category authorized in this section except as specifically
148 authorized in this section. In addition, except as provided in
149 section 27.5204(12), Florida Statutes, funds shall not be
150 transferred from a state attorney office to alleviate a deficit in
151 a public defender office or an office of criminal conflict and
152 civil regional counsel, and funds shall not be transferred from a
153 public defender office or regional counsel office to alleviate a
154 deficit in a state attorney office.

155 Section 3. This act shall take effect July 1, 2012.