

*oppaga*

# Justification Review



November 2001

Report No. 01-52

## Performance of Collateral Counsels Improved; Registry Accountability Needs to Be Revisited

### *at a glance*

Legislative reforms have dramatically improved the system for the legal representation of death row inmates in the courts system.

The division of the capital collateral counsel into three independent offices monitored by the Commission on Capital Cases has improved accountability and performance.

The creation of a registry of private attorneys to take regional counsel conflict and overflow cases has eliminated the prior backlog of capital collateral cases. However, the registry lacks the financial and performance accountability of the regional counsels. The commission should provide additional oversight to assure the registry's proper operation.

The repository, which collects and reproduces the multitude of case records, has significantly improved operations through technology and outsourcing.

Rather than pursuing the dual-track post-conviction concept, which would increase costs by an estimated \$14 million, Florida should try to eliminate delay in the capital collateral system by qualifying for the "opt-in" provisions of the federal Anti-Terrorism and Effective Death Penalty Act.

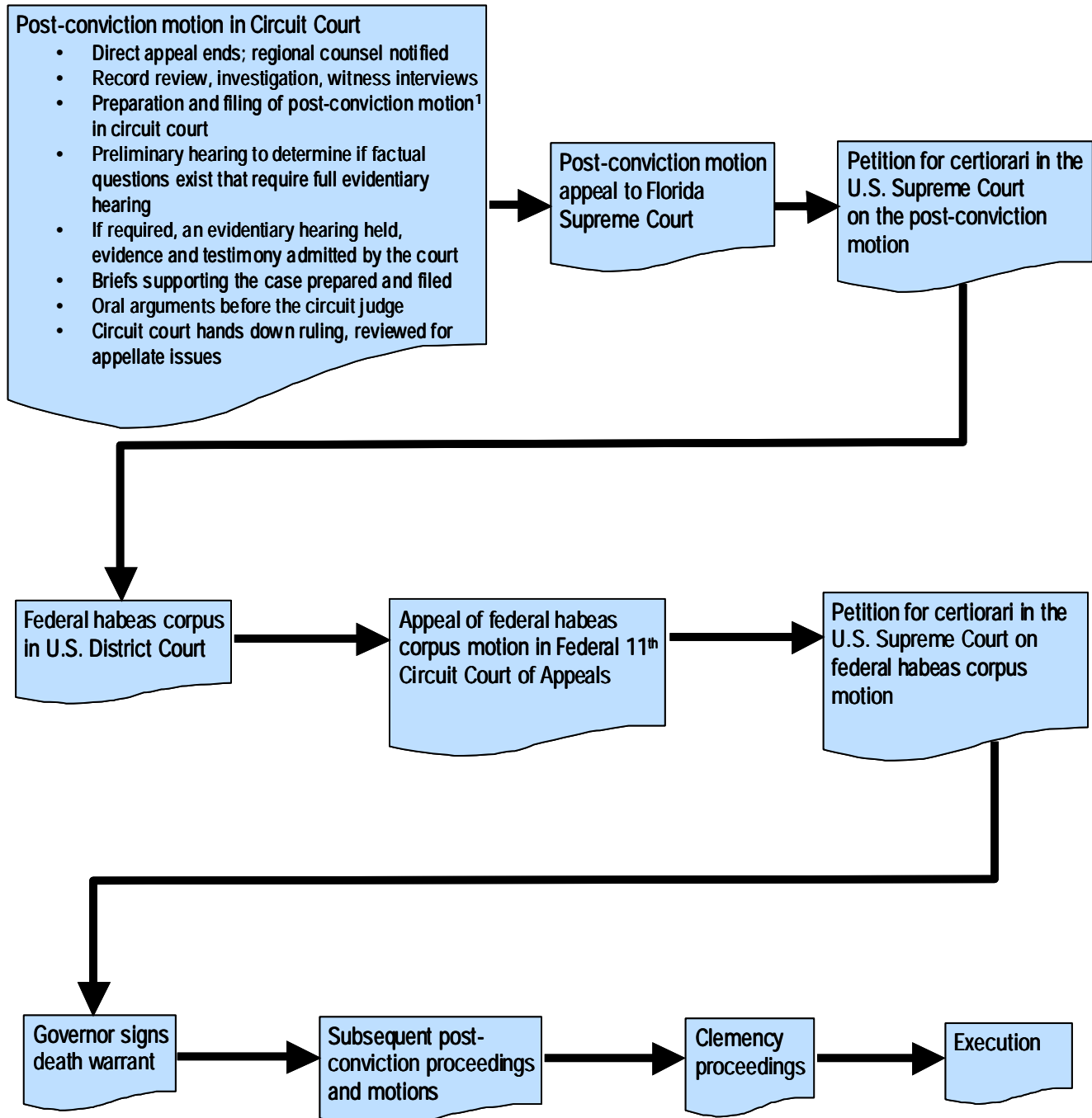
### Purpose

This report presents the results of our Program Evaluation and Justification Review of the Capital Collateral Regional Counsels. We conducted our justification review a year ahead of schedule, during the program's first year of performance-based budgeting, so that our analysis can be used in the Legislative Budget Commission's zero-based budget review of the counsels. Appendix A summarizes our conclusions regarding the issues the law requires be considered in a justification review.

### Background

Capital collateral regional counsels represent death row inmates during collateral challenges, known as post-conviction appeals, after their direct appeals have been exhausted. (See Exhibit 1.) Collateral challenges focus on the effectiveness of trial and appellate counsel, the discovery of new or undisclosed evidence, or other issues that had not been previously raised, but pertain to the defendant's guilt or the appropriateness of the death penalty.

Exhibit 1  
Death Penalty Cases Include Many Steps



<sup>1</sup> Post-conviction motions are those filed after the later of two events: (1) the Supreme Court of Florida hands down a final decision and the defendant does not appeal within 90 days, or (2) the United States Supreme Court denies a request for an appeal, known as a writ of certiorari.

Source: Capital Collateral Regional Councils.

As currently structured, Florida has three independent capital collateral counsels. The state is divided into three geographic regions, north, middle and south, with one counsel assigned to each region. Each region is composed of six to eight judicial circuits. The counsels are appointed by the Governor for a three-year term, and are selected from a list provided by the Judicial Nominating Committee, subject to Senate confirmation.

Regional offices are located in Tallahassee, Tampa and Fort Lauderdale. Each office has separate appropriations and independently hires staff. (See Exhibit 2.) The Justice Administrative Commission provides administrative support to the counsels, including budget and personnel functions.

**Exhibit 2  
Funding of Regional Counsels Has Remained Stable Over the Past Three Years**

CCRC Region	2001-02 FTE	Appropriations Fiscal Year		
		1999-00	2000-01	2001-02
North	29	\$2,233,061	\$2,621,950	\$2,561,361
Middle	39	3,105,467	3,199,895	3,375,790
South	30	2,487,023	2,947,683	3,008,507
<b>Total</b>	<b>98</b>	<b>\$7,825,551</b>	<b>\$8,769,528</b>	<b>\$8,945,658</b>

Source: General Appropriations Acts.

***Former structure of regional counsel lacked accountability***

Prior to 1985, inmates did not have a statutory right to post-conviction counsel. State level collateral review did not begin until the Governor signed a death warrant. Once a warrant was signed, there would be a rush to find a volunteer attorney who would request a stay of the execution to allow time to investigate collateral claims.

The Legislature created an Office of Capital Collateral Counsel in 1985. By giving the defendant an attorney at the earliest stage of collateral proceedings, the Legislature hoped that the claims would be raised earlier and

more efficiently. Creation of collateral counsel made Florida one of the few states that provided representation for collateral appeals.

However, in the 1990s, as the capital collateral caseload grew, the office was plagued with financial and case management problems.

- In 1995 the counsel refused to assign staff to 40 new cases, citing lack of resources and staff.
- During the next two Fiscal Years, 1995-96 and 1996-97, the Legislature added 25 staff to the collateral counsel and increased the budget \$1.3 million.
- In 1997 retired Chief Justice Parker McDonald reviewed the collateral counsel and reported that it did not keep accurate financial or hourly records. At that time, 13 death row defendants remained unrepresented. The report stated that the collateral counsel was abusing public records requests. The report also noted that no post-conviction motions were filed between April 15, 1996, and January 10, 1997.
- To alleviate the backlog of cases and increase efficiency and effectiveness in the system, the Florida Supreme Court and the Legislature took several actions.
- The Supreme Court modified rules of procedure, including reducing the time for filing post-conviction motions from two years to one, and issued a moratorium on filing post-conviction motions to allow for the reorganization of the collateral counsel into regions. The Supreme Court also altered rules on the production of documents and required training standards for trial judges with death penalty cases. In 2001, the court has further refined the rules of procedure by limiting the ability of trial courts to dismiss motions without a hearing, and by requiring more expeditious appointment of counsel and status conferences every 90 days. These rules took effect in October 2001.

## *Justification Review*

- The Legislature also enacted a number of significant reforms.
- In 1997, the Legislature sought to improve accountability and performance by dividing the collateral counsel office into three regional offices and creating the Commission on Capital Cases to monitor and review their operations. The commission is composed of six members; the Governor, the Speaker of the House and the President of the Senate each appoints two members.
- In 1998, the Legislature created a registry of private attorneys under the Commission on Capital Cases to alleviate the backlog of cases and to represent any cases in which there was an ethical conflict of interest that would prevent the regional counsels from handling the case.<sup>1</sup>
- Also in 1998 the Legislature created a records repository in the Department of State, as part of the state archives, to reduce delays and confusion related to the collection and distribution of legal records in death penalty cases.

Our review assesses these changes in the capital collateral system as well as the performance of the regional counsels and provides recommendations for further improving the system.

## Accountability and Performance

### *Legislative changes have improved accountability and performance*

Accountability and performance of the capital collateral appeals system have improved since the regional counsels were established. As

---

<sup>1</sup> An example of a conflict of interest would be a case in which two defendants were arrested for the same crime and each defendant blamed the other. Counsel would be in conflict in seeking a plea bargain for one client to testify against the other. When possible the regional counsels resolve conflict cases by sending the case to another regional office.

noted in the report prepared by Chief Justice McDonald, the former collateral counsel's office was not accountable for its activities and expenditures.<sup>2</sup> One of the functions of the Commission on Capital Cases was to provide oversight for the three newly appointed regional counsels.

The commission requires the counsels to submit quarterly reports. The reports detail the hours worked and the expenditures on each case handled by the offices. The commission takes an active role in reviewing these reports and monitoring the activities of the regional offices. Commissioners believe that the division of the work into regions has enhanced performance by providing competition and facilitating comparisons of performance.

One of the criticisms of the single capital collateral counsel was that the office did not provide representation for all of the defendants on death row. Between 1996-97 the number of unrepresented defendants ranged from 13-40. Under the revised system, all defendants who want a lawyer currently have one.

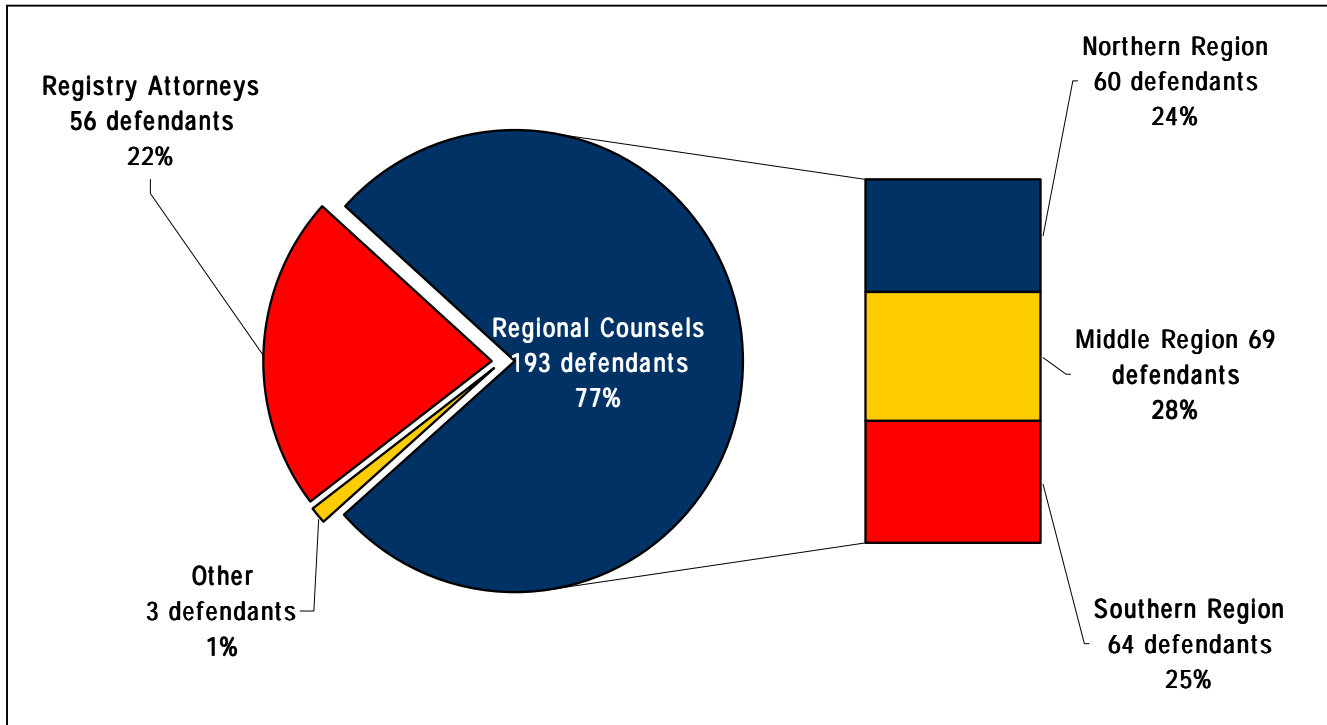
As of September 2001, there are 374 defendants on death row. Approximately 252 of these cases are in the collateral appeals process.<sup>3</sup> The regional offices represent 77% of these inmates, while registry attorneys represent 22%, and the remaining 1% are represented privately or have petitioned to represent themselves. (See Exhibit 3.)

---

<sup>2</sup> Former Supreme Court Chief Justice Parker McDonald authored the McDonald Report dated February 13, 1997, and presented it to the Office of the Governor and to the Legislature. This report will be available online at [www.floridacapitalcases.state.fl.us](http://www.floridacapitalcases.state.fl.us).

<sup>3</sup> The remaining cases are still in the direct appeal stage.

**Exhibit 3**  
Regional Counsels Represent 77% of Death Row Inmates



Source: Capital Collateral Regional Counsel, Commission on Capital Cases, Comptroller and Department of Corrections data as of July 2001.

***Regional counsels are moving cases through the system***

Many of the legislative and court changes were the result of a concern about the length of time it took to resolve death penalty cases.<sup>4</sup> While the reforms are too recent to allow for an analysis of their effect on case completion, case activity provides an indicator of whether cases are progressing through the system.

The regional counsels, the commission, and the Legislature track various case milestones. Last fiscal year the regional counsels attended 53 preliminary hearings and made 26 arguments before various state and federal courts.<sup>5</sup> (See

<sup>4</sup> In 1999, Potts and Hirt authored *Report to the Commission on the Administration of Justice in Capital Cases*, which calculated the average length of time for the post-conviction process as 8.1 years measured from the date the death sentence was affirmed to execution for each inmate who has been executed since 1974.

<sup>5</sup> In addition to the activities listed in Exhibit 4, the regional counsels review the voluminous records from the trial and appeals court proceedings; conduct investigations; and prepare legal documents. Cases also await rulings from various state

Exhibit 4.) The Commission on Capital Cases noted that the number of evidentiary hearings held in death penalty cases in the past year exceeds the number held in the prior 10 years combined.

**Exhibit 4**  
Regional Counsels Are Actively Litigating Cases

Legal Action	Fiscal Year 2000-01			Total
	North Region	Middle Region	South Region	
Post-conviction Motions	8	6	9	23
Evidentiary Hearings held	8	10	14 <sup>1</sup>	32
Other Hearings	26	16	11	53
Oral Arguments	6	10	10 <sup>2</sup>	26

<sup>1</sup> 12 state, 2 federal

<sup>2</sup> 9 state, 1 federal

Source: Capital Collateral Regional Counsels.

and federal courts. These decisions may take years between the hearings and the decisions.

As a result of the regional counsels activities, in the 1999-00 and 2000-01 fiscal years, 4 defendants have been released; 1 has been granted a new trial; 11 have received new sentencing hearings, and 10 have had other appeals granted. Most of these activities occurred during the past two years, further indicating regional counsel progress in cases. Additional discussion of legislative performance measures is provided in Appendices A and B.

### ***New technology has increased efficiency***

To enhance productivity, the middle regional counsel's office has embarked on a scanning project for files that were housed in its office prior to the change in repository operations in 2000. Those files had been sent to the regional counsels in storage boxes. Each case ranged from 6 or 7 boxes to over 40 filled with records, transcripts, and documents.

By scanning the files, the middle region has been able to place these records on both a CD-ROM disk and a computer server. This technology has permitted the attorneys to have faster access to records, making their legal work more efficient. For example, the file can be searched by name to locate all documents containing a witness's name. Scanning also reduces the need for staff to copy, organize, and label the documents. The scanning system cost \$100,000.

In addition to allowing staff to make more efficient use of their time, scanning reduces the amount of space needed to maintain the files. When the middle region completes the scanning process, it will be able to avoid the \$3,600 annual cost of records warehouse space. The southern region rents a portion of another floor in their building for \$4,600 per month for file storage. North and south counsels could enhance efficiency by implementing records scanning, either in-house, as piloted by the middle counsel office, or through a joint purchase or contractor.

## Registry of Private Attorneys

---

In 1998 the Legislature created a list, or registry, of private attorneys to assist in the defense of death penalty cases.<sup>6</sup> The registry was intended to assist the new regional counsels in reducing the backlog of cases and unrepresented defendants, provide a comparison group against which the performance of the regional counsels could be measured, and aid in the control of state costs of death row representation.

The Legislature and the commission have established an effective system for monitoring the work of the regional counsels; similar accountability needs to be established for registry. The registry has helped eliminate the backlog of cases; however, more oversight is needed to ensure that registry attorneys adhere to legislative financial guidelines, provide adequate legal representation, and collect appropriate data to compare registry and regional counsels.

### ***Registry lawyers helped to remedy case backlogs***

The registry attorneys have helped to alleviate the capital collateral backlog created before the split into regional offices. Use of the registry provided time for the new regional offices to organize, hire staff and transfer files from the collateral counsel's office. The registry attorneys also serve as reservoir of counsel who will handle a case if all of the regional counsels have a conflict of interest with a case and cannot accept it. Currently the registry lists 122 lawyers. Of these, 38 attorneys are representing 56 defendants.

---

<sup>6</sup> The Commission on Capital Cases compiled the registry from attorneys that applied and had at least a minimum of experience in criminal law including participation in at least five felony trials, five felony appeals, or five capital post-conviction evidentiary hearings or any combination of at least five of such proceedings, and distributed the list of available attorneys to the circuit courts for appointment.

The registry lawyers, like the regional counsels, are moving their cases through the system. We examined a sample of 15 registry cases (25% of the total) and determined that the cases are being actively litigated. They have initial and amended post-conviction motions filed, and have had evidentiary and other hearings.<sup>7</sup>

The comparative timeliness of case processing between the registry and regional counsels cannot currently be determined. None of the registry cases has gone through the entire post-conviction process. When the registry was created, each of the regional counsels transferred newer cases to registry attorneys to avoid duplication of case file reviews and to maximize the use of their respective staffs.

***A growing number of registry cases are exceeding the statutory payment limits***

Registry cases exceeding the statutory fee maximums are on the rise, thereby eroding the Legislature’s cost containment efforts. Registry attorneys are paid using a statutory payment schedule that is based on completion of specific case activities. (See Exhibit 5.) After appointment, registry attorneys sign a contract for services that is prepared by the Comptroller. A part of this contract incorporates the statutory fee rates.

**Exhibit 5  
State Law Caps Registry Attorney Fees**

Type of Activity	Maximum Charge at \$100/hr.
Appointment	\$ 2,500
Timely filing of post-conviction motion	20,000
Trial court issuance of order granting or denying post-conviction motion	20,000
Timely filing of brief to Florida Supreme Court	20,000
Trial court order after a remand from the Florida Supreme Court	10,000
After denial of the post-conviction motion and the defendants writ of habeas corpus becomes final in the Florida Supreme Court	4,000
Petition for writ of certiorari in the United States Supreme Court	2,500
Conclusion of representation in all United States Supreme Court proceedings if certiorari is granted	5,000
Investigation fees, maximum amount	15,000
Miscellaneous fees, including transcripts, expert fees, etc. Maximum unless court orders for extraordinary circumstances	15,000
<b>Total</b>	<b>\$114,000</b>

Source: Section 27.711, F.S.

To collect their fees, the registry attorneys make requests for payment through the Comptroller after they have completed a phase of the case. Comptroller staff pre-audits the bill for attorney’s fees and costs, and consult with a department attorney if some aspect of the invoice raises questions. The Comptroller sends the approved voucher to the attorney who presents it to the judge with an order for payment. After the judge signs the order, it is returned to the Comptroller for payment. The Comptroller then issues payment.

According to our review, approximately 15% of the registry cases have exceeded the statutory fee limits. Cases exceeding the statutory maximums are on the rise according to the Comptroller’s staff.<sup>8</sup> Two ways these cases are exceeding fee limits are through multiple

<sup>7</sup> Over 90% of the sample cases had post conviction or amended post-conviction motions filed. Twenty percent were awaiting answers to their motions from the state. Twenty-seven percent had a preliminary hearing scheduled or have had the hearing. Twenty-seven percent had an evidentiary hearing scheduled or have had the hearing. In one case, the post-conviction motion was denied and the case was on appeal to the Florida Supreme Court. Since these cases are relatively new cases in the collateral process, one would expect to see these early stage proceedings. (See Exhibit 1 for a flow chart of post-conviction proceedings.)

<sup>8</sup> We note that not all registry cases exceed the statutory payment limits, and further some registry lawyers request less than the amounts permitted.

## *Justification Review*

attorney appointments on a single case and excessive miscellaneous charges.

In some cases, initial counsel withdrew from the case and another attorney was appointed. Both old counsel and new counsel have billed for completing the same work. In one case, the first attorney billed for reviewing the file after appointment, filing the post conviction motion, and a portion of the court fees allowed after the trial court issues an order, receiving \$32,195 in counsel fees when he withdrew. He also incurred \$14,787 in expenses. Subsequent counsel has already collected \$22,360 for repeating the case review, and for preparing and filing another post-conviction motion. He has incurred another \$9,177 in expenses. The potential costs for this case, when the fees and expenses of the two attorneys are combined, are \$160,842, including expenses of \$44,787.

There are also cases where the costs for expert fees, transcripts and other costs have exceeded the \$15,000 limit and courts have approved the overages. The Comptroller's Office is reviewing at least nine cases in which such overages occurred. In one case the miscellaneous costs exceeded \$24,000.

As the number of these cases increase, they will erode the statutory maximums and the cost savings envisioned by the Legislature when the registry was created. The commission should have greater oversight in the appointment and fee payment processes for registry lawyers.

### ***Post-warrant proceedings also raise financial questions***

The registry contract is silent on whether registry attorneys are required to pursue cases at the death warrant stage of the proceedings. There is some question as to whether the statute requires registry attorneys to pursue the case after the death warrant is signed, and there appears to be no money in the schedule for such a defense. This lack of certainty has led to litigation in which the statutory limits were held unconstitutional by a circuit court.

The *Florida v. Demps* case could severely affect the cost-effectiveness of the registry.<sup>9</sup> In this case, the local trial court appointed two private lawyers to represent Bennie Demps in his fourth post-death warrant proceeding. Although one of the attorneys was a registry lawyer, both appointments were made outside the registry process. The lawyers and the court failed to notify either the commission or the Comptroller of the appointment. The Comptroller did not secure a contract with either counsel.

- At the end of the proceeding, one of the attorneys presented a bill for counsel fees of \$27,310, which included \$1,130 in expenses. The Comptroller does not yet have the final bill for the second lawyer.
- Counsel charged \$200 per hour, twice the statutory rate for registry attorneys.
- The court approved the fee over the objection of the Comptroller.
- The judge held the provisions of Chs. 27.703 and 27.711, *Florida Statutes*, limiting the rate for counsel fees to \$100 per hour, were unconstitutional in taking of the lawyers "time, energies and talents," in the circumstances of the case. The Comptroller has appealed.

This case, if upheld, will severely affect the cost-effectiveness of the private registry, as many cases could have extraordinary circumstances at the post-warrant stage.

The Legislature needs to clarify the statute to provide a clear understanding of the responsibility of the registry lawyers in post-death warrant proceedings. Since none of the registry cases has reached this stage, it would be an opportune time to clarify their responsibilities.<sup>10</sup>

The death warrant stage is a critical stage of the defense. When the Governor signs a death

---

<sup>9</sup> *State of Florida v. Demps*, Case No. 77-00116CFA (8<sup>th</sup> Circuit, Bradford County).

<sup>10</sup> Demps had not gone through the process as a registry case.



warrant the defense attorney has between 30 and 90 days to do a complete review of the record, request stays in federal and state courts, and make a final request for relevant records from the state.

Even though solicitations for evidence were made earlier in the proceedings, these requests have generated important new evidence in some cases. For example, the regional counsels have been successful in having three defendants' death warrants remanded for further proceedings. This occurred when evidence indicating defendant's innocence and prosecutorial misconduct was disclosed for the first time after a death warrant had been signed.

There would be two advantages to revising the statute to specifically direct registry attorneys to conduct post-warrant proceedings and defining the fee in the payment schedule. First, including this stage in the fee schedule would limit costs by avoiding situations such as the Demps case. And second, if the private registry lawyer is not obligated by contract to perform this task, either the regional counsels or other private lawyer will be appointed for the warrant stage.

Regional counsels have faced this situation when privately retained lawyers have withdrawn from a case in the warrant stage. The regional counsels have indicated that the review required by a death warrant is difficult even if an attorney is familiar with the case or its history, and is more difficult if the attorney knows nothing about the case. Post-death warrant proceedings are an extremely time consuming and stressful period in a collateral case, and if assigned unexpectedly, are very disruptive to other work in progress.

If registry attorneys are to handle these proceedings the courts should be aware that only the regional counsels and registry lawyers are to be appointed, and that the registry contracting process must be followed.

### *Monitoring performance of registry attorneys is minimal*

Commission staff have started to collect information about the progress of cases, to be placed on a website. We believe this is a positive development. The commission could further improve registry accountability by taking additional steps to address attorney performance.

Members of the commission and commission staff suggested that the courts, not the commission, would intervene in the event that the quality of registry counsel's work was substandard. Others suggested that the defendant had recourse with the Florida Bar Association by filing a complaint against attorneys who did not fulfill their professional obligations.

However, these potential remedies for poor performance are highly problematic. Judges told us that it would be inappropriate for them to assume responsibility for quality control of registry attorneys or to challenge the quality of counsel during a case. The judges noted that removing counsel from a case that is before the court over the objection of the defendant would create appellate issues.<sup>11</sup>

Defendants, even if they had the information and expertise to recognize a poorly performing lawyer, cannot provide oversight of the quality of representation by their registry attorneys. Defendants are not permitted to challenge the ineffectiveness of collateral counsel on appeal.

While a complaint could be filed with the Florida Bar for violations of ethical standards, it is not clear who would file the complaint, as the defendant would have been executed. In short, there is no effective oversight mechanism to ensure that the state is purchasing appropriate collateral legal services.

---

<sup>11</sup> The Florida Supreme Court refused to discuss performance of the regional counsels or the registry attorneys in any manner for this report, indicating that it could cause a conflict for them.

## *Justification Review*

To address this problem, the registry contract should be revised to clearly specify attorney responsibilities. Also, to insure a quality cohort of registry lawyers, experience and training should be mandated.

### ***Additional provisions are needed in the registry contract***

The contract for services of registry attorneys does not clearly identify the responsibilities of the registry lawyer and deals with performance requirements only in a marginal way. For example, it prohibits the filing of frivolous motions, although the remedies are undefined and left to the discretion of the court. The contract fails to address the activities the state expects from the registry attorney, including such activities as client contact and file review.

The commission should work with the Comptroller to revise the contract to include basic expectations of the state for the lawyer. According to the American Bar Association, these should include

- requiring client contact within a reasonable period of time after appointment;
- requesting the record from the repository; and
- reviewing the entire record.<sup>12</sup>

The current contract does not require the registry attorney to pursue federal action even though the statute provides for private registry counsel to litigate federal claims. The contract should be amended to be consistent with the statute. This is significant because federal time limits for filing actions run concurrently with state time limits. If the attorney is either unaware of the limits or believes he had no obligation to pursue them, the defendant could lose his federal habeas corpus appeal rights.

In addition, as described earlier, the contract should address registry attorney obligations during the death warrant stage.

To properly evaluate the efficacy of the registry, the contract should also stipulate that registry attorneys submit the same performance information as is required of the regional counsels. This information will allow the Legislature and the commission to assess registry performance and compare it with that of the regional counsels, which cannot currently be done.

### ***Registry requirements should mandate post-conviction experience***

Post-conviction practice requires skills and knowledge that are substantially different from criminal trial work. Familiarity with criminal trial work is and should be a requirement for inclusion on the registry list, but it is not enough. Neither the regional counsel attorneys nor the registry attorneys are required to have post-conviction experience. However, new regional counsels receive substantial experience, training, and mentoring, while registry attorneys do not.

Attorneys employed in the regional counsel's office handle only post-conviction cases and daily gain valuable experience. All regional counsels assign two attorneys to each case. New attorneys team with experienced lawyers who are ultimately responsible for the progress of the case. New lawyers in the regional counsel's office grow in expertise and responsibility through this mentoring process.

As with a new lawyer in the regional counsel's office, registry attorneys must have participated in at least five felony trials, five felony appeals, or five capital post-conviction evidentiary hearings or any combination of at least five of such proceedings. Unlike the new lawyer in the regional counsel's office, the registry attorneys have outside practices that may not give them daily experience in post-conviction cases. In addition, only one lawyer is appointed in each case. While the regional counsels indicated that they act as resources for registry attorneys by periodically answering inquiries about procedures, motions, and the

---

<sup>12</sup> The repository librarian indicated that the registry attorneys requested records less than regional counsels.

law, requiring post-conviction experience would strengthen the registry process. As noted later in this report, it would also qualify Florida for more expeditious treatment of federal proceedings.

An additional way to provide a more experienced registry is to redesign the appointment process. As the system is now configured, the commission informs the court of the registry attorneys who are available in that area and the trial court then selects an attorney. The courts use of this discretion has resulted in only 38 of the 122 registry attorneys receiving appointments.

While 84 registry lawyers have no clients assigned, 10 have multiple clients and 1 has five clients.<sup>13</sup> Some, but not all, of this unevenness is caused by the geographical preferences of the registry lawyers.<sup>14</sup> This distribution of work is problematic in that those attorneys on the registry that have not been assigned cases are not gaining experience in the post-conviction process. They may also lose interest in participating if they are never called upon to serve.

Another option would be to appoint registry attorneys to cases on a rotating system. The commission could maintain a list of eligible and available registry attorneys for each region. Judges would appoint the attorney on the top of the list as each case came up. Using a rotating system would assure that the cases are evenly distributed among the registry attorneys.

### ***Training of registry lawyers is also essential***

In addition to experience, registry lawyers need both training and continuing legal education in post-conviction practice, whether

or not they currently have a registry case. Constant updating is required in this area of the law. Both federal and state law, at both the legislative and judicial levels, changes often. Changes in statutes, case law, and rules of court for Florida and for the federal courts dictate that attorneys, who practice in this area remain current.

The registry law provides an optional \$500 per year for training for registry attorneys who are appointed to cases. This training is necessary and should be mandated. However, learning the law after appointment is not an efficient use of the lawyer's time and would delay the progress of the case.

Florida Bar Rule 6-10.3 requires all lawyers to complete 30 continuing legal education hours every three years. To remain on the registry, lawyers should be required to commit a portion of these hours to updating their knowledge of the law in the post-conviction field. This requirement would not add additional cost to the process because it would be the responsibility of the lawyer to attend and pay for the classes. But it would not increase the financial burden on the lawyer, since completion of continuing legal education classes are required to maintain a license to practice law. These requirements would simply divert some of those hours to remaining current in post-conviction practice.

The commission has conducted and made available a comprehensive training program in the post-conviction process. It is offered on a yearly basis and is available on site and by video conferencing. Both regional counsels and registry lawyers attend these courses. There are also other commercially sponsored courses are available.

---

<sup>13</sup> Some of these clients have more than one case.

<sup>14</sup> Cases are not distributed evenly throughout the state or between the regions. The northern region has fewer registry attorneys than either the middle or southern regions, although the region is responsible for representing approximately the same number of inmates.

## The Repository

### *Repository has improved system efficiency*

One of the factors in the backlog of capital cases in the 1990s was the difficulty of obtaining case records and the corresponding litigation. As a remedy the Legislature consolidated all case records in a repository in the state library in Tallahassee.<sup>15</sup> Regional counsels report high satisfaction with the repository, which has dramatically improved the timeliness of obtaining case records and reduced the litigation over production.

At the conclusion of the direct appeal process of each collateral case, the Attorney General and state attorney notify relevant state agencies to reproduce applicable records and send them to the repository. The repository receives records from law enforcement and other agencies, documents their receipt, maintains a master file of the documents, and sends copies of the records to the regional counsel or registry lawyer that requests them.<sup>16</sup>

The commission initially photocopied the records at the repository for distribution to regional counsel, but repository staff sought a more efficient way to reproduce the voluminous records. The staff found that the process could be outsourced to a firm that would scan the records on the premises of the repository. The scanned records are placed on a CD-ROM disk with an index. Repository staff makes copies of records that cannot be scanned, such as photographs, audio and videotapes, and oversized documents.

The change from photocopies to disks has dramatically reduced shipping costs, which are

paid by the regional counsels. For example, the cost of shipping boxes of records for one case would run from \$39.02 for 4 boxes of materials, to \$818.54 for 200 boxes of materials. In contrast, the cost of shipping the disks by three-day Federal Express would be approximately \$4 for up to two pounds or eight disks. The repository retains the original records as well as master copies of the disks. Copying the disk is a simple and inexpensive process if additional copies are needed.

Since the inception of the scanning process, the repository has scanned 71 cases. The time required to reproduce the records and send them to respective counsel has been reduced from four to five weeks when the commission photocopied the files to one to four days using the scanner.<sup>17</sup>

## Options for Reducing Case Delays

There is great interest in reducing delay in the post-conviction process. The reforms noted in this report are testament to the attempts by the Legislature, the courts, the commission, and the regional counsels to make the process run both effectively and efficiently.

### *An alternative to dual track provisions may be preferable*

To further expedite the post-conviction process, the Legislature enacted what has been referred to as a dual-track process for post-conviction hearings. Currently, direct appeals are completed first. Then, cases that have not been diverted by direct appeal progress to post-conviction hearings. Dual-track would require post-conviction proceedings to begin concurrently with the direct appeal process so as to reduce the total length of time required

<sup>15</sup> The repository is staffed by approximately 2.5 FTEs, which represents a number of individuals that work part-time. The cost of operating the repository in Fiscal Year 2000-01 was \$175,000.

<sup>16</sup> The repository also hosts a website for agencies which are depositors. The site includes downloadable forms and instructions for preparing records and transmitting them.

<sup>17</sup> After saving substantial time with scanning in 2000, the repository has refined the process and further shortened the time. Scanning and other improvements have cut the time to reproduce files nearly in half, lowering the average time from 5.02 days to 2.87 days.

for death row cases. The Florida Supreme Court has stopped implementation of the process, holding that some public record concerns must be addressed before dual track may go into effect.<sup>18</sup> While the public records problem could be overcome, there is an alternative option that could meet legislative intent and avoid substantial cost increase.

Before returning to the dual-track policy, the Legislature should review its financial implications. Under the current procedure, only cases that have no direct appeal issues are assigned to the regional counsels and registry. When the new procedure takes effect, cases that have direct appeal issues will also be assigned. This will result in a 40% increase in workload for the regional counsels, the registry, and the lower courts because the Supreme Court reverses or returns death penalty cases at a rate of approximately 40% at the direct appeal stage. Over the last 10 years the court has reversed or remanded 307 death cases out of 763 cases they have heard. In the past, these cases did not progress to the post-conviction stage.

The cost of this 40% increase in workload is substantial. For example, if all of the above 307 cases that were returned to the lower courts were assigned to the registry, the potential cost could be nearly \$35 million. This figure does not include the financial commitment needed for the courts to hold hearings and review post conviction motions. If the Supreme Court returns 40% of these cases on direct appeal issues, \$14 million of those funds may have been spent needlessly on cases that would not have reached the post-conviction process.

Since the intent of the dual-track provisions was to end delay in the death penalty appeal process, we suggest that there may be an

alternative method of accomplishing this task without incurring the expenditures noted above. This would be to pursue the opt-in provisions of the Federal Anti-terrorist and Effective Death Penalty Act.<sup>19</sup>

This act is intended to avoid delays in federal habeas corpus reviews, which regional counsel and federal court staff report are substantial. In some cases, the trial courts were taking up to three years to render a decision. Appeals of those cases add additional time to the process. The act provides for limitations of federal intrusions into state death penalty procedures if states meet certain qualifications. The act

- provides for limitations of the federal government's ability to grant stays of execution;
- provides a six-month statute of limitations to file petitions for writs of habeas corpus (reduced from the current year limitation);
- grants greater deference to the ruling of state courts on federal law; and
- mandates a strict timeline for district (180 days) and appellate (120 days) courts to follow when entertaining post-conviction petitions.

To opt-in to the benefits of the act, a state is required to address several issues.

- The state must establish by rule or law a mechanism for the appointment and reasonable compensation and payment of expenses of competent counsel for defendants facing the death penalty on collateral appeal.
- The rules must provide for competency of counsel.
- The rules must provide for a determination of whether the defendant is indigent.
- The rules must provide for the defendant waiving his/her right to counsel.

---

<sup>18</sup> Under current law, until the direct appeal is completed the prosecution files are not public records. The post-conviction process would be hampered if these records were not available. The Supreme Court indicated that this issue needed to be addressed before the law could take effect in *Allen v. Butterworth*, 756 So.2<sup>nd</sup> 52 (FL, 2000).

---

<sup>19</sup> 28 U.S.C. Sections 2261-2266.

## *Justification Review*

No state has yet taken advantage of the opt-in provisions of the Anti-Terrorism and Effective Death Penalty Act.

In 1996, a federal district court held that Florida did not qualify as an opt-in state.<sup>20</sup> The court found that Florida did not require specialized knowledge in habeas corpus practice by attorneys appointed to represent death row inmates. It noted that Florida did not have competency requirements for conflict counsel. It also noted the disputes between the former collateral counsel and the Supreme Court and Legislature over funding and the refusal to assign staff to cases left many defendants with the promise of counsel, but no actual representation.

However, the reforms of the last several years have addressed many of the court's concerns. Our recommendations with regard to requiring previous post-conviction experience and continuing education would address the court's concern over competence of counsel.

By notifying the court that it wishes to proceed under the provisions of the act, the Attorney General can test the readiness of the state for opt-in status. This would expedite the death penalty appeals process yet avoid the increased cost of the dual-track provision.

## Conclusions and Recommendations

### *Regional counsels*

Legislative and court reforms to the capital collateral system over the past five years have dramatically improved performance. The division of the capital collateral counsel into three independent regional offices monitored by the Commission on Capital Cases has improved accountability. The counsels are actively litigating their cases. For example, the number of evidentiary cases held in death

penalty cases in the past year exceeds the number held in the prior 10 years combined. The middle counsel office has implemented records scanning to enhance efficiency.

We recommend that the north and south regional counsels evaluate the feasibility of adopting scanning by

- consulting with one another and the repository to insure the compatibility of the systems and to avoid contracting for outdated systems;
- evaluating the costs and benefits of scanning in-house and outsourcing the task, including working with the central region or the repository, or local clerks of court that have scanning operations; and
- contacting other officeholders such as the public defenders and state attorneys to determine if the cost of scanning could be shared among the offices.

### *Private registry*

The creation of a registry of private attorneys that takes conflict and overflow cases from the regional counsels has helped eliminate the backlog of cases. However, the commission needs to strengthen financial and quality accountability of the regional counsels. The commission needs to provide more oversight to assure the registry's proper operation. We recommend the following actions.

The Legislature should revise Ch. 27, *Florida Statutes*, to

- require post-conviction experience in felony/capital cases for attorneys who are not yet assigned a case;
- require registry lawyers to complete the commission's continuing legal education course before they are eligible for appointment to a case;
- require all collateral lawyers to commit a portion of their mandatory continuing legal education requirements to post-conviction courses;

---

<sup>20</sup> *Hill v. Butler*, 941 F. Supp. 1129 (N.D. Florida, 1996). However, there is some question as to whether this opinion is still valid.

- clarify that registry counsels are to participate in federal habeas corpus proceedings and the death warrant stage, and specify the fee for the death warrant proceedings in the fee schedule;
- expressly state that the capital collateral counsel and the private registry attorneys are the exclusive source for state-financed representation for death penalty proceedings in state court;
- authorize the commission to remove attorneys from the registry for financial or professional misconduct; and
- require that the courts employ a standard order which incorporate the terms and condition of the registry, to be provided by the Commission on Capital Cases.

The Commission on Capital Cases should

- assist the court by preparing a standard order of appointment for registry counsel which incorporates the registry contract so that the registry counsel and the court are clear as to the duties and payment schedule for the registry attorneys;
- develop a rotating system for appointment of registry attorneys;
- review cases that are transferred from one registry attorney to another and inform new counsel which fees the state will pay for that case; and
- work with the Comptroller to rewrite the registry contract to require
  1. minimum performance consistent with the American Bar Association standards;
  2. participation in the death warrant stage and the federal habeas corpus proceedings; and

3. reporting on the same performance measures as the regional counsels.

### *Records repository*

The repository, which collects and reproduces the multitude of case records, has significantly improved operations through technology and outsourcing.

### *Options for reducing delay*

Rather than pursuing the dual-track post-conviction concept, which would increase the number of cases reviewed by about 50%, Florida should try to eliminate delay in the collateral appeals system by qualifying for the opt-in provisions of the federal Anti-Terrorism and Effective Death Penalty Act.

We recommend that the Attorney General's Office prepare and request from the Federal District Court treatment of Florida's federal habeas corpus petition under the opt-in provisions of the Anti-Terrorism and Effective Death Penalty Act.

## Agency Response

The Capital Collateral Regional Counsels were contacted regarding a response to the report. Each expressed satisfaction with the report and had no further comments to make on its findings. The State Archives were contacted regarding a response to the portion of the report on the repository. The staff also expressed satisfaction with the report and had no further comment to make on its findings. The executive director of the Commission on Capital Cases provided a written response to our preliminary and tentative findings and recommendations. (See Appendix C, page 21, for his response.)

---

OPPAGA provides objective, independent, professional analyses of state policies and services to assist the Florida Legislature in decision making, to ensure government accountability, and to recommend the best use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021 or 800/531-2477), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475).

**Florida Monitor:** <http://www.oppaga.state.fl.us/>

Project supervised by Kathy McGuire (850/487-9224)

Project conducted by Cynthia Cline (850/487-9222)

John W. Turcotte, OPPAGA Director

Appendix A

# Statutory Requirements for Program Evaluation and Justification Review

Section 11.513(3), *Florida Statutes*, provides that OPPAGA Program Evaluation and Justification Reviews shall address nine issue areas. Our conclusions on these issues as they relate to the Capital Collateral Regional Councils are summarized in Table A-1.

**Table A-1**  
**Summary of the Program Evaluation and Justification Review of the Capital Collateral Regional Councils**

Issue	OPPAGA Conclusions
The identifiable cost of the program	The appropriations for representation of indigent death row defendants for Fiscal Year 2001-02 are \$11,319,052. The Capital Collateral Regional Councils are allocated \$8,945,658 and \$2,373,394 is allocated to the private attorney registry.
The specific purpose of the program, as well as the specific public benefit derived therefrom	The program is intended to provide death row inmates with competent counsel in post-conviction proceedings. Post-conviction proceedings insure that the trial and direct appeal proceedings have met both the standards for competency of counsel and the constitutional process requirements. It is the further intent of the program to insure that the proceedings are handled carefully, yet efficiently, so as to bring the case to a conclusion. The public benefits when the death penalty is imposed only on those individuals who are guilty and who meet the statutory and constitutional requirements for death. The public also benefits when the process is handled in an efficient and effective manner.
Progress toward achieving the outputs and outcomes associated with the program	Because the Capital Collateral Regional Council was placed on performance-based budgeting in the last fiscal year, benchmarks for performance were still in development at the time this report was completed. However, the regional offices have shown improvement over their predecessor in court submissions and hearings held.
An explanation of the circumstances contributing to the departments ability to achieve, not achieve, or exceed its projected outputs and outcomes as defined in s. 216.011, <i>F.S.</i> , associated with the program	This program has undergone major changes in the last three to five years including decentralization, the creation of an oversight commission, the creation of a registry of private attorneys who act as conflict and overload counsel, changes in filing limits and other procedure, and, in some regions, turnover of the regional counsel. However, through the reorganization and the Legislature's willingness to adequately fund the program, strides have been made in meeting their goals.
Alternative courses of action that would result in administering the program more efficiently and effectively	<p>The regional councils should pursue technological improvements that will increase attorney access to files while reducing the space needed to store them through the use of scanning devices.</p> <p>The registry needs to make improvement in accountability. Continuing legal education (CLE) requirements need to be modified to insure currency and competence of counsel before assigning cases. Specifically, the commission should require that a portion of the registry attorney's mandatory CLE requirements is used to update post-conviction procedures. All registry attorneys must take the commission's course on post-conviction proceedings before being assigned a case.</p> <p>Modifications are needed to clarify performance expectations and remedies. The commission and the Comptroller should make changes in the contract for services that include reasonable expectations as to client contact, review of the records, and reporting on performance. It should also contain remedies in the event of a breach by the registry attorney, including removal from the case, termination of fee payment, and the removal from the registry.</p> <p>The Legislature should amend the appointment process to insure that registry counsel as a</p>



Issue	OPPAGA Conclusions
	<p>whole become more experienced in the process and to insure adherence to the legislatively designed payment levels. Specifically, the registry attorneys should be selected in rotation to increase their experience levels. The commission should be responsible for providing the court the next available registry lawyer.</p> <p>The Legislature should revisit the dual track legislation to examine whether the cost of post-conviction proceedings, in cases that will be returned to the lower courts on direct appeals issues, outweighs any timesavings.</p> <p>The Attorney General should, in the next available case, apply for opt-in status under the federal Anti-Terrorism and Effective Death Penalty Act to determine whether improvements of the system will permit Florida to take advantage of reduced time limits in the federal courts. If Florida qualifies, the time reduction in the federal trial courts alone could be from three years to 180 days.</p>
<p>The consequences of discontinuing the program</p>	<p>Discontinuance of the program could lead to the execution of innocent individuals. It could also lead to a system which defendants are not represented, creating a backlog of death cases in the Florida courts.</p>
<p>Determination as to public policy; which may include recommendations as to whether it would be sound public policy to continue or discontinue funding the program, either in whole or in part</p>	<p>Because the system is nearing eligibility for the opt-in provisions of the Federal Anti-Terrorism and Effective Death Penalty Act which would end much of the delay caused by federal court proceedings, it would not be beneficial to discontinue this program, in whole or in part.</p>
<p>Whether the information reported pursuant to s. 216.031(5), <i>F.S.</i>, has relevance and utility for evaluation of the program</p>	<p>Appendix B of this report addresses the usefulness of the measures and data for this program as they pertain to the Capital Collateral Regional Counsels. We note that the same measures are not applied to the registry attorneys. This information needs to be collected and evaluated.</p>
<p>Whether state agency management has established controls systems sufficient to ensure that performance data are maintained and supported by state agency records and accurately presented in state agency performance reports</p>	<p>The Capital Collateral Regional Counsel must submit quarterly reports to the Commission on Capital Cases that include hourly work data and financial data. The commission has recently begun to collect data that will be pertinent to the performance measures. Neither the commission nor the regional counsels have an inspector general who would verify the validity and reliability of the data. As noted above, the information about the performance of registry attorneys also needs to be collected.</p>

Source: OPPAGA analysis.

Appendix B

# Program Performance for Fiscal Year 2000-01

To provide information for zero-based budgeting, we conducted the performance review of the capital collateral regional councils a year early. The Legislature did not set standards for the performance measures in the 2000 implementing bill. Regional councils compile detailed information on the hourly work of their attorneys and investigators to report to the Commission on Capital Cases on a quarterly basis.

Table B-1  
Regional Councils' Performance Measures Improving

Measures	Fiscal Year 1999-00			Fiscal Year 2000-01			Fiscal Year 2001-02		
	Northern Region	Middle Region	Southern Region	Northern Region	Middle Region	Southern Region	Northern Region	Middle Region	Southern Region
<b>Outcome Measures</b>									
Percent of cases in which post-conviction motion, post conviction appeal, federal habeas corpus motion or federal appeal is timely filed without extension	40%	45%	40%	50%	69%	40%	60%	76%	50%
Number of decisions by the court to release a death row inmate	0	0	0	0	0	4	1	0	0
Number of new trials granted	0	0	0	1	0	0	2	1	2
Number of new sentencing hearings granted	0	0	3	2	2	4	3	2	5
Number of other appeals granted	0	6	0	0	0	4	1	1	5
Percent of substantiated bar grievances filled annually	0	0	0	0	0	0	0	0	0
Annual attorney turnover rate	21.05%	19.99%	33.33%	40.00%	64.51%	0%			
<b>Output Measures</b>									
Percent of issues raised by CCRCs considered by the courts not ruled procedurally parred or without merit	20%	20%	16%	20%	20%	20%	20%	20%	20%
Number of issues raised by CCRCs considered by the courts not ruled procedurally parred or without merit	20	70	40	40	30	35	95	75	75
Number of CCRC court issues not ruled on due to strength of at least one issue	100	144	120	147	168	160	494	216	525
Percent of requested extensions of time granted after court consideration	90%	90%	90%	90%	85%	90%	90%	80%	90%
Number of requested extensions of time granted after court consideration	16	9	15	12	6	15	10	4	15
Percent of CCRC issues summarily dismissed by courts or ruled procedurally barred or without merit	80%	80%	84%	80%	80%	80%	80%	80%	80%

Measures	Fiscal Year 1999-00			Fiscal Year 2000-01			Fiscal Year 2001-02		
	Northern Region	Middle Region	Southern Region	Northern Region	Middle Region	Southern Region	Northern Region	Middle Region	Southern Region
Number of CCRC issues summarily dismissed by courts or ruled procedurally barred or without merit	80	280	210	160	120	175	380	300	300
Number of post-conviction which contain a request by the CCRC for the court to grant leave to amend post-conviction action	4	4	16	8	2	16	18	2	19
Number of cases requiring case investigation services				51	39	27	45	43	37
Number of cases requiring legal representation				20	74	58	62	87	68
Number of cases requiring public records /investigations services				61	39	23	45	43	33

Source: Capital Collateral ZBB budget document, August 15, 2001, and Capital Collateral Long Range Program Plan (Draft), August 31, 2001.

### Comment on the measures

The regional counsels have not reported performance for some measures pertaining to the hours spent in various activities. However, the regional counsels are required to file detailed reports to the Commission on Capital Cases of the hours spent on each case. These reports include the case, the activity performed on the case, the individual who performed the activity, and the hours, by quarter-hour increments, expended on those activities. We believe because of the breadth of these reports the information is better collected and reviewed by the Commission on Capital Cases on a quarterly basis, rather than as part of the performance measures.

We note that some of the measures do not provide meaningful information. For example, for the measure “number of hours of investigation, “ the term investigation is not defined. It is unclear if the measure is intended to report strictly the work of investigators, or whether it includes file reviews and interviews by the attorney; nor does the measure have context. Some cases will require more investigative work than others. It would be impossible to set a performance standard which would cover all cases.

- Some measures provide an inaccurate portrait of the work performed by the regional counsel. For example, counting the number of issues that are summarily dismissed by the courts for being time barred, procedurally barred or without merit gives the impression that the counsels are raising frivolous issues. However, this may not be the case. The courts, the Attorney General’s Office, and the regional counsels agree that there are issues that must be raised to protect the interest of the client in the event the law changes, even though at the time they are raised it is known they will be summarily dismissed. If counsel fails to raise these issues the client may be barred from application of new precedent or law. The agreed practice among the actors in the court system is for these issues to be clearly labeled as being presented to preserve them on the record, and that they be placed at the end of the motion or brief.

## *Justification Review*

We do believe that the regional counsels should report on the number, status and age by year of cases at the beginning of the fiscal year, the number of new cases received and the age and number of cases that were resolved.

We would also suggest the measures below.

- Of the newly assigned cases in the prior fiscal year, the percentage of cases that have had post-conviction motions filed within one year
- Of the cases with post-conviction motions filed in the previous years the percentage of post-conviction motions that were “shell” motions that will need to be supplemented or amended
- Of the cases requiring the filing of briefs, the percentage of briefs that were filed in a timely manner

We believe these measures would accurately portray whether the regional counsels and the registry attorneys are fulfilling their obligations under the rules.

*Appendix C*

---

# Response from the Commission on Capital Cases

In accordance with the provisions of s. 11.45(7)(d), *Florida Statutes*, a draft of our report was submitted to the executive director of the Commission on Capital Cases to review and respond.

His written response is reprinted herein beginning on page 22.

*Justification Review*

John McKay  
President



Justice Parker Lee McDonald, Chairman  
Senator Locke Burt, Vice-Chairman  
Senator Walter "Skip" Campbell  
Representative Randy Ball  
Representative Sally A. Heyman  
Judge Charles E. Miner, Jr.

THE FLORIDA LEGISLATURE  
COMMISSION ON CAPITAL CASES

---

Tom Feeney  
Speaker



Roger Maas, Executive Director  
402 South Monroe Street  
Tallahassee, Florida 32399-1300  
Telephone (850) 921-4704  
Fax (850) 921-4737  
maas.roger@leg.state.fl.us

October 31, 2001

Mr. John Turcotte  
Executive Director  
Office of Program Policy Analysis and  
Government Accountability  
111 West Madison Street, Suite 312  
Tallahassee, Florida 32399-1475

Dear Mr. Turcotte:

Enclosed is the response of the Commission on Capital Cases to the Office of Program Policy Analysis and Government Accountability (OPPAGA) justification review.

If you have questions, please call me at 921-4704.

Sincerely,

/s/

Roger R. Maas  
Executive Director

Enclosure

**COMMISSION ON CAPITAL CASES  
RESPONSE**

**OPPAGA suggests that the Commission on Capital Cases should:**

- 1) Assist the court by preparing a standard order of appointment for registry counsel that incorporates the registry contract so the registry counsel and the court are clear as to the duties and payment schedule for the registry attorneys;**

*Response: We agree; however, the commission had tried to implement a standard order of appointment in 1998. Various judges not only refused to enter the order, but also commented that it was presumptuous of the commission to submit such an order. The payment schedule is attached to the contract and s. 27.711(13), Florida Statutes, provides the Office of the Comptroller the opportunity to object and to advise the court about the specific payment requests prior to the entry of the order.*

- 2) Develop a rotating system for appointment of registry attorneys;**

*Response: The Legislature left the appointment process up to the judiciary because the judges know from experience which attorneys are best qualified to represent these inmates. We understand that the intent of the Legislature was to implement a statute for the benefit of the inmates, not to guarantee work for attorneys. The attorneys that have several cases are very well known to the judiciary and have reputations as experienced and diligent litigators in this area of practice. A rotation system would not give the judge the discretion to not appoint an attorney who may technically qualify for inclusion on the Registry, but who, for some other reason, may not be the best person to represent a particular inmate.*

- 3) Work with the Comptroller to rewrite the registry contract to require:**

*Response: The staff members of the commission have a close working relationship with the Comptroller's office and are more than willing to assist them. The Office of the Comptroller, however, has this responsibility pursuant to s. 27.710(4), Florida Statutes, that provides "the Comptroller shall develop the form of the contract...."*

**a) Minimum performance consistent with the American Bar Association standards;**

*Response: The commission agrees that the American Bar Association standards requiring client contact within a reasonable period of time after appointment, requesting the record from the repository, and reviewing the entire record are appropriate. These requirements are the reason that the initial payment of \$2,500 was included in the statutes. It should be noted that registry attorneys might not always request records from the repository because the records were provided by the original attorney as required by s. 27.711(8).*

**b) Participation in the death warrant stage and the federal habeas corpus proceedings; and**

*Response: The contract provides in paragraph two, that, "The Contracting Attorney further certifies that he or she intends to continue the representation under the terms and conditions set forth in this contract until the sentence is reversed, reduced, or carried out, or until released by order of the trial court." This is based upon s. 27.710(3) and s. 27.711(1)(c) and (2).*

*It should be noted that the federal court appoints attorneys to represent indigents in the federal proceedings, and this state contract is not binding on a federal court.*

**c) Reporting on the same performance measures as the regional counsels; and**

*Response: The commission staff is presently developing these statistics. The commission is also developing a website that will include the factual and case history and present status of every inmate on death row.*

**4) Review cases that are transferred from one registry attorney to another and indicate to new counsel which fees the state will pay for that case.**

*Response: The Florida Statutes do not provide for any modification or reduction of the fee schedule if a case is transferred from one registry attorney to another. The subsequent attorney will need to review all the files and pleadings, and thereafter, amend the pleadings. Further, the Office of the Comptroller is given the exclusive authority to, "... function as contract manager...."*