

Section 4. Section 27.511, Florida Statutes, is created to read:

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

(1) It is the intent of the Legislature to provide adequate representation to persons entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law. It is the further intent of the Legislature to provide adequate representation in a fiscally sound manner, while safeguarding constitutional principles. Therefore, an office of criminal conflict and civil regional counsel is created within the geographic boundaries of each of the five district courts of appeal. The regional counsel shall be appointed as set forth in subsection (3) for each of the five regional offices. The offices shall commence fulfilling their constitutional and statutory purpose and duties on October 1, 2007.

(2) Each office of criminal conflict and civil regional counsel shall be assigned to the Justice Administrative Commission for administrative purposes. The commission shall provide administrative support and service to the offices to the extent requested by each regional counsel within the available resources of the commission. The regional counsel and the offices are not subject to control, supervision, or direction by the commission in the performance of their duties, but the employees of the offices shall be governed by the classification plan and the salary and benefits plan for the commission.

(3) Each regional counsel must be, and must have been for the preceding 5 years, a member in good standing of The Florida Bar or a similar organization in another state. Each regional counsel shall be appointed by the Governor and is subject to confirmation by the Senate. The Supreme Court Judicial Nominating Commission shall recommend to the Governor three qualified candidates for appointment to each of the five regional counsel positions. The Governor shall appoint the regional counsel for the five regions from among the recommendations, or, if it is in the best interest of the fair administration of justice, the Governor may reject the nominations and request that the Supreme Court Judicial Nominating Commission submit three new nominees. The regional counsel shall be appointed to a term of 4 years, the first term beginning on July 1, 2007. Vacancies shall be filled in the same manner as appointments.

(4) Each regional counsel shall serve on a full-time basis and may not engage in the private practice of law while holding office. Assistant regional counsel shall give priority and preference to their duties as assistant regional counsel and may not otherwise engage in the practice of criminal law or in civil proceedings for which the state compensates attorneys for representation.

(5) Effective October 1, 2007, when the Office of the Public Defender, at any time during the representation of two or more defendants, determines that the interests of those accused are so adverse or hostile that they cannot all be counseled by the public defender or his or her staff without a conflict of interest, or that none can be counseled by the public defender or his or her staff because of a conflict of interest, and the court grants the public defender's motion to withdraw, the office of criminal conflict and civil regional counsel shall be appointed and shall provide legal services, without additional compensation, to any person determined to be indigent under s. 27.52, who is:

(a) Under arrest for, or charged with, a felony;

(b) Under arrest for, or charged with:

1. A misdemeanor authorized for prosecution by the state attorney;

2. A violation of chapter 316 punishable by imprisonment;

3. Criminal contempt; or

4. A violation of a special law or county or municipal ordinance ancillary to a state charge, or if not ancillary to a state charge, only if the office of criminal conflict and civil regional counsel contracts with the county or municipality to provide representation pursuant to ss. 27.54 and 125.69. The office of criminal conflict and civil regional counsel may not provide representation pursuant to this paragraph if the court, prior to trial, files in the cause an order of no imprisonment as provided in s. 27.512;

(c) Alleged to be a delinquent child pursuant to a petition filed before a circuit court;

(d) Sought by petition filed in such court to be involuntarily placed as a mentally ill person under part I of chapter 394, involuntarily committed as a sexually violent predator under part V of chapter 394, or involuntarily admitted to residential services as a person with developmental disabilities under chapter 393;

(e) Convicted and sentenced to death, for purposes of handling an appeal to the Supreme Court; or

(f) Is appealing a matter in a case arising under paragraphs (a)-(d).

(6)(a) Effective October 1, 2007, the office of criminal conflict and civil regional counsel has primary responsibility for representing persons entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law in civil proceedings, including, but not limited to, proceedings under s. 393.12 and chapters 39, 390, 392, 397, 415, 743, 744, and 984.

(b) If constitutional principles or general law provide for court-appointed counsel in civil proceedings, the court shall first appoint the regional counsel unless general law specifically provides for appointment of the public defender, in which case the court shall appoint the regional counsel if the public defender has a conflict of interest.

(c) Notwithstanding paragraph (b) or any provision of chapter 744 to the contrary, when chapter 744 provides for appointment of counsel, the court, in consultation with the clerk of court and prior to appointing counsel, shall determine, if possible, whether the person entitled to representation is indigent, using the best available evidence.

1. If the person is indigent, the court shall appoint the regional counsel. If at any time after appointment the regional counsel determines that the person is not indigent and that there are sufficient assets available for the payment of legal representation under s. 744.108, the regional counsel shall move the court to reassign the case to a private attorney.

2. If the person is not indigent or if the court and the clerk are not able to determine whether the person is indigent at the time of appointment, the court shall appoint a private attorney. If at any time after appointment the private attorney determines that the person is indigent and that there are not sufficient assets available for the payment of legal representation under s. 744.108, the private attorney shall move the court to reassign the case to the regional counsel. When a case is reassigned, the private attorney may seek compensation from the Justice Administrative Commission for representation not recoverable from any assets of the person in an amount approved by the court as a pro rata portion of the compensation limits prescribed in the General Appropriations Act.

(d) The regional counsel may not represent any plaintiff in a civil action brought under the Florida Rules of Civil Procedure, the Federal Rules of Civil Procedure, or federal statutes, and may not represent a petitioner in a rule challenge under chapter 120, unless specifically authorized by law.

(7) The court may not appoint the office of criminal conflict and civil regional counsel to represent, even on a temporary basis, any person who is not indigent, except to the extent that appointment of counsel is specifically provided for in chapters 390, 394, 415, 743, and 744 without regard to the indigent status of the person entitled to representation.

(8) The office of criminal conflict and civil regional counsel shall handle all circuit court appeals within the state courts system and any authorized appeals to the federal courts which are required in cases in which the office of criminal conflict and civil regional counsel is appointed under this section.

(9) When direct appellate proceedings prosecuted by the office of criminal conflict and civil regional counsel 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 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 office of criminal conflict and civil regional counsel shall notify the accused of his or her rights pursuant to Rule 3.850, Florida Rules of

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