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1
2 An act relating to the state judicial system; amending
3 s. 27.511, F.S.; authorizing each office of criminal
4 conflict and civil regional counsel to create a
5 direct-support organization; prescribing requirements
6 related to the creation and operation of the direct-
7 support organization; amending s. 27.52, F.S.;
8 providing the clerk with the discretion to conduct a
9 review of the county's property records to confirm
10 indigency; amending s. 27.5304, F.S.; providing for
11 the payment of attorney's fees that exceed the limits
12 prescribed by law; creating s. 39.8297, F.S.;
13 providing for county funding of additional guardian ad
14 litem personnel; requiring an agreement between the
15 county and the Statewide Guardian Ad Litem Office;
16 specifying responsibility for such positions; amending
17 s. 318.18, F.S.; requiring the clerk of court and the
18 Florida Clerks of Court Operations Corporation to
19 submit reports on local traffic assessments in an
20 electronic format; providing an effective date.

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

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24 Section 1. Subsection (10) is added to section 27.511,
25 Florida Statutes, to read:

26 27.511 Offices of criminal conflict and civil regional
27 counsel; legislative intent; qualifications; appointment;
28 duties.—

29 (10) Each office of criminal conflict and civil regional

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30 counsel may create a direct-support organization.

31 (a) The direct-support organization must be registered in
32 this state as a nonprofit corporation under chapter 617. The
33 direct-support organization shall be exempt from the filing fees
34 under s. 617.0122.

35 (b) The direct-support organization shall be organized and
36 operated to conduct programs and activities; raise funds;
37 request and receive grants, gifts, and bequests of moneys;
38 acquire, receive, hold, invest, and administer, in its own name,
39 securities, funds, objects of value, or other property, real or
40 personal; and make expenditures to or for the direct or indirect
41 benefit of the office of criminal conflict and civil regional
42 counsel.

43 (c) The direct-support organization shall operate under a
44 written contract with the regional counsel. The written contract
45 must, at a minimum, provide for:

46 1. Approval of the articles of incorporation and bylaws of
47 the organization by the regional counsel.

48 2. Submission of an annual budget for the approval by the
49 regional counsel.

50 3. The reversion without penalty to the office of criminal
51 conflict and civil regional counsel, or to the state if the
52 office ceases to exist, of all moneys and property held in trust
53 by the organization for the office if the organization ceases to
54 exist or if the contract is terminated.

55 4. The fiscal year of the organization, which must begin
56 July 1 of each year and end June 30 of the following year.

57 5. The disclosure of material provisions of the contract
58 and the distinction between the regional counsel and the

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59 organization to donors of gifts, contributions, or bequests, as
60 well as on all promotional and fundraising publications.

61 (d) If the regional counsel determines that the direct-
62 support organization is operating in a manner that is
63 inconsistent with the goals and purposes of the office of
64 criminal conflict and civil regional counsel or is not acting in
65 the best interest of the state, the regional counsel may
66 terminate the contract, and thereafter the organization may not
67 use the name of the office.

68 (e) The regional counsel shall appoint a board of directors
69 for the direct-support organization. The regional counsel may
70 designate employees of the office of criminal conflict and civil
71 regional counsel to serve on the board of directors. Members of
72 the board shall serve at the pleasure of the regional counsel.

73 (f) The regional counsel:

74 1. May authorize the use of facilities and property other
75 than money which are owned by the office of criminal conflict
76 and civil regional counsel to be used by the direct-support
77 organization.

78 2. May authorize the use of personnel services provided by
79 employees of the office.

80 3. May prescribe the conditions by which the direct-support
81 organization may use property, facilities, or personnel services
82 of the office.

83 4. May not authorize the use of property, facilities, or
84 personnel services of the direct-support organization if the
85 organization does not provide equal employment opportunities to
86 all persons, regardless of race, color, religion, sex, age, or
87 national origin.

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89 For the purposes of this paragraph, the term "personnel
90 services" includes full-time personnel and part-time personnel
91 as well as payroll processing.

92 (g) Moneys of the direct-support organization may be held
93 in a depository account in the name of the organization which is
94 separate from the accounts of the office, but which is subject
95 to the provisions of the contract with the regional counsel.

96 (h) The direct-support organization shall provide for an
97 annual financial audit in accordance with s. 215.981.

98 (i) The direct-support organization may not exercise any
99 power under s. 617.0302(12) or (16). A state employee may not
100 receive compensation from the organization for service on the
101 board of directors or for services rendered to the organization.

102 Section 2. Paragraph (a) of subsection (2) of section
103 27.52, Florida Statutes, is amended to read:

104 27.52 Determination of indigent status.—

105 (2) DETERMINATION BY THE CLERK.—The clerk of the court
106 shall determine whether an applicant seeking appointment of a
107 public defender is indigent based upon the information provided
108 in the application and the criteria prescribed in this
109 subsection.

110 (a)~~1.~~ An applicant, including an applicant who is a minor
111 or an adult tax-dependent person, is indigent if the applicant's
112 income is equal to or below 200 percent of the then-current
113 federal poverty guidelines prescribed for the size of the
114 household of the applicant by the United States Department of
115 Health and Human Services or if the person is receiving
116 Temporary Assistance for Needy Families-Cash Assistance,

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poverty-related veterans' benefits, or Supplemental Security
Income (SSI).

~~1.2.a.~~ There is a presumption that the applicant is not
indigent if the applicant owns, or has equity in, any intangible
or tangible personal property or real property or the expectancy
of an interest in any such property having a net equity value of
\$2,500 or more, excluding the value of the person's homestead
and one vehicle having a net value not exceeding \$5,000.

~~2.b.~~ Notwithstanding the information that the applicant
provides, the clerk may ~~shall~~ conduct a review of the property
records for the county in which the applicant resides and the
motor vehicle title records of the state to identify any
property interests of the applicant under this paragraph
~~subparagraph~~. The clerk may ~~shall~~ evaluate and consider the
results of the review in making a determination under this
subsection. If the review is conducted, the clerk shall maintain
the results of the review in a file with the application and
provide the file to the court if the applicant seeks review
under subsection (4) of the clerk's determination of indigent
status.

Section 3. Subsection (12) of section 27.5304, Florida
Statutes, is amended to read:

27.5304 Private court-appointed counsel; compensation.—

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

(a) If counsel seeks compensation that exceeds the limits
prescribed by law ~~under this section and the General~~
~~Appropriations Act~~, he or she must file a motion with the chief

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judge for an order approving payment of attorney's fees in excess of these limits.

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

2. 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 therefor shall be communicated in writing to the private court-appointed counsel. The counsel may thereafter file his or her motion, which must specify whether the commission objects to any portion of the billing or the sufficiency of documentation, and ~~shall~~ attach the commission's letter stating its objection.

(b) Following receipt of the motion to exceed the fee limits, the chief judge or a single designee for all such cases, shall hold an evidentiary hearing.

1. At the hearing, the attorney seeking compensation must prove by competent and substantial evidence that the case required extraordinary and unusual efforts. The chief judge or designee shall consider criteria such as the number of witnesses, the complexity of the factual and legal issues, and the length of trial. The fact that a trial was conducted in a case does not, by itself, constitute competent substantial evidence of an extraordinary and unusual effort. In a criminal case, relief under this section may not be granted if the number of work hours does not exceed 75 or the number of the state's

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witnesses deposed does not exceed 20.

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

(c) A copy of the motion and attachments shall be served on the Justice Administrative Commission at least 5 business days before ~~prior to~~ the date of a hearing. The Justice Administrative Commission shall have standing to appear before the court, including at the hearing under paragraph (b), to contest any motion for an order approving payment of attorney's fees, costs, or related expenses and may participate in a hearing on the motion by use of telephonic or other communication equipment ~~unless ordered otherwise~~. 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 an 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.

(d) 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 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 percentage must ~~shall~~ be only the rate necessary to ensure that

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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 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. However, the compensation calculated by using the hourly rate shall be only that amount necessary to ensure that the total fees paid are not confiscatory.

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

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

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

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

3. 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 court system in the General

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Appropriations Act. Funds from the state court system must be used in a manner approved by the Chief Justice and administered by the Trial Court Budget Commission.

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

Section 4. Section 39.8297, Florida Statutes, is created to read:

39.8297 County funding for guardian ad litem personnel.—

(1) A county and the executive director of the Statewide Guardian Ad Litem Office may enter into an agreement under which the county agrees to fund personnel positions to assist in the operation of the guardian ad litem program.

(2) The agreement, at a minimum, must provide that:

(a) Funding for the positions is provided on at least a fiscal-year basis.

(b) The personnel whose employment is funded under the agreement are hired, supervised, managed, and fired by personnel of the Statewide Guardian Ad Litem Office. The office shall supervise the personnel whose employment is funded under the agreement; be responsible for compliance with all requirements of federal and state employment laws, including, but not limited to, Title VII of the Civil Rights Act of 1964, Title I of the

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Americans with Disabilities Act, 42 U.S.C. s. 1983, the Family Medical Leave Act, the Fair Labor Standards Act, chapters 447 and 760, and ss. 112.3187, 440.105, and 440.205; and fully indemnify the county from any liability under such laws, as authorized by s. 768.28(19), to the extent such liability is the result of the acts or omissions of the guardian ad litem program or its agents or employees.

(c) The county is the employer for the purposes of s. 440.10 and chapter 443.

(d) Employees funded by the county under this section and other county employees may be aggregated for purposes of a flexible benefits plan pursuant to s. 125 of the Internal Revenue Code of 1986.

(e) The positions terminate upon the expiration of, or substantial breach of, the agreement or upon the expiration of county funding for the positions.

(3) Positions funded under this section do not count against any formula or similar process used by the Statewide Guardian Ad Litem Office to determine personnel needs or levels of a judicial circuit's Guardian ad Litem program.

(4) This section does not obligate the state to fund any personnel positions.

Section 5. Paragraph (b) of subsection (13) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(13)

(b) A county may impose a surcharge under subparagraph

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(a)1., subparagraph(a)2., or subparagraph(a)3., but may not impose more than one surcharge under this subsection. A county may elect to impose a different authorized surcharge but may not impose more than one surcharge at a time. The clerk of court shall report, no later than 30 days after the end of the quarter, the amount of funds collected under this subsection during each quarter of the fiscal year. The clerk shall submit the report, in an electronic ~~a~~ format developed by the Florida Clerks of Court Operations Corporation ~~Office of State Courts Administrator~~, to the chief judge of the circuit and the Florida Clerks of Court Operations Corporation. The corporation shall submit the report in an electronic format to, the Governor, the President of the Senate, the Speaker of the House of Representatives, and the board of county commissioners.

Section 6. This act shall take effect July 1, 2011.