

*Administrative and Operational  
Support for Court-Appointed Counsel  
and  
Indigent Due Process Costs*

*November 2004*

***Respectfully submitted:***

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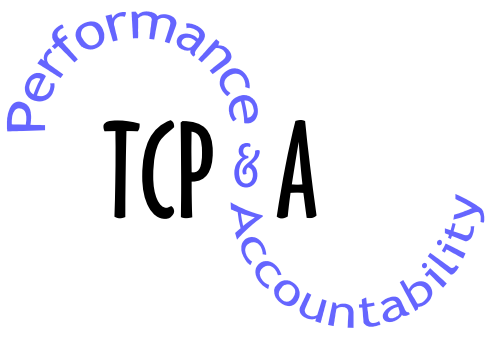
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## Report on Administrative and Operational Support for Court-Appointed Counsel and Indigent Due Process Costs

### Executive Summary

In 1998, an amendment to Article V of Florida's constitution provided that the state would assume a primary role in funding the state courts system. Consequently, in July 1, 2004, the state became responsible for expenditures related to the representation of indigent persons in criminal and certain civil proceedings.

Prior to the implementation of Revision 7, each county had developed various means of ensuring that these very significant expenditures were necessary and appropriate. The statutory scheme developed with the implementation of Revision 7, relies on local circuit indigent services committees to oversee these costs on behalf of the state, with the funds related to court-appointed counsel and other indigent due process service costs appropriated to the Justice Administrative Commission (JAC), an executive branch agency. In order to ensure that the justice system continued to operate in the months immediately following the implementation of Revision 7, the trial courts were forced to undertake many court-appointed counsel support activities. Continued support for these activities by trial court staff is not only inappropriate but also not feasible within existing resources.

The Commission on Trial Court Performance and Accountability has identified three critical problems following the state's assumption of court-appointed counsel costs under Revision 7. They are as follows:

- the statutes establishing and governing the local indigent services committees are inherently problematic in that the committees are not clearly created as executive branch policy-making bodies;
- an executive branch infrastructure to support court-appointed counsel operations – just as the state attorney and public defenders' offices enjoy – is necessary; and
- critical operational and administrative support for both the local committees and for the local day-to-day management of court-appointed counsel activities are urgently needed.

The Commission on Trial Court Performance and Accountability has prepared this report in order to help identify the scope of the circuit indigent services committees' tasks and the related executive branch support resources necessary to keep the system operational.

Prior to Revision 7, the counties had borne these costs and each county had developed various means of controlling them. Generally, the combined efforts of the chief judge and the county attorney (via the administrative orders of the chief judge setting forth allowable fees, costs and expenses and the county attorney reviewing and objecting to counsel's motions for fees and expenses) were sufficient to provide the counties with some assurance that their court-appointed expenditures were necessary and appropriate.

Post-Revision 7, the statutes governing the court-appointed counsel process and the appropriation of attorneys' fees and expenses in criminal and civil cases are contained in the public defenders' section of chapter 27. Specifically, section 27.42, F.S., directs the establishment of circuit Article V indigent services committees to "manage the appointment and compensation of court-appointed counsel within a circuit pursuant to ss. 27.40 and 27.5303." This section also provides that "the funding and positions for the processing of committees' fees and expenses shall be appropriated to the Justice Administrative Commission in the General Appropriations Act." (See Appendix A for statutes).

The statute establishes no express operational or administrative requirements on the circuit Article V indigent services committees (hereinafter "committee(s)"), in the conduct of their duties, other than requiring that the committees meet at least quarterly. However, the following functions, and their related activities and tasks, are arguably necessary for the successful creation and use of a court-appointed counsel registry process:

- I. Establish the operational procedures necessary to carry out committee responsibilities.
- II. Manage the court-appointed counsel (CAC) registry process.
- III. Manage due process services.
- IV. Manage the appointment of court-appointed counsel in individual cases.
- V. Manage the compensation of court-appointed counsel and due process service providers.
- VI. Manage the court-appointed counsel budget(s).

Of necessity, each committee has established its own operational and administrative mechanics, with the support of staff from the various members' agencies. **However, the circuits report that they cannot sustain their current efforts; that many of the activities and tasks related to the committee's functions are, in fact, not being addressed adequately, if at all; and that additional support from the JAC is needed this fiscal year – even if it requires accessing the working capital fund.**

The Supreme Court’s Commission on Performance and Accountability established a workgroup of judges and court professionals to compile a comprehensive description of the operational and administrative support mechanisms necessary for the circuit Article V indigent services committees to perform their duties. The workgroup began its work by creating a comprehensive list of activities and related tasks and resources necessary for the effective and accountable management of the court-appointed counsel process. This list identified necessary tasks related to the operations of the committees and the court-appointed counsel appointment and compensation process. The list did not attempt to identify all of the related tasks for: individual judges; chief judges outside their role as chair of the committee; court-appointed counsel; or clerks of court. Following the identification of tasks and necessary support resources necessary to accomplish these tasks, the workgroup identified those that should be performed by court staff and recommended that the remaining tasks be performed by an entity other than the court.

The report addresses each of the six functions necessary for the effective and accountable management of the court-appointed counsel process by:

- identifying the tasks that the committees must perform;
- describing the necessary administrative or legal tasks that must be performed by some entity in direct support of the committees or the court-appointed counsel process; and
- making recommendations for ensuring that the administrative and legal support tasks are performed.

*Workgroup members:*

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**I. Establish the operational procedures necessary to carry out committee responsibilities**

▶ **Committee Tasks:**

- a) Establish communication and notice procedures for committee members, court-appointed attorneys, the JAC, and other interested parties.
- b) Establish protocol for how meetings of the committee will be called.
- c) Establish rules of procedure for the conduct of meetings.
- d) Identify an instrument by which decisions are codified.
- e) Establish a mechanism by which decisions can be challenged.

▶ **Tasks to be performed by some entity in order to support the committee or the CAC process:**

**Administrative and clerical staff support to:**

- ✓ set and notice meetings;
- ✓ research, prepare, and compile meeting materials;
- ✓ coordinate meeting space logistics;
- ✓ ensure that a proper record of the meeting is taken;
- ✓ serve as custodian of committee records;
- ✓ prepare minutes;
- ✓ prepare instrument to codify decisions; and
- ✓ prepare and transmit notices of committee decisions.

**Legal staff support to:**

- ✓ provide legal advice to the committee as to legal and ethical questions related to the work of the committee, including public records and compliance with open meeting (sunshine) requirements.

**Expense dollars** for expenditures related to committee operations, including: postage, copying, binding, notices, court reporting and general office supplies.

▶ **Discussion and Recommendations:**

The Judicial Management Council's Trial Court Performance and Accountability Committee and the Trial Court Budget Commission determined that costs associated with court-appointed counsel should not be an element of the trial court budget. Subsequently, the statutory scheme developed with the implementation of Revision 7, relied on the circuit indigent services committees to manage these costs on behalf of the state, with the funds related to court-appointed counsel and other indigent due process service costs to be appropriated to the JAC, an executive branch agency. While the JAC was appropriated 50 FTE in FY 2004-05, the executive director of the JAC's position is that they have neither the statutory authority nor the staff resources to support the work of the local committees or to provide administrative support to the day-to-day management of the court-appointed counsel activities.

**Recommendation: While the establishment of the local committees is critical to accommodating local practices and ensuring that fees and expenses are consistent with the local market forces, these bodies must of necessity exercise executive and not judicial branch powers. The statute establishing the local indigent services committees needs to clarify their role as executive branch agents and provide them with a mechanism for codifying their decisions.**

The legal and administrative/clerical staff support necessary to facilitate the committees' meetings has generally fallen to the judicial branch, in part due to the fact that the chief judge, or his or her designee, serves as chair of the committee, pursuant to the statute. While section 27.42, Florida Statutes, provides that "the funding and positions for the processing of committees' fees and expenses shall be appropriated to the Justice Administrative Commission in the General Appropriations Act" this has not been true for the local committees' support. While the courts have an inherent interest in the court appointed counsel process operating efficiently and effectively, the present situation presents both significant policy questions and administrative questions for the trial courts.

The most significant policy question arises from concerns as to the appropriateness of the chief judge, with the assistance of court staff, managing the day-to-day support operations conducted on behalf of parties to a case. Just as the court does not manage the internal operations of the public defenders' offices or the guardian ad litem programs, court management of court-appointed counsel operations can also present a potential conflict. Legal and administrative questions, such as which entity is responsible for compiling the committees' meeting materials, maintaining the committees' records, and what retention standards apply (executive or judicial) to these records remain unanswered.

**Recommendation: The chief judges and TCBC should seek appropriate legislative action to ensure that the JAC is able to provide legal and administrative support for the committees from existing resources or contingency funds. Not only do trial courts lack the capacity to provide general meeting support or legal support to these committees, it is outside their proper role in our adversarial judicial process. The JAC should be responsible for providing the legal and administrative staff support necessary for these committees to conduct their meetings and record their decisions. The JAC should also provide for any necessary committee expenses.**

While the committees have been given statutory authority to manage certain components of the court-appointed counsel process, including establishing requirements, credentials, and fees, there is no statutorily prescribed mechanism by which each committee should formalize or codify its decisions. Additionally, it is not clear what statutes, rules or other procedures should apply when a committee's decision is ultimately contested by an adversely affected party.

**Recommendation: Administrative orders of the chief judge and local court rules are uniquely judicial branch instruments and are not appropriate mechanisms for codifying the decisions of these committees. The committees, through the respective chairs, should jointly request a legal opinion from the JAC's general counsel as to: 1) the appropriate mechanism by which their decisions can be appropriately codified; and 2) what statutes, rules or other procedures apply when a committee's decision is contested by an adversely affected party and by what standard these decisions are to be reviewed.**

## II. Manage the court-appointed counsel (CAC) registry process

### ► Committee Tasks:

- a) Determine minimum requirements and desirable credentials and experience for CACs by case-type.
- b) Establish an application or competitive bidding process.
- c) Solicit applications.
- d) Review and evaluate applications for appointment, recertification, re-qualification, as required by statute.
- e) Approve registry of CACs by county and case category
- f) Notify the chief judge in writing if the number of attorneys on the registry in a county or circuit for a particular category of cases is inadequate.
- g) Provide registry list on a quarterly basis to chief justice, chief judge, state attorney and public defender and clerk.
- h) Monitor CAC appointment practices for performance and accountability implications.

### ► Tasks to be performed by some entity in order to support the committee or the CAC process:

#### Operational and administrative staff to:

- ✓ create registry attorney application;
- ✓ publicize, solicit, actively recruit for applicants;
- ✓ answer attorneys' questions regarding appointment process and procedures;
- ✓ compile information from applications;
- ✓ verify information on applications;
- ✓ generate and continually update registry lists by county and case category;
- ✓ regularly transmit current registry to interested parties;
- ✓ administer the registry attorney evaluation process established by the committee; and
- ✓ compile and analyze reports as requested by the committee.

#### Legal staff support to:

- ✓ provide legal support in the event a decision of the committee is challenged;
- ✓ provide legal support in the registry attorney evaluation process established by the committee; and
- ✓ develop a comprehensive list of cases where a party may be entitled to court appointed counsel.

**Expense dollars** for expenditures related to notice and advertisement costs, reproduction and copy costs, long-distance telephone charges, postage and other general office supplies.

### ► Discussion and Recommendations:

In addition to providing the committee with legal support in its operations, the committees will require legal support in the review of applications and in resolving challenges to its decisions or its procedures, including the quality review process required by the statute. There are numerous legal



needs, some are currently being met by trial court legal staff and some are not being met at all. Absent immediate intervention, this process will likely break down, resulting in case delay, excessive attorney fee and due costs, and increased jail costs.

A related issue of great concern relates to the likely instance where a judge needs to appoint an attorney and there are none available to serve or none qualified in the specific area of law for which the appointment is needed. The sixth circuit reports that they have found it necessary to develop and present a CLE course so that local attorneys could meet the committee's locally imposed educational requirements.

**Recommendation: The current lack of legal, operational and administrative support at the local level is of paramount concern. The burden this continues to place on trial court staff is of great concern, as the trial courts were not funded adequately for this function. Following the reasoning of previous Revision 7 work by the Commission on Trial Court Performance and Accountability and the policies regarding the proper role and essential elements of the court, it is recommended that the committees and the TCBC seek legislative action to ensure that these resources are provided by the JAC. Specifically:**

- a) The JAC should provide FTEs for all circuits to perform the necessary operational and administrative duties related to the creation, maintenance, and operation of the registry lists and supporting committee activities.**
- b) The JAC should provide general counsel legal support to the circuit committees on a circuit or regional basis. Depending on the level and staffing model selected, these lawyers could also represent the JAC in contesting court-appointed counsels' motions for fees and expenses (see next item).**

### III. Manage due process services

▶ **Committee Tasks:**

- a) Establish rates for court reporting and court interpreting services for CAC appointments pursuant to s. 27.42(2)(c), Florida Statutes.
- b) Establish policies under which CACs will obtain due process services, including policies regarding investigative, court reporting, court interpreting, experts, and travel expenditures, etc.
- c) Review due process service utilization for performance and accountability implications.

▶ **Tasks to be performed by some entity in order to support the committee or the CAC process:**

**Operational and administrative staff to:**

- ✓ Identify due process service providers/vendors willing and capable of providing due process services;
- ✓ Develop the specific process by which CACs will obtain due process services;
- ✓ Execute contracts and service agreements with due process service providers/vendors; and
- ✓ Coordinate the provision of due process services to CACs.

**Legal staff support to:**

- ✓ review contracts, and
- ✓ provide legal support in the event a decision of the committee is challenged.

**Expense dollars** for expenditures related to reproduction and copy costs, long-distance telephone charges, postage, and other general office supplies.

▶ **Discussion and Recommendations:**

Court-appointed attorneys will require local support to help them procure due process services within the guidelines established by the committees. While the JAC already has a process by which it will contract with vendors or direct-pay attorney expenses, it is the local staff that must identify these vendors and respond to attorney inquiries about the local process and work with them on making certain that the specific requirements established by the chief financial officer are met. Further, absent an on-site complement of staff, JAC will not be able to provide the committees with adequate information with which they can determine whether the due process services expenditures were necessary and appropriate for the cases and will itself be hindered in its ability to identify instances where expenditures should be challenged. Because these attorneys are parties to a case, trial court staff cannot perform this function.

**Recommendation:** The Workgroup recommends that the committees and the TCBC seek legislative action to ensure that the JAC can perform the necessary operational and administrative duties related to the creation, maintenance, and operation of the registry lists and supporting committee activities. Additionally, the JAC should ensure that they have lawyers in each circuit to represent the JAC in contesting court-appointed counsels' motions for fees and expenses (see previous item).

## IV. Manage the appointment of court-appointed counsel in individual cases

### ▶ Committee Tasks:

Establish the process by which the registry will be administered and monitor how successful the process is in operation.

### ▶ Tasks to be performed by some entity in order to support the committee or the CAC process:

**Operational and administrative staff to:** (parenthesis depict entity(ies) that have done it in the past)

- ✓ Maintain and operate CAC registries by county and by case category in order to identify attorneys in rotating order by the appropriate county and case category (court, county, clerk, PD);
- ✓ Select next attorney on the list; (court, clerk, PD);
- ✓ Prepare orders of appointment and orders rescinding appointments for judge's signature (court, clerk, PD, CAC);
- ✓ Forward signed orders of appointment (clerk);
- ✓ Maintain files and database of all CAC assignments by case number, defendant/respondent, and open/closed status (county, court);
- ✓ Execute contract with CAC (county);
- ✓ Copy and forward the case file to CAC (clerk or PD);
- ✓ Receive motions and orders for discharge (court);
- ✓ Verify case is closed and forward signed orders of discharge (court); and
- ✓ Review transcript for appeal for form and format and check against the invoice (court).

**Legal staff support to:**

- ✓ Provide legal support to individual judges in making finding that an attorney next on the list should be "skipped;" and
- ✓ Legal research for the judges as to whether the facts in a particular case require the appointment of court-appointed counsel.

**Expense dollars** for expenditures related to reproduction and copy costs, long-distance telephone charges, postage and other general office supplies.

### ▶ Discussion and Recommendations:

The operational and administrative support necessary to create and operate these registries is quite significant. The 18<sup>th</sup> Circuit reported that the trial court administrator's office provides at least 60 hours a week accommodating these first two activities alone. "This is a huge task for which we were given no resources. Staff overtime is substantial and assigned employees are stressed."

There is a misconception that the operation of these registry "wheels" will require nothing more than simply selecting names in order from a list. In reality, once the lists are created they will be subject to continuous modification, as attorneys are added and deleted from the lists. Also, at any given time on

any given morning, a circuit will likely have several judges on the bench who will be pulling names from the county's list. If all judges work from the same list simultaneously, then the attorneys at the top of the list will receive overlapping assignments from multiple judges. Preventing this will require a complex system to identify the true "next" attorney or to organize the judges to begin their selection from various starting points on the list will be required. Other complications include: tracking assignments when one attorney is on several county or case type lists within the circuit; tracking when an attorney is "skipped" and should be "next;" tracking when a court-appointed attorney is assigned a case and immediately recognizes a conflict and declines the case; tracking when an attorney withdraws and another is assigned, tracking when an attorney asks to not be assigned a case for a specific time due to unavailability, etc. Once the committees determine how these issues will be handled, it will take staff resources to fairly maintain and implement this system.

The identification of a circumstance that will require the appointment of CAC comes from many sources, including the PD, the DCF, clerks, judges and judicial assistants. How all of this information is managed to ensure that the necessary tasks are accomplished varies greatly by circuit, county and even case type. Each task identified above presents an opportunity for staff to field questions, from judges, judicial assistants, CACs and others about the process. In fact, this is the area where trial court administrative staff is spending most of their efforts, much of it in coordination and communication activities. The trial courts have a multitude of systems developed to accommodate the processes related to getting attorneys assigned to cases, including co-opting of public defenders' and clerks' staff.

**Recommendation: The legal support needs described for this function are judicial and should continue to be provided by trial court law clerks. The committees and the TCBC should seek legislative action to ensure that the role of the other entities is clarified. In preparation for this, each local committee should review the clerical support needs, by case type and location, in this area and identify where the court, public defender, and JAC staff should be responsible. In some instances, this will be dictated by the type of case and the location. For example, if the registry list were properly maintained by the committees' JAC staff, then the clerks, judicial assistants or public defenders could collaborate on getting the orders of appointment prepared and forwarded, based on the type of case. For example: If the public defender withdraws from a case then the public defender could prepare an order appointing private counsel and forward a copy of the file, etc. In any case, it should be clarified that the JAC is responsible for maintaining the data base of all case appointments and related expenditures.**

## V. Manage the compensation for court-appointed counsel and due process service providers.

### ▶ Committee Tasks:

- a) Establish fees by case type (and, if appropriate, by county).
- b) Establish rates for due process service providers/vendors, where appropriate.
- c) Establish travel reimbursement and other policies relating to fees and costs.

### ▶ Tasks to be performed by some entity in order to support the committee or the CAC process:

#### Administrative staff to:

- ✓ answer attorney and due process vendor questions regarding payment process;
- ✓ answer questions regarding payment
- ✓ receive CAC motions, affidavits, supporting documentation and proposed orders for fees, costs and related expenses;
- ✓ review CAC proposed fee and expense motions;
- ✓ identify and object to CAC proposed fees and expenses outside the rates established by the committee;
- ✓ Review due process providers/vendors' invoices;
- ✓ Object to the use of a due process services, including investigators and experts;
- ✓ Object to due process service provider/vendor invoices;
- ✓ Prepare order on CACs motion for payment of fees and expenses;
- ✓ Process CAC and due process provider/vendor invoices for payment;
- ✓ Audit CAC and due process provider/vendor invoices.

#### Legal staff to:

- ✓ Review fees, costs, and expenses to determine if the facts in the case warrant them as necessary and appropriate.
- ✓ Appear and contest CAC proposed fee and expense motions.

#### Expenses related to:

- ✓ Staff expenses

### ▶ Discussion and Recommendations:

It is unclear what is expected of the individual judges in relation to managing costs in any given cases. The individual judge should be primarily concerned with the quality of representation. The duties related to managing compensation should be JACs or the court-appointed attorneys themselves. If the JAC objects to a fee or expenditure, then the judge will certainly be capable of making a ruling. In an adversarial system, judges make decisions when facts in dispute are presented in the course of a case; they are not auditors and it is not appropriate for their staff to be auditing the motions filed by a party to a case. Simply ascertaining that a due process service expense falls within the range established by the committee is not the same as determining that the expenditure was necessary and appropriate in the first

place, e.g., investigations, deposition transcripts, experts, travel to Morocco to interview witnesses, etc. If JAC pays directly for these costs, the judge will never see them. If the judge were to see them, JAC would have to develop the capacity to identify and object to unnecessary expenditures. Of course, if the objection is based on a legal analysis and argument, (i.e., something more than simply noting that a fee, cost, or expenditure exceeds the amount set forth in the committees' schedule) it will need to be prepared and presented by an attorney licensed to practice in Florida's courts. Absent an objection based on case facts and Florida case law, these fees, costs, and expenditures will likely be approved by the judges assigned to the case. Such an arrangement will leave the various committees with very little capacity to manage these costs in a manner likely to result in meaningful cost containment.

**Recommendation:**

- a. Because the various circuit committees are charged with managing court-appointed counsel and other indigent costs; they must rely on the JAC to critically review the appropriateness and necessity of expenditures and to challenge them as necessary within each case, the legislature should establish an office of court-appointed counsel within the JAC, with representation on the commission, and this office should deal with the court-appointed attorneys directly as to their fees. Additionally, the compensation for the court-appointed counsel should generally be accomplished without the court's participation. Only when the office for court-appointed counsel and the attorney cannot reach agreement as to the amount of fees, costs, and expenses, should the judge become involved. To accomplish this, subsection 27.40(7)(a), F.S., should be amended to delete the reference to approval of payment by the court and subsection 27.5304(2), F.S., should be amended to provide that the court retains "ultimate" authority, rather than "primary" authority, in determining the reasonableness of all billings.**
- b. The legislature should establish a mechanism by which to pay the due process costs for those individuals (both represented and pro se) who are determined to be indigent-for-costs.**

## VI. Manage the court-appointed counsel budget(s)

### ▶ Committee Tasks:

- a) Monitor CAC aggregate expenditures and their related due process service expenditures by circuit, case and budget category.
- b) Develop a schedule of standard fees and expense allowances for the categories of cases specified in section 27.5303, F.S., consistent with the overall compensation rates in that section and within the amount of appropriated funds allocated by the JAC to the circuit for this purpose.
- c) Review JAC expenditure reports.

### ▶ Tasks to be performed by some entity in order to support the committee or the CAC process:

#### Administrative staff to:

- ✓ prepare and provide encumbrance and expenditure data to the committees;
- ✓ prepare and provide quarterly expenditure data to the legislature, as required by statute and GAA proviso;
- ✓ verify JAC expenditure reports with local appointment records;
- ✓ determine where there will be a funding deficiency;
- ✓ prepare necessary budget amendments, including accessing the contingency fund;
- ✓ prepare and submit the Legislative Budget Request;
- ✓ advance and lobby the Legislative Budget Request; and
- ✓ prepare allocations.

**Legal staff to:** none identified

**Expenses related to:** none that are not included in other activities.

### ▶ Discussion and Recommendations:

In order for the committees to perform their statutory functions, they will need to be provided current data as to the total expenditures and encumbrances. This information will need to be provided by case type, CAC, and expenditure type so that the committees can see where any anomalies arise. JAC staff will have to be available and prepared to explain any anomalies that may be based on due process cost trends, trends in practices, or case specific facts that resulted in a significant variance. It is unclear what role the committees will have in relation to the management of costs in cases where a person is declared indigent-for-costs.

**Recommendation: The tasks related to these financial activities must be performed by JAC but could be accomplished with central staff that is available to attend committee meetings for purposes of explanation.**



## Appendix A

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

(1) Counsel shall be appointed to represent any individual in a criminal or civil proceeding entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law. The court shall appoint a public defender to represent indigent persons as authorized in s. 27.51. Private counsel shall be appointed to represent indigents in those cases in which provision is made for court-appointed counsel but the public defender is unable to provide representation due to a conflict of interest or is not authorized to provide representation.

(2) No later than October 1, 2004, private counsel appointed by the court to provide representation shall be selected from a registry established by the circuit Article V indigent services committee or procured through a competitive bidding process.

(3) In utilizing a registry:

(a) Each circuit Article V indigent services committee shall compile and maintain a list of attorneys in private practice, by county and by category of cases. To be included on a registry, attorneys shall certify that they meet any minimum requirements established in general law for court appointment, are available to represent indigent defendants in cases requiring court appointment of private counsel, and are willing to abide by the terms of the contract for services. Each attorney on the registry shall be responsible for notifying the circuit Article V indigent services committee of any change in his or her status. Failure to comply with this requirement shall be cause for removal from the registry until the requirement is fulfilled.

(b) The court shall appoint attorneys in rotating order in the order in which names appear on the applicable registry, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney not appointed in the order in which his or her name appears on the list shall remain next in order.

(c) If it finds the number of attorneys on the registry in a county or circuit for a particular category of cases is inadequate, the circuit Article V indigent services committee shall notify the chief judge of the particular circuit in writing. The chief judge shall submit the names of at least three private attorneys with relevant experience. The clerk of court shall send an application to each of these attorneys to register for appointment.

(d) Quarterly, beginning no later than October 1, 2004, July 1, 2004, each circuit Article V indigent services committee shall provide the Chief Justice of the Supreme Court, the chief judge, the state attorney and public defender in each judicial circuit, and the clerk of court in each county with a current copy of each registry.

(4) To be eligible for court appointment, an attorney must be a member in good standing of The Florida Bar in addition to any other qualifications specified by general law.

(5) The Justice Administrative Commission shall approve uniform contract forms for use in procuring the services of private court-appointed counsel based on the recommendations of the Article V Indigent Services Advisory Board.

(6) After court appointment, the attorney must immediately file a notice of appearance with the court indicating acceptance of the appointment to represent the defendant.

(7)(a) An attorney appointed to represent a defendant or other client is entitled to payment of attorney's fees and expenses pursuant to s. 27.5304, only upon full performance by the attorney of specified duties, approval of payment by the court, and attorney submission of a payment request to the Justice Administrative Commission. If an attorney is permitted to withdraw or is otherwise removed from representation prior to full performance of the duties specified in this section for reasons other than breach of

duty, the trial court shall approve payment of attorney's fees and costs for work performed in an amount not to exceed the amounts specified in s. 27.5304.

(b) The attorney shall maintain appropriate documentation, including a current and detailed hourly accounting of time spent representing the defendant or other client.

(8) Subject to the attorney-client privilege and the, work-product privilege, an attorney who withdraws or is removed from representation shall deliver all files, notes, documents, and research to the successor attorney within 15 days after receiving notice from the successor attorney. The successor attorney shall bear the cost of transmitting all files, notes, documents, and research.

(9) A circuit Article V indigent services committee or any interested person may advise the court of any circumstance affecting the quality of representation, including, but not limited to, false or fraudulent billing, misconduct, failure to meet continuing legal education requirements, solicitation to receive compensation from the defendant or other client the attorney is appointed to represent, or failure to file appropriate motions in a timely manner.

(10) This section does not apply to attorneys appointed to represent persons in post conviction capital collateral cases pursuant to part IV of this chapter.

#### **27.42 Circuit Article V indigent services committees; composition; staff; responsibilities; funding.--**

(1) In each judicial circuit a circuit Article V indigent services committee shall be established. The committee shall consist of the following:

(a) The chief judge of the judicial circuit or the chief judge's designee, who shall serve as the chair.

(b) The public defender of the judicial circuit, or designee from within the office of the public defender.

(c) One experienced private criminal defense attorney appointed by the chief judge to serve a 2-year term. During the 2-year term, the attorney is prohibited from serving as court-appointed counsel.

(d) One experienced civil trial attorney appointed by the chief judge, to serve a 2-year term. During the 2-year term, the attorney is prohibited from serving as court-appointed counsel.

(2)(a) The responsibility of the circuit Article V indigent services committee is to manage the appointment and compensation of court-appointed counsel within a circuit pursuant to ss. 27.40 and 27.5303. The circuit Article V indigent services committee shall meet at least quarterly.

(b) No later than October 1, 2004, each circuit Article V indigent services committee shall maintain a registry pursuant to s. 27.40, even when procuring counsel through a competitive bidding process. However, if counsel is procured through a competitive bidding process, the registry shall be used only when counsel obtained through that process is unable to provide representation due to a conflict of interest or reasons beyond their control. The committee shall apply any eligibility and performance standards set by the Legislature.

(c) Each circuit Article V indigent services committee shall develop a schedule of standard fees and expense allowances for the categories of cases specified in s. 27.5303, consistent with the overall compensation rates in that section and within the amount of appropriated funds allocated by the Justice Administrative Commission to the circuit for this purpose.

(3) The Justice Administrative Commission shall prepare and issue on a quarterly basis a statewide report comparing actual year-to-date expenditures to budgeted amounts for the circuit Article V indigent services committees in each of the judicial circuits. Copies of these quarterly reports shall be distributed to each circuit Article V indigent services committee and to the Governor, the Chief Justice of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives.

(4)(a) The funding and positions for the processing of committees' fees and expenses shall be as appropriated to the Justice Administrative Commission in the General Appropriations Act.

(b) Funds for criminal conflict attorney's fees and expenses shall be appropriated by the Legislature in a separate appropriations category within the Justice Administrative Commission. These funds shall be allocated to each circuit as prescribed in the General Appropriations Act.

(c) Funds for attorney's fees and expenses for child dependency and civil conflict cases shall be appropriated by the Legislature in a separate appropriations category within the Justice Administrative Commission.

(d) Any funds the Legislature appropriates for other court-appointed counsel cases shall be as appropriated within the Justice Administrative Commission.

The Justice Administrative Commission shall separately track expenditures on private court-appointed counsel for the following categories of cases: criminal conflict, civil conflict, dependency and termination of parental rights, and guardianship.

### **27.5303 Public defenders; conflict of interest.--**

(1)(a) If, at any time during the representation of two or more defendants, a public defender 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 conflict of interest, or that none can be counseled by the public defender or his or her staff because of a conflict of interest, then the public defender shall file a motion to withdraw and move the court to appoint other counsel. If requested by the Justice Administrative Commission, the public defender shall submit a copy of the motion to the Justice Administrative Commission at the time it is filed with the court. The Justice Administrative Commission shall have standing to appear before the court to contest any motion to withdraw due to a conflict of interest. The Justice Administrative Commission may contract with other public or private entities or individuals to appear before the court for the purpose of contesting any motion to withdraw due to a conflict of interest. The court shall review and may inquire or conduct a hearing into the adequacy of the public defender's representations regarding a conflict of interest without requiring the disclosure of any confidential communications. The court shall deny the motion to withdraw if the court finds the grounds for withdrawal are insufficient or the asserted conflict is not prejudicial to the indigent client. If the court grants the motion to withdraw, the court shall appoint one or more attorneys to represent the accused.

(b) Upon its own motion, the court shall appoint such other counsel when the facts developed upon the face of the record and court files in the case disclose a conflict of interest. The court shall advise the appropriate public defender and clerk of court, in writing, with a copy to the Justice Administrative Commission, if so requested by the Justice Administrative Commission, when making the motion and appointing one or more attorneys to represent the accused. The court shall specify the basis for the conflict.

(c) In no case shall the court approve a withdrawal by the public defender based solely upon inadequacy of funding or excess workload of the public defender.

(d) In determining whether or not there is a conflict of interest, the public defender and the court shall apply the standards contained in the Uniform Standards for Use in Conflict of Interest Cases found in appendix C to the Final Report of the Article V Indigent Services Advisory Board dated January 6, 2004 adopted by the Legislature after receiving recommendations from the Article V Indigent Services Advisory Board.

(2) The court shall appoint conflict counsel pursuant to s. 27.40. The appointed attorney may not be affiliated with the public defender or any assistant public defender in his or her official capacity or any other private attorney appointed to represent a codefendant. The public defender may not participate in case-related decisions, performance evaluations, or expense determinations in conflict cases.

(3) Private court-appointed counsel shall be compensated as provided in s. 27.5304 in accordance with compensation standards adopted by the Legislature after receiving recommendations from the Article V Indigent Services Advisory Board.

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

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

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

#### **27.5304 Private court-appointed counsel; compensation.--**

(1) Private court-appointed counsel shall be compensated by the Justice Administrative Commission in an amount accordance with standards adopted by the Legislature after receiving recommendations from the Article V Indigent Services Advisory Board. However, compensation shall not to exceed the maximum fee limits established in by this section. The attorney also shall be reimbursed for reasonable and necessary expenses in accordance with s. 29.007. If the attorney is representing a defendant charged with more than one offense in the same case, the attorney shall be compensated at the rate provided for the most serious offense for which he or she represented the defendant. This section does not allow stacking of the fee limits established by this section.

(2) Prior to filing a motion for an order approving payment of attorney's fees, costs, or related expenses, the private court-appointed counsel shall deliver a copy of the intended billing, together with supporting affidavits and all other necessary documentation, to the Justice Administrative Commission. The Justice Administrative Commission shall review the billings, affidavit, and documentation for completeness and compliance with contractual and statutory requirements. If the Justice Administrative Commission objects to any portion of the proposed billing, the objection and reasons therefore shall be communicated to the private court-appointed counsel. The private court-appointed counsel may thereafter file his or her motion for order approving payment of attorney's fees, costs, or related expenses together with supporting affidavits and all other necessary documentation. The motion must specify whether the Justice Administrative Commission objects to any portion of the billing or the sufficiency of documentation and, if so, the reasons therefore. A copy of the motion and attachments shall be served on the Justice Administrative Commission. The Justice Administrative Commission shall have standing to appear before the court to contest any motion for order approving payment of attorney's fees, costs, or related expenses. The Justice Administrative Commission may contract with other public or private entities or individuals to appear before the court for the purpose of contesting any motion for order approving payment of attorney's fees, costs, or related expenses. The fact that the Justice Administrative Commission has not objected to any portion of the billing or to the sufficiency of the documentation is not binding on the court. The court retains primary authority and responsibility for determining the reasonableness of all billings for attorney's fees, costs, and related expenses, subject to statutory limitations. Before final disposition of a case, a private court-appointed counsel may file a motion for fees, costs, and related expenses for services completed up to the date of the motion in any case or matter in which legal services have been provided by the attorney for more than 1 year. The amount approved by the court may not exceed 80 percent of the fees earned, or costs and related expenses incurred, to date, or an amount proportionate to the maximum fees permitted under this section based on legal services provided to date, whichever is less. The court may grant the motion if counsel shows that failure to grant the motion would work a particular hardship upon counsel.

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

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

2. For non-capital, non-life felonies represented at the trial level: \$2,500.

3. For life felonies represented at the trial level: \$3,000.
4. For capital cases represented at the trial level: \$3,500.
5. For representation on appeal: \$2,000.

(b) If a death sentence is imposed and affirmed on appeal to the Supreme Court, the appointed attorney shall be allowed compensation, not to exceed \$1,000, for attorney's fees and costs incurred in representing the defendant as to an application for executive clemency, with compensation to be paid out of general revenue from funds budgeted to the Department of Corrections.

(4) By January 1 of each year, 2004, the Article V Indigent Services Advisory Board shall recommend to the Legislature any adjustments to the existing compensation provisions of this section schedules for criminal proceedings and any proposed compensation standards for private attorneys providing representation in civil proceedings in which private court-appointed counsel is required.

(5)(a) If counsel is entitled to receive compensation for representation pursuant to court appointment in a termination of parental rights proceeding under chapter 39 s. 39.0134, such compensation shall not exceed \$1,000 at the trial level and \$2,500 at the appellate level.

(b) Counsel entitled to receive compensation for representation pursuant to court appointment in a proceeding under chapter 384 or chapter 392 shall receive reasonable compensation as fixed by the court making the appointment.

(6) A private attorney appointed in lieu of the public defender to represent an indigent defendant may not reassign or subcontract the case to another attorney or allow another attorney to appear at a critical stage of a case who is does not on the registry developed pursuant to s. 27.40 meet standards adopted by the Legislature after any recommendations from the Article V Indigent Services Advisory Board.