

**A Study of the Compensation
of Private Court-Appointed Conflict Counsel
in Criminal Cases in Florida**

*A Report to the Chair of the Senate Committee on Appropriations
and the Chair of the House Appropriations Committee,
of the Florida Legislature*

January 15, 2013

I. Introduction

A. Background

The constitutional right to appointed counsel in criminal proceedings is well-established under the Sixth Amendment to the United States Constitution.¹ The Sixth Amendment guarantees that “in all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defence.”² The Florida Supreme Court has acknowledged that “the right to effective assistance of counsel encompasses the right to representation free from actual conflict.”³ An actual conflict of interest that adversely affects a lawyer's performance violates a defendant's Sixth Amendment right to effective assistance of counsel.⁴

Pursuant to Section 27.51, Florida Statutes, the Office of the Public Defender in each judicial circuit is primarily responsible for representing indigent defendants who have been charged or arrested for specific criminal offenses. If the Office of the Public Defender has a conflict of interest then the Office of Criminal Conflict and Civil Regional Counsel is appointed to provide legal services.⁵ As an additional layer to provide indigent defendants with conflict-free counsel, if the Office of Criminal Conflict and Civil Regional Counsel has a conflict, then counsel is appointed by the court from a registry of private attorneys willing to take these conflict cases.⁶

These private court-appointed attorneys are compensated according to a schedule of flat

¹ See Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963); see also Article I, Section 16, Florida Constitution.

² U.S. Const. Amend. VI.

³ See Johnson v. State, 78 So.3d 1305 (Fla.2012) (quoting, Hunter v. State, 817 So.2d 786, 791 (Fla.2002)).

⁴ Id. at 1308 (citing, Cuyler v. Sullivan, 446 U.S. 335, 346, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980)).

⁵ Section 27.511(5), Florida Statutes. (2012).

⁶ Section 27.40(2)(a), Florida Statutes (2012).

fees listed each year in the General Appropriations Act (GAA), which must not exceed the limits set in statute at Section 27.5304, Florida Statutes.⁷ The Legislature has created a statutory scheme requiring an evidentiary hearing to allow conflict counsel on “rare occasions” to motion the court to allow for the payment of attorney fees that exceed the flat fees in cases that have required “extraordinary and unusual effort”.⁸ This process will be discussed further in this study.

B. The Study

The 2012 Florida Legislature passed HB 5001 or the GAA (Ch. 2012-118, Laws of Florida), which contained specific appropriation 828 in the amount of \$3,000,000 for attorney fees in criminal conflict cases that are in excess of the flat fees established by law. The proviso language in specific appropriation 828 also directed the Office of the State Courts Administrator (OSCA) to study the adequacy and reasonableness of the current statutory flat fee limits and the statutory hourly rates listed in Section 27.5304(12), Florida Statutes, for criminal cases in which conflict counsel is appointed. Specifically the proviso language directs that:

...The Office of the State Courts Administrator (OSCA) shall conduct a study of the adequacy and reasonableness of the current statutory flat fee limits and the statutory hourly rates listed in section 27.5304 (12) for criminal cases in which conflict counsel is appointed. The Justice Administrative Commission shall assist the Office by providing all data, documents, and information in its possession requested by OSCA to complete the study. OSCA shall submit a report of the study to the chair of the Senate Budget Committee⁹ and the chair of the House Appropriations Committee by January 15, 2013.

⁷ Section 27.5304(1), Florida Statutes (2012).

⁸ Section 27.5304(12), Florida Statutes (2012).

⁹ The “Senate Budget Committee” is now the Senate Committee on Appropriations.

C. Scope of this Study

As directed by the proviso language in the GAA, this Study examines the adequacy and reasonableness of private court-appointed attorney fees paid under the current statutory flat fee and hourly rate schedule for **criminal conflict** cases as allowed by Section 27.5304, Florida Statutes. This study will not seek to analyze dependency or other civil matters in which a flat fee attorney schedule has been mandated by statute or by the GAA. Post-conviction capital collateral proceedings, as defined in Section 27.711(1)(c), Florida Statutes, are also beyond the scope of this study because fees in such cases are governed by Section 27.711(4), Florida Statutes.

II. Compensation of Private Court-Appointed Conflict Counsel in Florida

A. Section 27.5304(5) – Statutory Maximum Fees

The current pay structure for private court-appointed conflict counsel is based primarily on subsections (1) and (5) of Section 27.5304, Florida Statutes. Section 27.5304(5), Florida Statutes, sets out the statutory maximum attorney fees that the state will pay, absent a court order. Section 27.5304(1), Florida Statutes, requires that the GAA annually sets out the actual specific attorney fee. The specific attorney fees listed in the GAA annually are not to exceed the limits set out in Section 27.5304(5), Florida Statutes. The relevant portions of subsections (1) and (5) are as follows:

*(1) Private court-appointed counsel shall be compensated by the Justice Administrative Commission as provided in this section and the General Appropriations Act. The flat fees prescribed in this section are limitations on compensation. **The specific flat fee amounts for compensation shall be established annually in the General Appropriations Act.** [Emphasis added.]*

(5) 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 noncapital, nonlife 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: \$15,000. For purposes of this subparagraph, a "capital case" is any offense for which the potential sentence is death and the state has not waived seeking the death penalty.*
- 5. For representation on appeal: \$2,000.*

Generally, prior to the appointment, counsel is chosen from the registry of attorneys willing to handle specific types of cases. To be listed on the registry, attorneys must meet minimum requirements established by the chief judge and by general law for court appointment; be available to represent indigent defendants; abide by the terms of the contract for services with the Justice Administration Commission (JAC); and be willing to accept as full payment the flat fees prescribed in Section 27.5304, Florida Statutes. Recent amendments to Section 27.40, Florida Statutes, attempt to hold registry counsel to the flat fees prescribed while recognizing that cases brought under the Racketeer Influenced and Corrupt Organizations Act (RICO) and capital cases will almost certainly necessitate attorney fees in excess of the flat fees prescribed.¹⁰

Registry attorneys must enter into a contract with the JAC¹¹ which serves as the administrator for court-appointed conflict counsel statewide.¹² The JAC was created by statute and its membership, powers, and duties are described in Section 43.16, Florida Statutes.¹³ As to

¹⁰ See Section 27.40(3)(a)4., Florida Statutes (2012).

¹¹ Section 27.40(3)(a), Florida Statutes (2012).

¹² The JAC administratively serves the offices of State Attorneys, Public Defenders, Capital Collateral Regional Counsels, the Statewide Guardian ad Litem Program, Criminal Conflict and Civil Regional Counsels, and the Clerks of Court Operations Corporation; and provides compliance and financial review of the court-appointed attorney due process costs.

¹³ There are 4 members of the Justice Administrative Commission consisting of two state attorneys and two public defenders who each serve a period of 2 years. Current members are the Hon. Brad King, Chair (State Attorney, 5th Judicial Circuit); Hon. Jerry Hill (State Attorney, 10th Judicial Circuit); Hon. Diamond R. Litty (Public Defender, 19th Judicial Circuit); and the Hon. Nancy Daniels (Public Defender, 2nd Judicial Circuit). The JAC is authorized by statute to employ an executive director.

court-appointed conflict counsel, the JAC is responsible for approving uniform contract forms for use in procuring the services of private court-appointed counsel as well as forms and procedures used by a court-appointed attorney in support of billing for attorney's fees and costs. The JAC also has standing to appear before the court at a hearing to contest any motion for an order approving payment of attorney fees, costs, or related expenses, including motions for fees exceeding the flat fees.¹⁴

Counsel appointed to a case can expect to be paid an attorney fee as listed in the GAA (see Table 1, *GAA Specific Flat Fees for Court-Appointed Conflict Counsel, FY 2012-2013*). Many of these fees are less than the statutory limits set out in Section 27.5304(5), Florida Statutes. For example, for fiscal year (FY) 2012-2013, the attorney flat fee for representation of a defendant charged with a misdemeanor is \$400.¹⁵ However the maximum compensation amount listed in statute is \$1,000. The attorney flat fee for representation of a defendant charged with a life felony has a statutory maximum of \$3,000, but the GAA provides a specific flat fee of \$2,500.¹⁶ The specific flat fees, for the most part, are less than the statutory maximum fees, and the statutory maximum fees have remained the same for the past 30 years. With one exception, for capital cases, the maximum fees have not been raised since 1981.

¹⁴ Section 27.5304(12)(c), Florida Statutes (2012).

¹⁵ Ch. 2012-118, Laws of Florida.

¹⁶ Id.

B. General Appropriations Act – Specific Fees

The specific flat fee amounts for compensation of conflict counsel in any given fiscal year (July 1 - June 30) is established annually in the GAA passed by the Florida Legislature.

Table 1 below shows the fees for FY 2012-2013.

Table 1

GAA Specific Flat Fees for Court-Appointed Conflict Counsel FY 2012-2013	
CATEGORY	2012-2013 <i>in dollars</i>
POST CONVICTION - Rules 3.850 and 3.800, Fla.R.Crim. Proc	1,000
CAPIT AL - 1ST DEGREE MURDER (LEAD COUNSEL	15,000
CAPIT AL - 1ST DEGREE MURDER (CO-COUNSEL	15,000
CAPIT AL - 1ST DEGREE MURDER (NON-DEATH)	2,500
CAPIT AL SEXUAL BATTERY	2,000
CAPIT AL APPEALS	2,000
CONTEMPT PROCEEDINGS	400
CRIMINAL TRAFFIC	400
EXTRADITION.	500
FELONY – LIFE	2,500
FELONY - PUNISHABLE BY LIFE.	2,000
FELONY 1ST DEGREE.	1,500
FELONY 2ND DEGREE.	1,000
FELONY 3RD DEGRE	750
FELONY OR MISDEMEANOR - NO INFORMATION FILED.	400
FELONY APPEALS	1,500
JUVENILE DELINQUENCY - 1ST DEGREE FELONY	600
JUVENILE DELINQUENCY - 2ND DEGREE	400
JUVENILE DELINQUENCY - 3RD DEGREE.	300
JUVENILE DELINQUENCY - FELONY LIFE	700
JUVENILE DELINQUENCY – MISDEMEANOR	300
JUVENILE DELINQUENCY-DIRECT FILE OR NO PETITION FILED.	300
JUVENILE DELINQUENCY APPEALS	1,000
MISDEMEANOR	400
MISDEMEANOR APPEALS	750
VIOLATION OF PROBATION - FELONY (INCLUDES VOCC)	500
VIOLATION OF PROBATION - MISDEMEANOR (INCLUDES VOCC)	300
VIOLATION OF PROBATION (VOCC) JUVENILE DELINQUENCY	300

The listing in the GAA of specific attorney fees for court-appointed conflict counsel began in 2007 (these rates have not changed since the initial listing in 2007). There have been several cases in which these flat fees have been challenged by the registry attorney or others. The leading case on this issue is Makemson v. Martin County.¹⁷

In Makemson, the Florida Supreme Court held that it is “within the inherent power of Florida's trial courts to allow, in extraordinary and unusual cases, departure from the statute's fee guidelines when necessary in order to ensure that an attorney who has served the public by defending the accused is not compensated in an amount which is confiscatory of his or her time, energy and talents.”¹⁸

The Court’s opinion stated that “statutory maximum fees, as inflexibly imposed in cases involving unusual or extraordinary circumstances, interfere with the defendant's sixth amendment right to have the assistance of counsel for his defence.”¹⁹ Makemson and its progeny are discussed latter in this report.

¹⁷ 491 So.2d 1109 (Fla.1986).

¹⁸ Id. at 1115.

¹⁹ Id. at 1112.

III. History of the Current Compensation Structure

A. Chapter 2003-402, Laws of Florida

In a special session in 2003, Section 27.5304, Florida Statutes, (Private court appointed counsel; compensation) was first enacted into law by Chapter 2003-402, Laws of Florida. Included in the new law was language that the compensation for representation of a defendant in a criminal proceeding shall not exceed the following:

- (a)1. For misdemeanors and juveniles represented at the trial level: \$1,000.*
- 2. For noncapital, nonlife 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: \$2,000.²⁰*

The paragraph above was moved from the now repealed Section 925.036, Florida Statutes (1981), using the same maximum fee amounts in use today under Section 27.5304, Florida Statutes, with the exception of capital cases now capped at \$15,000. Section 925.036, Florida Statutes, provided that conflict counsel appointed pursuant to Section 27.5, Florida Statutes (1981), would be compensated at levels not to exceed those listed in Section 925.036, Florida Statutes (1981). Chapter 2003-402, Laws of Florida, created Section 27.5304, Florida Statutes, and repealed Section 925.036, Florida Statutes. The Legislature consolidated Section 925.036, Florida Statutes, with the new Section 27.5304, Florida Statutes, and left the established maximum fee limits in place.²¹ The flat fees of the old Section 925.036, Florida Statutes, unchanged from 1981 and not far from what they were in 1979 (the year after Section 925.036,

²⁰ Chapter 2003-402, Laws of Florida, Section 20.

²¹ Id. The staff analysis of HB 113-A (May 14, 2003) stated that one purpose of the legislation was to consolidate provisions relating to conflict counsel and compensation for representation of defendants charged with capital and non-capital offenses into a single section.

Florida Statutes, was enacted into law²²), were inserted into the 2003 legislation.

Chapter 2003-402, Laws of Florida, also created Section 27.42, Florida Statutes, which established Article V indigent services committees for each judicial circuit. These committees were charged with the responsibility of meeting at least quarterly to manage the appointment and compensation of court-appointed counsel within a circuit. Serving on these committees were the chief judge of the judicial circuit or the chief judge's designee, serving as the committee chair; the public defender of the judicial circuit, or designee from within the office of the public defender; one experienced private criminal defense attorney appointed by the chief judge to serve a 2-year term; and one experienced civil trial attorney appointed by the chief judge, to serve a 2-year term.²³

These circuit Article V indigent services committees were required by statute to develop a schedule of standard fees and expense allowances for the various categories of cases, consistent with the standards adopted by the Legislature. In addition, a newly created Article V Indigent Services Advisory Board (“Board”) was to make recommendations to the Legislature regarding compensation and other issues.

In the Board’s Final Report,²⁴ dated January 6, 2004, as to the issue of court-appointed counsel compensation, the Board recommended to the Legislature that compensation for court-appointed counsel in criminal trial and appellate cases (other than capital appeals) and in dependency cases and appeals, should be established by the circuit Article V Indigent Services Advisory Committees. Further, the Board also recommended that for capital death penalty cases,

²² Section 925.036, Florida Statutes (1979), now repealed, was enacted in 1978. *See* Laws of Florida Chapter 78-344.

²³ Section 27.42, Florida Statutes (2006).

²⁴ See the Report at http://www.justiceadmin.org/art_v/ART.%20V%20ISAB%20Final%20Report%201-6-04.pdf

a minimum compensation of at least \$10,000 and if additional compensation was necessary, the attorney should be paid at an hourly rate established by the circuit's Article V Indigent Services Committee and approved by the court. Part of this recommendation was accomplished in 2007 when the flat fee for capital cases was raised from \$3,500 to \$15,000.

Under the indigent services committee regime, each judicial circuit established a fee structure for payment of conflict counsel that varied by local area or circuit, although still within the maximum fee limits set by statute. For example in 2004, the Chief Judge of the Nineteenth Judicial Circuit (Indian River, Martin, Okeechobee and St. Lucie counties) issued an Administrative Order (2004-15) authorizing the fees established by the local indigent services committee. This order reflects that for first degree murder cases, conflict attorneys were paid at the rate of \$90 per hour; and for misdemeanor cases a flat fee of \$500 in the Nineteenth Circuit. In the Thirteenth Judicial Circuit (Hillsborough County), the local indigent services committee established the rate of \$90 per hour for first degree murder cases; and a flat fee of \$450 for misdemeanor cases in that circuit.

B. Chapter 2007-62, Laws of Florida

Four years later, in 2007, the Legislature through the passage of CS/SB 1088, created the Offices of Criminal Conflict and Civil Regional Counsel and repealed Section 27.42 (Article V indigent services committees). The Senate bill, codified by Chapter 2007-62, Laws of Florida, effective October 1, 2007, also enacted the following relevant amendments:

- Attorney fee for capital cases at the trial level raised to \$15,000.
- Specific flat fees for compensation of court-appointed conflict counsel would now be established annually in the General Appropriations Act.
- Added subsection (12) details the procedure in which conflict counsel may seek compensation that exceeds the monetary limits of payment for representation in extraordinary and unusual cases.

The table below summarizes the history of the statutory flat fees paid to attorneys for representation of criminal defendants in conflict cases.

Table 2

Current flat fees have not changed since 1981, with the exception of capital cases.

Compensation of Court-Appointed Conflict Counsel - Criminal Florida Statutory Maximum Fee Limits, 1979 – 2012						
CATEGORY	1979²⁵	1981²⁶	2003²⁷	2006²⁸	2007²⁹	2012³⁰
Misdemeanors and juveniles represented at the trial level	\$500	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Noncapital, nonlife felonies represented at the trial level	\$1,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500
Life felonies represented at the trial level	\$2,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Capital cases represented at the trial level	\$2,500	\$3,500	\$3,500	\$3,500	\$15,000	\$15,000
Representation on appeal	\$1,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000

²⁵ Section 925.036, Florida Statutes (1979).

²⁶ Section 925.036(2), Florida Statutes (1981).

²⁷ In the 2003 Legislative Special Session, H0113A consolidated provisions relating to conflict counsel and compensation for defendants in criminal cases by repealing s. 925.036, Florida Statutes, and amending s. 27.53, Florida Statutes. In addition s. 27.5304, Florida Statutes, was created and the maximum fee schedule from s. 925.036, F.S., was carried over with the rates unchanged since 1981. See Chapter 2003-402, Laws of Florida.

²⁸ Section 27.5304(3)(a), Florida Statutes (2006).

²⁹ In 2007, CS/SB 1088 amended s. 27.5304, Florida Statutes, adding that all rates will be specified in the GAA but that the maximum amounts are those listed in statute; and raised the flat fee for capital cases at the trial level from \$3,500 to \$15,000.

³⁰ Section 27.5304(5)(a), Florida Statutes (2012). These are the current statutory maximum fees allowed absent a motion by the attorney for “excess” fees.

IV. What Is Reasonable Compensation?

I won't work for those fees. It is less than my overhead costs and I have a low overhead practice. I have been a member of The Florida Bar for close to 40 years... I would sooner represent the client pro bono or go fishing.³¹

A. A Survey of Florida's Criminal Defense Attorneys

To determine the adequacy and reasonableness of the flat fees paid to court-appointed conflict counsel in criminal cases the Office of the State Courts Administrator created a survey and asked members of the Florida Association of Criminal Defense Lawyers (FACDL)³² and the members of the Florida Bar's Criminal Law Section for responses. The attorney participants were asked to answer questions related to fees that they charge for representing criminal defendants and if they have ever participated as registry attorneys. The survey was conducted between September 19, 2012 and September 28, 2012, and emailed to nearly 3,000 criminal defense attorneys statewide. A copy of the survey questions is attached at **Appendix A**.

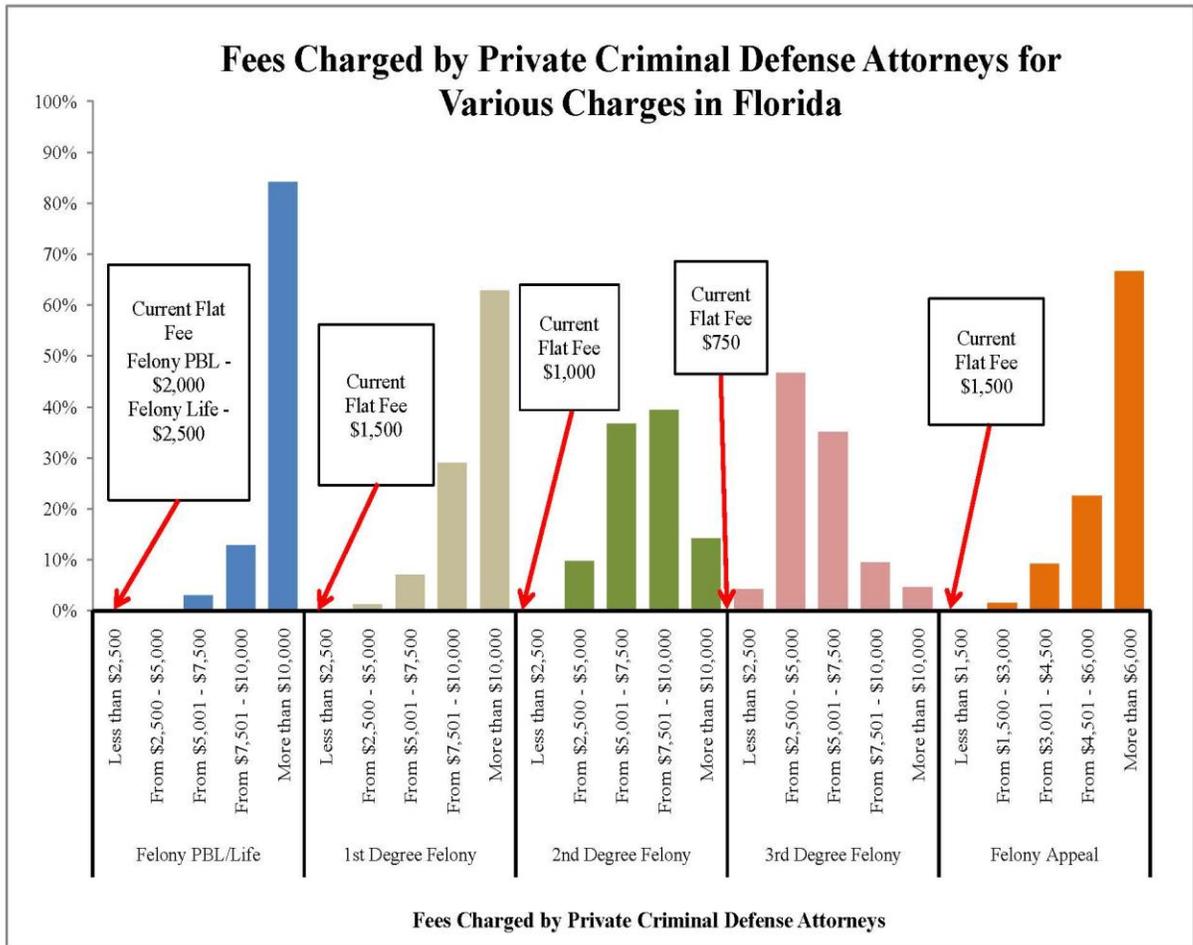
The survey contained 21 questions targeted at determining in general the attorney fees charged for non-court-appointed representation of criminal defendants charged with various offenses. The questions sought responses as to the geographic practice areas of the survey participants as well as the fee charged for various offenses. The questions required either a "yes" or "no" response, or a selection from a dollar amount range with the lowest range tracking the GAA specific flat fee or the statutory amount. For example, the GAA specific amount for representation of a defendant charged with a felony punishable by life (PBL) is \$2,000.

³¹ Comment from an anonymous attorney participant in the September 2012 survey of Florida's criminal defense attorneys.

³² Special thanks to Rick Freedman, Esq., of Rick Freedman & Associates, P.A., for his assistance in distributing the survey to FACDL members.

Question 12 in the survey, asks “what is your attorney fee for a defendant charged with a Life felony or PBL at the trial level?” Thus the base amount of the choices listed is stated as “a. Less than \$2,500”. Only a subpart of question #21 allowed survey participants to make comments about why they have not participated as a registry attorney, if applicabl e.

The responses of the survey participants reflecting the attorney fees charged by private counsel for their non court-appointed cases are illustrated in the charts below:



The Office of the State Courts Administrator received responses from 361 participants in the survey. All of the participants are members of the Florida Bar and 99% currently practice criminal law in Florida.³³ Over 80% of the survey participants practice law in Central and South Florida. Almost 18% of the survey participants practice law in North Florida, and close to 1.5% indicated that their practice of law is statewide. Over 82% of the survey participants responded that at least 50% of their practice involves criminal defense and at least 95% of the participants charge a flat fee in their criminal defense practice. Over 61% of the survey participants are NOT currently listed as registry attorneys, and 47% have never sought appointment as a registry attorney pursuant to Section 27.40, Florida Statutes.

Question #7 of the survey asked the attorney participants to indicate the range of flat fees that they charge (for non-court-appointed cases) for representation of a defendant charged with a misdemeanor at the trial level. Section 27.5304(5)(a), Florida Statutes, allows for payment of attorney fees for such matters not to exceed \$1,000. The specific fee in the GAA is lower and thus attorneys are paid a flat fee of \$400 for representation of a defendant charged with a misdemeanor at the trial level. The survey results showed that none of the participants indicated that they charge less than \$500 for such representation; only 2.4% indicated that they charge an attorney fee less than \$1,000 for such cases; and close to 40% charge between \$2,000 - \$3,000 for such representation.

³³ Attorneys employed by the Public Defender's Office or Office of Criminal Conflict and Civil Regional Counsel were asked not to complete the survey if they indicated that they were employed with those offices because the target of the survey are the fees charged in the marketplace by private criminal defense counsel.

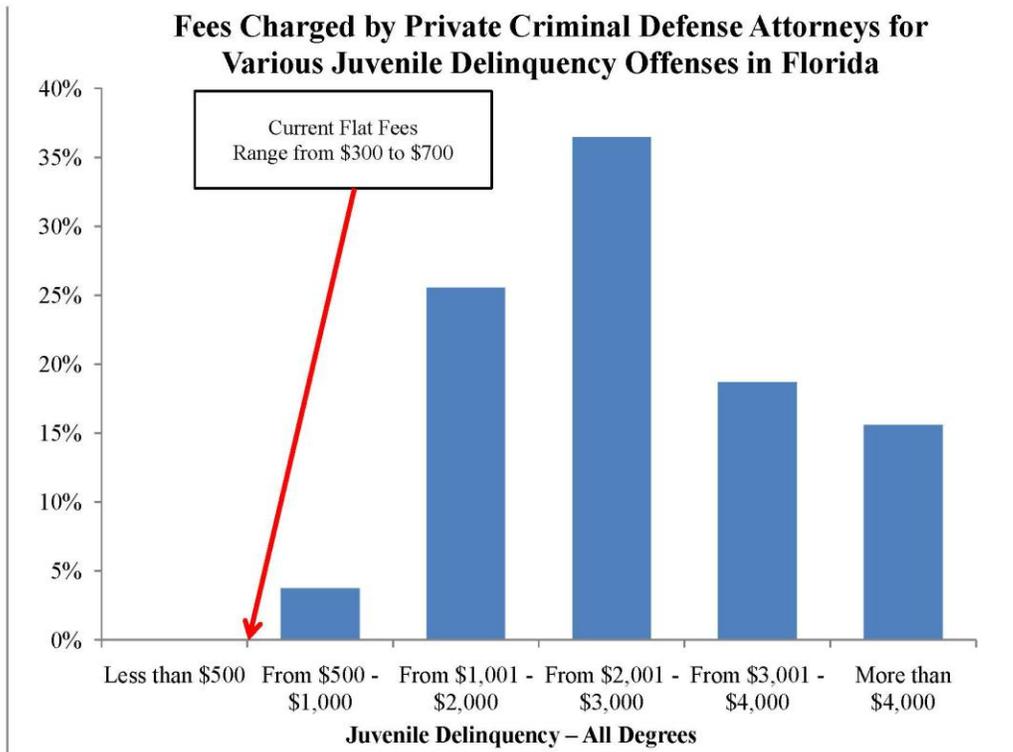
Question #8 of the survey asked the attorney participants to indicate the range of flat fees that they charge (for non-court-appointed cases) for representation of a defendant charged with a first degree felony at the trial level. The statutory maximum listed in Section 27.5304(5)(a), Florida Statutes, allows for payment of attorney fees for such matters not to exceed \$2,500. The specific fee in the GAA is lower and thus attorneys are paid a flat fee of \$1,500 for representation of a defendant so charged. The survey results showed that none of the participants indicated that they charge less than \$2,500 for such representation; only 1.2% indicated that they charge an attorney fee less than \$5,000 for such cases; and close to 63% charge more than \$10,000 for representation of a defendant charged with a first degree felony at the trial level.

Question #12 of the survey asked the attorney participants to indicate the range of flat fees that they charge (for non-court-appointed cases) for representation of a defendant charged with a life felony or felony punishable by life at the trial level. Section 27.5304(5)(a), Florida Statutes, allows for payment of attorney fees for such matters not to exceed \$3,000. The specific fees in the GAA are lower. The specific flat fee in the GAA for a felony PBL is \$2,000 and the fee for a life felony is \$2,500. The survey results showed that none of the participants indicated that they charge less than \$5,000 for such representation; and over 84% charge more than \$10,000 for such representation.

Question #13 of the survey asked the attorney participants to indicate the range of flat fees that they charge (for non-court-appointed cases) for representation of a juvenile defendant (all degrees) at the trial level. The statutory maximum listed in Section 27.5304(5)(a), Florida Statutes, allows for payment of attorney fees for such matters not to exceed \$1,000. The specific attorney fees in the GAA are lower:

JUVENILE DELINQUENCY - 2ND DEGREE	400
JUVENILE DELINQUENCY - 3RD DEGREE.	300
JUVENILE DELINQUENCY - FELONY LIFE	700
JUVENILE DELINQUENCY – MISDEMEANOR	300
JUVENILE DELINQUENCY-DIRECT FILE OR NO PETITION FILED.	300
JUVENILE DELINQUENCY - 1ST DEGREE FELONY	600

The survey results showed that none of the participants indicated that they charge less than \$500 for such representation; only 3.7% indicated that they charge an attorney fee between \$500 and \$1,000 for such cases; and 70% charge more than \$2,000 for representation of a juvenile defendant at the trial level.



The complete results of the survey for all questions can be reviewed in **Appendix B**.

B. Current Fees Not far from Minimum Wage?

“The capped fees create a situation where the attorney would need such a great volume[of]cases, that he/she could not provide effective assistance to his/her client. Alternately, if he/she were to maintain a small volume of case, in order to provide effective assistance, the attorney, would net far less than minimum wage, after dividing the capped fee by the number of hours necessary to provide a real or even a minimal level of effective representation as required by the Constitution.”³⁴

On July 2, 2010, then Chief Justice Charles T. Canady established, by Administrative Order, the Florida Innocence Commission (Commission) and appointed Chief Judge Belvin Perry, Jr., of the Ninth Judicial Circuit, to chair the Commission.

The Commission was established to recommend to the Florida Supreme Court solutions to eliminate or significantly reduce the causes for wrongful convictions. In its *Final Report to the Supreme Court of Florida (June 25, 2012)*, the Commission recommended, among other things, that the Florida Legislature immediately determine that the funding for private court-appointed counsel be based on the level of the felony involved and not a flat fee approach.³⁵

During the Commission’s June 2012 meeting, testimony from members of the Florida Association of Criminal Defense Lawyers was heard. At least two attorneys testified regarding the inadequacy of the flat fees in cases with multiple defendants or co-defendants and cases involving multiple jurisdictions.³⁶

³⁴ Comment from an anonymous attorney participant in the September 2012 survey.

³⁵ *Florida Innocence Commission, Final Report to the Supreme Court of Florida* (June 25, 2012), page 171. The current specific fees and the statutory maximum flat fees are currently based on the degree of felony; this recommendation refers to the offense severity rating as listed in the Florida Punishment Code, Section 921.0022, Florida Statutes.

³⁶ *Id.*, at Appendix H, pages 16-22.

Attorney Ed Kelly, a registry attorney, addressed the Commission and testified that in one particular case, he put in 272 hours in one year and that based on the number of hours dedicated to the case, his hourly fee came out to \$14.00 an hour.³⁷

Among several conclusions involving related matters, the Commission concluded that the current funding process for private court-appointed counsel under Section 27.5304(1), Florida Statutes, invites ineffective assistance of counsel and wrongful convictions.³⁸

V. Attorney Fees in Excess of the Amounts Set by Law

A. Requesting Excess Fees

Court-appointed attorneys must file a motion with the chief judge for an order approving payment of attorney fees in excess of the established limits discussed in this report.³⁹ However, before filing the motion the attorney is required to deliver a copy of the intended billing and supporting documents to the JAC.⁴⁰ The JAC is then required to review the documents and advise the attorney if the JAC has any objections after which the attorney may file the motion attaching the JAC letter.⁴¹ Following receipt of the motion and the attachments/supporting documentation the matter is set for an evidentiary hearing.⁴²

If the chief judge or a single designee finds that counsel has proved by competent and substantial evidence that the case required extraordinary and unusual efforts, the chief judge or single designee shall order the compensation to be paid to the attorney at a percentage above the flat fee rate, depending on the extent of the unusual and extraordinary effort required. The

³⁷ Id.

³⁸ Id.

³⁹ Section 27.5304(12)(a), Florida Statutes (2012).

⁴⁰ Section 27.5304(12)(a)1., Florida Statutes (2012).

⁴¹ Section 27.5304(12)(a)2., Florida Statutes (2012).

⁴² Section 27.5304(12)(a)2.b., Florida Statutes (2012).

percentage must be only the rate necessary to ensure that the fees paid are not confiscatory under common law. The percentage may not exceed 200 percent of the established flat fee, absent a specific finding that 200 percent of the flat fee in the case would be confiscatory.

If the chief judge or single designee determines that 200 percent of the flat fee would be confiscatory, he or she shall order the amount of compensation using an hourly rate not to exceed \$75 per hour for a noncapital case and \$100 per hour for a capital case.

B. Attorney Fees Cannot Be Confiscatory

Makemson v. Martin County,⁴³ is the landmark case dealing with the issue of the court's authority to award a request for payment of an attorney fee in excess of statutory maximum fees. The petitioner in the case was a court-appointed attorney who sought fees for the representation of a criminal defendant in excess of the statutory maximum fees. The facts of the case involved petitioner Robert Makemson, an attorney who was appointed by the court pursuant to Section 925.036, Florida Statutes, (now repealed and succeeded in part by Section 27.5304, Florida Statutes, see discussion on page 9 of this Study) to represent one of four defendants charged with first-degree murder, kidnapping and armed robbery.⁴⁴ Attorney Makemson, upon completion of the representation asked for compensation of \$9,500, in excess of the statutory amount.⁴⁵ The statutory maximum at the time was \$3,500. The circuit court awarded the fees, and declared Section 925.036, Florida Statutes (1981), unconstitutional.

Martin County, which like other counties prior to Revision 7 to Article V, had the responsibility at the time to pay the fees, filed an appeal. The Fourth District Court of Appeal

⁴³ 491 So.2d 1109 (Fla.1986).

⁴⁴ Id. at 1111.

⁴⁵ Id.

quashed the circuit court's order and certified four questions to the Florida Supreme Court as being of great public importance.⁴⁶

One of the certified questions addressed by the Florida Supreme Court was whether the flat fee statute (Section 925.036, Florida Statutes (1981)) was unconstitutional on its face as an interference with the inherent authority of the courts to enter attorney fee orders as necessary to carry out the courts' constitutional authority. The Florida Supreme Court answered that question in the negative, i.e. "no" the flat fee statute was not unconstitutional but could be if there was no flexibility for the courts to award fees in certain cases to ensure the defendants right to adequate representation. In its opinion, the Court's analysis addressed the inherent power of the courts and the impact statutory maximum fee schedules may have:

*Although facially valid, we find the statute unconstitutional when applied in such a manner as to curtail the court's inherent power to ensure the adequate representation of the criminally accused...*⁴⁷

The Court's opinion held that such statutory maximum limitations are "directory rather than mandatory in nature."⁴⁸ Recognizing that the Legislature has the power to appropriate funds for public purposes and resolve questions of compensation, the Court opined:

*[W]e find that the statutory maximum fees, as inflexibly imposed in cases involving unusual or extraordinary circumstances, interfere with the defendant's sixth amendment right 'to have the assistance of counsel for his defence.' The statute, as applied to many of today's cases, provides for only token compensation. The availability of effective counsel is therefore called into question in those cases when it is needed most.*⁴⁹

In subsequent decisions involving attempts to exceed a statutory cap on attorney's fees for representation of indigent persons, the Florida Supreme Court has adhered to its Makemson

⁴⁶ Id. at 1112.

⁴⁷ Id.

⁴⁸ Id. at 1115.

⁴⁹ Id. at 1112.

rationale and continued to emphasize the connection between fair compensation for the attorney and effective representation for the client.⁵⁰

C. Cases Generally Paid Over the Flat Fee

In 2011, the OSCA prepared and conducted a survey of Florida's 20 Judicial Circuits regarding conflict counsel fees awarded in excess of the statutory flat fee for criminal cases. The survey requested that all 20 judicial circuits examine actual excess fee cases for the fiscal years 2009-2010 and 2010-2011. All circuits were asked to indicate the date the matter was filed and the special circumstances (multiple defendants, complex case, etc., as described in section 27.5304(12)(d), Florida Statutes) that supported the award of attorney fees exceeding the flat fee for the top 5 cases, as listed in the *Detail Report* compiled by the JAC, for fiscal year 2010-2011, and fiscal year 2009-2010. The responses revealed that excess fees were awarded primarily in cases involving capital cases; 1st and 2nd degree murder, life felony, RICO cases, multiple defendants and charges, and complex legal and factual issues.

Subsequent to the 2011 survey of the 20 Judicial Circuits, OSCA analyzed the percentage and number of cases that were paid in excess of the flat fee for the period 2007-2012. This analysis showed that the case types listed above tend to be among the highest percentage of the cases paid over the flat fee. This analysis also revealed that there are some case types, for example, select juvenile delinquency cases, in which there were few or no cases where payments of an attorney fee over the flat fee were made. An assumption that the attorney fees in those cases was adequate or reasonable based on the relatively low number of cases paid over the flat

⁵⁰ See Maas v. Olive, 992 So.2d 196, 202-03 (Fla.2008); Olive v. Maas, 811 So.2d 644, 651-54 (Fla.2002); Remeta v. State, 559 So.2d 1132, 1135 (Fla.1990).

fee for a particular case type would be speculative. The data does not reflect if a motion was filed and subsequently denied by the court, nor does the data reveal individual decisions as to why an attorney did not request additional fees.

D. State Appropriation for Excess Fees

As discussed earlier, the Legislature has created a statutory scheme requiring an evidentiary hearing to allow conflict counsel on rare occasions to motion the court to allow for the payment of attorney fees that exceed the flat fees in cases that have required “extraordinary and unusual effort”.⁵¹ The amount appropriated by the Florida Legislature to pay for these “excess fee” requests statewide, covering all of Florida’s 20 Judicial Circuits, for fiscal year 2012-2013, totals \$3,000,000.⁵² As of January 7, 2013, the \$3,000,000 appropriation has now been exhausted, months in advance of the end of the fiscal year on June 30, 2013.⁵³

Section 27.5304(12)(f)3., Florida Statutes, requires the court system to take the money from the court system’s due process funds for court reporting, court interpreting, expert witnesses, etc., or any other funds, to pay for the excess attorney fee requests.⁵⁴ Table 3 below shows the amount of excess attorney fees, the bulk of which involved Capital and RICO cases, paid out as of the end of November 2012. The totals reflect that after only 5 months into the fiscal year, over \$2.5 million of the \$3 million appropriation had been spent. The totals below are not exact due to rounding.

⁵¹ Section 27.5304(12), Florida Statutes (2012).

⁵² See General Appropriations Act.

⁵³ Based on information received from the Justice Administrative Commission as of January 7, 2013.

⁵⁴ Section 27.5304(12)(f)(3), Florida Statutes (2012). “If, during the fiscal year, all funds designated for payment of the amount ordered by the court in excess of the flat fee are spent, the amount of payments in excess of the flat fee shall be made from the due process funds or other funds as necessary, appropriated to the state courts system in the General Appropriations Act.”

Table 3

**JAC - Criminal Conflict Attorney
Payments Over the Flat Fee
FY 2012-2013
July 2012 - November 2012**

CIRCUIT	Expenditure Summary			
	Capital Cases	RICO Cases	Other Cases	TOTAL*
1	\$40,000	\$0	\$21,475	\$61,475
2	\$0	\$0	\$0	\$0
3	\$0	\$0	\$0	\$0
4	\$175,478	\$0	\$82,528	\$258,006
5	\$0	\$0	\$45,635	\$45,635
6	\$53,035	\$0	\$2,000	\$55,035
7	\$111,820	\$1,834	\$42,176	\$155,830
8	\$0	\$0	\$4,723	\$4,723
9	\$0	\$7,860	\$5,700	\$13,560
10	\$0	\$0	\$18,172	\$18,172
11	\$752,747	\$29,223	\$236,417	\$1,018,387
12	\$0	\$0	\$23,170	\$23,170
13	\$856	\$133,713	\$43,583	\$178,152
14	\$0	\$0	\$40,600	\$40,600
15	\$0	\$259,366	\$13,596	\$272,962
16	\$0	\$0	\$0	\$0
17	\$31,810	\$0	\$95,573	\$127,383
18	\$0	\$0	\$17,527	\$17,527
19	\$76,889	\$6,306	\$30,863	\$114,058
20	\$0	\$39,795	\$95,363	\$135,158
TOTAL*	\$1,242,635	\$478,097	\$819,099	\$2,539,831

Note: Data provided by the Justice Administrative Commission.

VI. Methodology and Conclusions

The Florida Supreme Court has determined that a defendant's right to effective assistance of counsel encompasses the right to representation free from actual conflict. Court-appointed criminal conflict attorneys play an important role within our judicial system in providing representation for the accused when the Office of the Public Defender and the Office of Criminal Conflict and Civil Regional Counsel have indicated a conflict and cannot represent the accused.

As part of this Study, the OSCA conducted a comparative analysis of the flat fees based on four different methodologies: 1) using actual, historical data from the JAC on payments made at and over the flat fee by case type; 2) adjusting the statutory caps based on the Census Bureau Consumer Price Index (CPI); 3) adjusting the statutory caps based on the Bureau of Labor Statistics growth rate in earnings for attorneys from 1981 to 2010; and, 4) comparing to the survey responses conducted by OSCA indicating the flat rates charged by private attorneys for non-court appointed cases. During this analysis it was noted that, with the exception of capital murder cases, the maximum attorney fees allowed, absent a court order, have not been raised since 1981 and the specific flat fees listed in the General Appropriations Act are equal to or often less than the statutory maximum fees.

The first methodology utilizes historical data provided by the Justice Administrative Commission on the actual payments to criminal conflict attorneys, both at the flat rate and payments made over the flat rate from FY 2007-2008 through September of FY 2012-2013, and indicates there is a significant difference in the amounts actually paid compared to the current flat rates for particular case types. Comparisons to the current flat rates were made based on the median amounts paid over the flat fees.

The second methodology factors in the changing value of a dollar over time and indicates that the current flat fees have not been adjusted for inflation. The fee of \$1,000 in 1981 would have to be at least \$2,500 today to have the same buying power; and \$2,500 would now need to be over \$6,300 today to have the same purchasing power after accounting for inflation.⁵⁵ The statutory caps were adjusted for inflation based on the CPI index as reported by the Census Bureau as of December 14, 2012 (154.5%). The Consumer Price Indexes (CPI) program produces monthly data on changes in the prices paid by urban consumers for a representative basket of goods and services. Annual inflation data is based on the average changes in monthly CPI within the calendar year. The statutory cap adjusted for inflation for Capital - 1st degree murder (Lead and Co-Counsel) cases reflects inflation from 2007 through 2012 (11.6%). This comparison assumes that the flat rates in 1981 were appropriate at the time they were set. If the rates set back in 1981 were artificially low, at that point in history, then the difference between those rates and reasonable rates would be even greater.

The third methodology utilizes data from the United States Department of Labor, Bureau of Labor Statistics, and indicates that there has been a 221.8% increase in the median weekly earnings of attorneys from 1981 to 2010 (10.4% increase from 2007 to 2010 for Capital Murder cases in which the death penalty has not been waived). This comparison assumes that the flat rates in 1981 were appropriate at the time they were set. If the rates set back in 1981 were artificially low, at that point in history, then the difference between those rates and reasonable rates would be even greater.

⁵⁵ Source of inflation calculator United States Department of Labor, Bureau of Labor Statistics: http://www.bls.gov/data/inflation_calculator.htm.

The fourth methodology utilizes survey responses from practicing criminal defense attorneys in Florida (the vast majority of who are not current registry attorneys), and shows that fees charged in private practice far exceed the statutory fees and GAA specific fees for conflict counsel handling similar type cases. In the survey, respondents were not asked to identify the attorneys fees charged for Capital - 1st degree murder - death penalty waived and Capital Sexual Battery cases. These categories were compared to the attorney fees indicated for Felony - Life cases.

When compared to statistics generated from the four different methodologies listed above, the specific flat fees listed in the GAA and the statutory maximum fees of Section 27.5304(5), Florida Statutes, call in to question whether the current fees are adequate or reasonable. A meta-analysis of the four methodologies would indicate that rate adjustments are warranted. The “ceiling” represented as the maximum rates listed in Section 27.5304, Florida Statutes, and the “floor”, the GAA specific rates, could reasonably be adjusted to adequately compensate court-appointed conflict counsel.

**Criminal Conflict Attorney Case Payments
Comparative Analysis**

CRITICAL CASE TYPES						
Case Type	Current Flat Fee	Statutory Cap	Method 1: Median Amount Paid per Closed Case Over the Flat Fee	Method 2: Adjusted Statutory Cap based on Consumer Price Index (CPI)	Method 3: Adjusted Statutory Cap based on the BLS growth rate in earnings for attorneys from 1981 to 2010	Method 4: Percent of survey responses indicating the attorney fees charged for non-court appointed representation at or higher than Proposed Flat Fee
Capital - 1st Degree Murder (Lead/Co-Counsel)	\$15,000	\$15,000	\$34,890	\$16,734	\$16,560	90.8%
Capital - 1st Degree Murder - death penalty waived (Lead Counsel)	\$2,500	\$3,000	\$12,990	\$7,634	\$9,654	84.1%
Felony - Life	\$2,500	\$3,000	\$8,215	\$7,634	\$9,654	100.0%
Felony Life - RICO	\$2,500	\$3,000	\$17,423	\$7,634	\$9,654	84.1%
Capital Appeals	\$2,000	\$2,000	\$40,710	\$5,089	\$6,436	93.9%
Capital Sexual Battery	\$2,000	\$3,000	\$6,962	\$7,634	\$9,654	100.0%
Felony PBL - RICO	\$2,000	\$2,500	\$12,015	\$6,362	\$8,045	96.9%
Felony 1st Degree - RICO	\$1,500	\$2,500	\$10,950	\$6,362	\$8,045	98.8%

As stated on pages 22 – 24 of this report and as reflected in Table 3 on page 24, excess fees were awarded primarily in capital, 1st degree murder, life felony, and RICO cases, which tend to involve more complex legal and factual issues. Although all of the criminal case types should be reviewed and considered for an upward adjustment, the case types listed below are critical areas where an upward adjustment in the flat fees paid to conflict counsel for representation of defendants should be the first priority.

As a way of illustration, the following rate adjustments to the fees for the critical case types could be implemented:

Case Type	Current Flat Fee	Proposed Flat Fee
Capital- 1 st Degree Murder (lead/Co-Counsel)	\$15,000	\$25,000
Capital- 1 st Degree Murder- Death penalty waived	\$2,500	\$9,000
Felony Life	\$2,500	\$5,000
Felony Life - RICO	\$2,500	\$9,000
Capital Appeals	\$2,000	\$9,000
Capital Sexual Battery	\$2,000	\$4,000
Felony PBL - RICO	\$2,000	\$6,000
Felony 1 st Degree RICO	\$1,500	\$5,000

The proposed flat fees for critical case types were determined based on first calculating the median amounts paid in excess of the flat fees. Next, new median amounts were calculated based on data that removed the highest 25% of the cases paid in excess of the flat fees. Finally, an additional 25% reduction to the median amounts were taken to arrive at the proposed flat fees, with the exception of Capital - 1st degree murder (Lead and Co-Counsel), which was reduced to

\$25,000. Due to limited data available for Felony - Life RICO, Capital Appeals, and Felony PBL - RICO cases paid in excess of the flat fees, the proposed flat fees for these categories were further reduced to more reasonable amounts. All proposed fees were rounded down to the nearest \$1,000 value. This methodology produces very conservative proposed fees based on the actual data and recognizes that judges will continue to determine the appropriateness of attorney payments in excess of these fees.

APPENDIX A

Conflict Counsel Fees in Criminal Cases Survey

The Office of the State Courts Administrator, as required by the 2012 General Appropriations Act (proviso language in specific appropriation 828), is conducting a study of the **adequacy and reasonableness of the current mandated conflict counsel fees in criminal cases** (those listed s. 27.5304, F.S. and the Gen. Appropriations Act). This study will be submitted to the Florida Legislature by January 15, 2013.

As part of this study we are conducting this **survey** of criminal defense attorneys to have some standard by which to compare the current rates.

Please select the appropriate responses below to answer each question. *Thank you in advance for your participation.*

1. Are you a member of the Florida Bar?

Yes

No

2. In what geographical area of Florida do you primarily practice?

a. North Florida (Judicial Circuits 1, 2, 3, 4, 8, 14)

b. Central Florida (Judicial Circuits 5, 6, 7, 9, 10, 13, 18)

c. South Florida (Judicial Circuits 11, 12, 15, 16, 17, 19, 20)

d. Statewide

3. Are you currently practicing criminal law in Florida?

Yes

No

If your answer to question 3 is “no”, you are finished with this survey and may stop now. Thank you.

4. Are you employed as an attorney with the Office of the Public Defender or the Office of Criminal Conflict and Civil Regional Counsel?

Yes

No

If your answer to question 4 is “yes”, you are finished with this survey and may stop now. Thank you.

5. What percentage of your practice involves criminal defense? (select one)

a. 100%

b. From 50% to 99%

c. From 25% to 49%

d. Less than 25%

6. As a criminal defense practitioner, do you charge a flat fee?

Yes

No

If your answer to question 6 is no, please skip questions 7-14 and go to question 15.

7. If you charge a flat fee, what is your attorney fee for representation of a defendant charged with a misdemeanor, at the trial level (for non- court-appointed cases)?
- Less than \$500
 - From \$500 - \$1,000
 - From \$1,001 - \$2,000
 - From \$2,001 - \$3,000
 - From \$3,001 - \$4,000
 - More than \$4,000
8. If you charge a flat fee, what is your attorney fee for representation of a defendant charged with a first degree felony, at the trial level (for non- court-appointed cases)?
- Less than \$2,500
 - From \$2,500 - \$5,000
 - From \$5,001 - \$7,500
 - From \$7,501 - \$10,000
 - More than \$10,000
9. If you charge a flat fee, what is your attorney fee for representation of a defendant charged with a second degree felony , at the trial level (for non- court-appointed cases)?
- Less than \$2,500
 - From \$2,500 - \$5,000
 - From \$5,001 - \$7,500
 - From \$7,501 - \$10,000
 - More than \$10,000
10. If you charge a flat fee, what is your attorney fee for representation of a defendant charged with a third degree felony, at the trial level (for non- court-appointed cases)?
- Less than \$2,500
 - From \$2,500 - \$5,000
 - From \$5,001 - \$7,500
 - From \$7,501 - \$10,000
 - More than \$10,000
11. If you charge a flat fee, what is your attorney fee for representation of a defendant charged with a capital offense, at the trial level (for non- court-appointed cases)?
- Less than \$15,000
 - From \$15,001 - \$20,000
 - From \$20,001 - \$25,000
 - From \$25,001 - \$30,000
 - More than \$30,000

12. If you charge a flat fee, what is your attorney fee for representation of a defendant charged with a Life felony or PBL, at the trial level (for non- court-appointed cases)?

- a. Less than \$2,500
- b. From \$2,500 - \$5,000
- c. From \$5,001 - \$7,500
- d. From \$7,501 - \$10,000
- e. More than \$10,000

13. If you charge a flat fee, what is your attorney fee for representation of a juvenile defendant (all degrees), at the trial level (for non- court-appointed cases)?

- a. Less than \$500
- b. From \$500 - \$1,000
- c. From \$1,001 - \$2,000
- d. From \$2,001 - \$3,000
- e. From \$3,001 - \$4,000
- f. More than \$4,000

14. If you charge a flat fee, what is your attorney fee for representation of a defendant on appeal- misdemeanor cases (for non- court-appointed cases)?

- a. Less than \$500
- b. From \$500 - \$1,000
- c. From \$1,001 - \$2,000
- d. From \$2,001 - \$3,000
- e. From \$3,001 - \$4,000
- f. More than \$4,000

15. If you charge a flat fee, what is your attorney fee for representation of a defendant on appeal- felony cases (for non- court-appointed cases)?

- a. Less than \$1,500
- b. From \$1,500 - \$3,000
- c. From \$3,001 - \$4,500
- d. From \$4,501 - \$6,000
- e. More than \$6,000

16. If you charge a flat fee, what is your attorney fee for representation of a defendant on appeal- capital cases (for non- court-appointed cases)?

- a. Less than \$2,000
- b. From \$2,000 - \$4,000
- c. From \$4,001 - \$6,000
- d. From \$6,001 - \$8,000
- e. More than \$8,000

17. As a criminal defense practitioner, do you charge an hourly rate?

- Yes
- No

If you answered no to question 15, please skip question 16 and go to question 17.

18. If you charge an hourly rate, what is that rate?

- a. \$100.00
- b. Between \$100 -\$200
- c. Between \$200-\$300
- d. Between \$300-\$400
- e. Between \$400-\$500
- f. Greater than \$500

19. Are you currently listed as a registry attorney pursuant to Section 27.40, Florida Statutes?

- Yes
- No

20. Have you ever been appointed to represent a defendant as a result of being listed as a registry attorney pursuant to s. 27.40, Florida Statutes?

- Yes
- No

21. Have you ever sought appointment as a registry attorney pursuant to Section 27.40, Florida Statutes?

- Yes
- No

21a. If not, why not?

APPENDIX B

Conflict Counsel Fees – OSCA Survey Results – September, 2012

1. Are you a member of the Florida Bar? (n=361)⁵⁶

	<u>Number</u>	<u>%</u>
Yes	361	100

2. In what geographical area of Florida do you primarily practice? (n=362)

	<u>Number</u>	<u>%</u>
North Florida	63	17.4
Central Florida	73	20.2
South Florida	221	61
Statewide	5	1.4

3. Do you currently practice criminal law in Florida? (n=355)

	<u>Number</u>	<u>%</u>
Yes	351	98.9
No	4	1.1

4. Are you employed as an attorney with the Office of the Public Defender or the Office of Criminal Conflict and Civil Regional Counsel? (n=356)

	<u>Number</u>	<u>%</u>
Yes	20	5.6
No	336	94.4

5. What percentage of your practice involves criminal defense? (n=344)

	<u>Number</u>	<u>%</u>
a. 100%	122	35.4
b. From 50%-99%	160	46.6
c. From 25%-49%	44	12.8
d. Less than 25%	18	5.2

6. As a criminal defense practitioner, do you charge a flat fee? (n=345)

	<u>Number</u>	<u>%</u>
Yes	331	95.6
No	15	4.4

⁵⁶ "N=" refers to the number of participants who responded to the question.

7. If you charge a flat fee, what is your attorney fee for representation of a defendant charged with a misdemeanor, at the trial level (for non-court-appointed cases)? (n=326)

	<u>Number</u>	<u>%</u>
a. Less than \$500	0	0
b. \$500 - \$1,000	8	2.5
c. \$1,001 - \$2,000	104	31.9
d. \$2,001 - \$3,000	125	38.3
e. \$3,001 - \$4,000	47	14.4
f. \$4,000+	42	12.9

8. If you charge a flat fee, what is your attorney fee for representation of a defendant charged with a first degree felony, at the trial level (for non-court-appointed cases)? (n=327)

	<u>Number</u>	<u>%</u>
a. Less than \$2,500	0	0
b. \$2,500 - \$5,000	4	1.2
c. \$5,001 - \$7,500	23	7
d. \$7,501 - \$10,000	95	29
e. \$10,000 +	205	62.8

9. If you charge a flat fee, what is your attorney fee for representation of a defendant charged with a second degree felony, at the trial level (for non-court-appointed cases)? (n=329)

	<u>Number</u>	<u>%</u>
a. Less than \$2,500	0	0
b. \$2,500 - \$5,000	32	9.7
c. \$5,001 - \$7,500	120	36.4
d. \$7,501 - \$10,000	130	39.5
e. \$10,000 +	47	14.3

10. If you charge a flat fee, what is your attorney fee for representation of a defendant charged with a third degree felony, at the trial level (for non-court-appointed cases)? (n=327)

	<u>Number</u>	<u>%</u>
a. Less than \$2,500	14	4.3
b. \$2,500 - \$5,000	153	46.6
c. \$5,001 - \$7,500	114	35.1
d. \$7,501 - \$10,000	31	9.5
e. \$10,000 +	15	4.6

11. If you charge a flat fee, what is your attorney fee for representation of a defendant charged with a capital offense, at the trial level (for non-court-appointed cases)? (n=304)

	<u>Number</u>	<u>%</u>
a. Less than \$15,000	2	0.7
b. \$15,001-\$20,000	12	3.9
c. \$20,001 - \$25,000	14	4.6
d. \$25,001 - \$30,000	36	11.8
e. \$30,000 +	240	79

12. If you charge a flat fee, what is your attorney fee for representation of a defendant charged with a Life felony or PBL, at the trial level (for non-court-appointed cases)? (n=327)

	<u>Number</u>	<u>%</u>
a. Less than \$2,500	0	0
b. \$2,500 - \$5,000	0	0
c. \$5,001 - \$7,500	10	3
d. \$7,501 - \$10,000	42	12.8
e. \$10,000 +	275	84.1

13. If you charge a flat fee, what is your attorney fee for representation of a juvenile defendant (all degrees), at the trial level (for non-court-appointed cases)? (n=320)

	<u>Number</u>	<u>%</u>
a. Less than \$500	0	0
b. \$500 - \$1,000	12	3.7
c. \$1,001 - \$2,000	82	25.5
d. \$2,001 - \$3,000	116	36.4
e. \$3,001 - \$4,000	60	18.7
f. \$4,000+	50	15.6

14. If you charge a flat fee, what is your attorney fee for representation of a defendant on appeal-misdemeanor cases (for non-court-appointed cases)? (n=255)

	<u>Number</u>	<u>%</u>
a. Less than \$500	0	0
b. \$500 - \$1,000	3	1.2
c. \$1,001 - \$2,000	24	9.4
d. \$2,001 - \$3,000	62	24.3
e. \$3,001 - \$4,000	61	23.9
f. \$4,000+	105	41.2

15. If you charge a flat fee, what is your attorney fee for representation of a defendant on appeal-felony cases (for non-court-appointed cases)? (n=261)

	<u>Number</u>	<u>%</u>
a. Less than \$1,500	0	0
b. \$1,500 - \$3,000	4	1.5
c. \$3,001 - \$4,500	24	9.2
d. \$4,501 - \$6,000	59	22.6
e. \$6,000+	174	66.7

16. If you charge a flat fee, what is your attorney fee for representation of a defendant on appeal-capital cases (for non-court-appointed cases)? (n=244)

	<u>Number</u>	<u>%</u>
a. Less than \$2,000	0	0
b. \$2,000 – 4,000	0	0
c. \$4,001 - \$6,000	3	1.2
d. \$6,001 - \$8,000	12	4.9
e. \$8,000+	229	93.9

17. As a criminal defense practitioner, do you charge an hourly rate? (n=339)

	<u>Number</u>	<u>%</u>
Yes	137	40.3
No	202	59.7

18. If you charge an hourly rate, what is that rate? (n=144)

	<u>Number</u>	<u>%</u>
a. \$100	2	1.4
b. \$101 - \$200	8	5.6
c. \$201 - \$300	68	47.2
d. \$301 - \$400	43	29.9
e. \$401 - \$500	17	11.8
f. \$500+	6	4.2

19. Are you currently listed as a registry attorney pursuant to Section 27.40, Florida Statutes? (n=337)

	<u>Number</u>	<u>%</u>
Yes	131	38.8
No	206	61.2

20. Have you ever been appointed to represent a defendant as a result of being listed as a registry attorney pursuant to Section 27.40, Florida Statutes? (n=343)

	<u>Number</u>	<u>%</u>
Yes	210	61.3
No	133	38.7

21. Have you ever sought appointment as a registry attorney pursuant to Section 27.40, Florida Statutes? (n=339)

	<u>Number</u>	<u>%</u>
Yes	179	52.9
No	160	47.1

21a. If not, why not?
