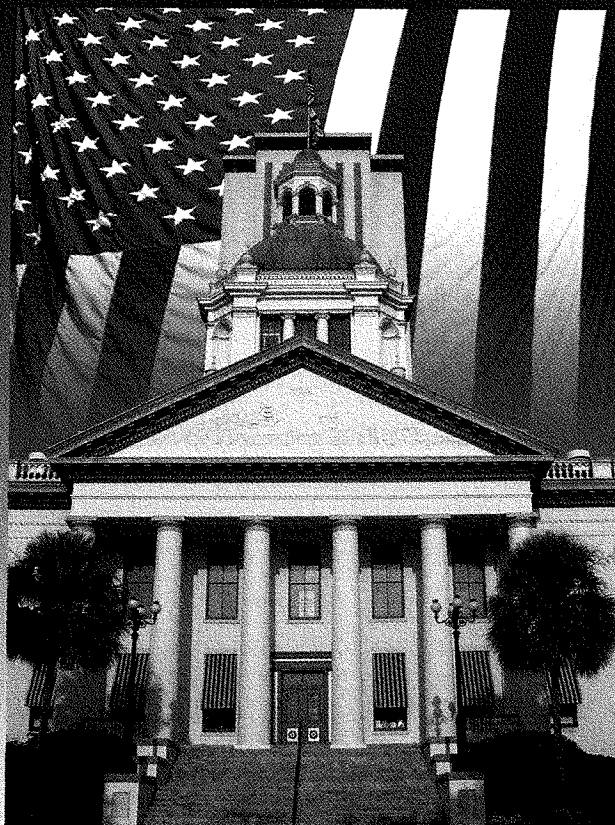


Fiscal Year 2003-2004 Report
Pilot Project



Transfer of Responsibilities from
Capital Collateral Regional Counsel - North
to the Statewide Attorney Registry

Fiscal Year 2003-2004 Report – Pilot Project

Transfer of Responsibilities from Capital Collateral Regional Counsel – North to the Registry of Attorneys

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Fiscal Year 2003-2004 Report – Pilot Project

Summary of the Transfer of Responsibilities from Capital Collateral Regional Counsel – North to the Registry of Attorneys

On June 30, 2003, the Capital Collateral Regional Counsel – North (CCRC-N) office was closed and all the cases handled by CCRC-N attorneys were reassigned to attorneys on the Statewide Attorney Registry that is maintained by the Commission on Capital Cases.

Bill Jennings of Capital Collateral Regional Counsel – Middle office was appointed as transition director and was charged with overseeing the transfer of the 62 cases of the CCRC-N to registry attorneys. One case was transferred to the Capital Collateral Regional Counsel – South office.

Reassignment of Cases

Of the 62 cases transferred, 45 were reassigned to former CCRC-N attorneys who joined the Statewide Attorney Registry. Seven of the eight attorneys employed at CCRC-N joined the registry and have an average of 10.5 years experience. All of these attorneys are in good standing with The Florida Bar Association and are admitted to the United States District Court, Northern District.

The Auditor General reported that each of the 62 cases was reassigned within an average of 26 days and each inmate had an attorney appointed by August 29, 2003. The Department of Financial Services completed contracts with all of the attorneys by February 2004, after which there were no significant delays reported. Many of the attorneys continued to work on their cases while their contracts were pending.

Transfer of Records and Property

Each of these cases had approximately 40 boxes of case records that were quickly sent to the newly-appointed registry attorneys.

The Justice Administrative Commission took possession of the administrative records from CCRC-N upon implementation on the pilot program.

Furniture and equipment were transferred to other government entities or charitable organizations or sent to the state surplus office for disposal.

Cost of Closing

Implementation Costs ¹	\$59,593.03
Additional Costs ²	\$154,816.93
<u>Continued Operational Costs³</u>	<u>\$38,518.08</u>
Total	\$252,928.04

Unresolved Issues

Upon closure of the CCRC-N, several of the former CCRC-N attorneys were appointed to more than five registry cases, contrary to § 27.711(9), Florida Statutes, which provides:

An attorney may not represent more than five defendants in capital postconviction litigation at any one time.

There are six registry attorneys who have more than five cases, but who are allowed to continue representation based on the Florida Supreme Court's interpretation of the statute in *Peterka v. State* and *Rutherford v. State*.

Pilot Project Costs

The budget for CCRC-North's 2002-2003 fiscal year was \$2,700,000.

The actual cost for the privatization of CCRC-N was:

Cost of Closing	\$250,000
<u>Cost of Registry Representation</u>	<u>\$600,000</u> ⁴
Total	\$850,000

The privatization of CCRC-N has saved the state nearly \$2 million in the first fiscal year.

¹ Implementation costs include temporary employment, unemployment compensation, freight, travel and other expenses.

² Additional costs were paid for unused annual and sick leave as of the date of termination. These costs were paid by funds certified forward from the previous fiscal year, which were authorized by the Executive Office of the Governor.

³ Facility rent was the primary continued operational cost.

⁴ Tab 3 contains a letter from the Department of Financial Services, detailing expenditures for the Registry Attorney Program for the Fiscal Year 2003-04.

Fiscal Year 2003-2004 Report – Pilot Project

Status of the Transition Cases

There have been no lengthy continuances or delays in the transfer of these cases from CCRC-N to the registry.

Only 1 of the 62 cases transferred from CCRC-N to the registry was continued for six months until March 2004, allowing the registry attorney to review the case file.

However, a delay in the issuance of contracts in a few cases resulted from confusion over the case cap issue, which was resolved by the Florida Supreme Court in December of 2003.

In a few cases, Circuit Court Judges have reported that the closing of the CCRC-N office has resulted in delays. According to one judge's quarterly reports, which are submitted to the Florida Supreme Court, "Abolition of CCR North has slowed progress of case." However, that same judge also noted, "...appointment of registry counsel should allow case to progress normally."

Continuances Filed in Transition Cases

Status as of 09/13/04

ATTORNEY	INMATE NAME	Date of Appt. Order	Continuance Requested	Length	Reason for Continuance / Case Notes
Abatecola, John	Muhammad, Abdul-Sajjad f/k/a Richard Randolph	6/24/2003	N		Case Moving to Federal Court
Brewer, Heidi E.	Bradley, Donald	6/24/2003	Y	10 Days	To File Amended 3.850; Amended 9/22/03
Brewer, Heidi E.	Johnson, Paul Beasley	7/31/2003	N		
Brewer, Heidi E.	Miller, Jr. David	6/24/2003	N		
	Muhammad, Askari Abdullah (f/k/a Thomas Knight)	8/4/2003	N		
Brewer, Heidi E.	Muhammad, Askari Abdullah (f/k/a Thomas Knight)	6/24/2003	N		
Brewer, Heidi E.	Taylor, Stephen	6/30/2003	N		
Brody, Harry P.	Derrick, Samuel J.	6/19/2003	N		
Brody, Harry P.	Hendrix, Robert Eugene	6/20/2003	N		
Brody, Harry P.	Jones, David W.	7/1/2003	N		
Brody, Harry P.	Ponticelli, Anthony John	6/19/2003	N		
Brody, Harry P.	Walls, Frank A.	6/23/2003	N		
Brody, Harry P.	Williamson, Johnny	6/23/2003	N		
Brunvand, Bjorn	Rose, Milo A.	7/14/2003	Y	6 Months	Court granted for case review until March 04
Creel, Richard M.	Koon, Raymond Leon	7/1/2003	N		
Doss, D. Todd	Barwick, Darryl	6/25/2003	Y	60 Days	Scheduling Conflict
Doss, D. Todd	Fennie, Alfred	7/1/2003	N		
Doss, D. Todd	Gorby, Olen	6/18/2003	N		
Doss, D. Todd	Hill, Clarence	7/1/2003	N		
Doss, D. Todd	Melton, Antonio	6/23/2003	N		
Doss, D. Todd	Morrison, Jr., Raymond	6/26/2003	N		
Doss, D. Todd	Orme, Roderick	6/23/2003	N		
Doss, D. Todd	Stephens, Jason D.	7/1/2003	N		
Giordano, Michael	Beasley, Curtis	8/20/2003	N		
Harper, Robert	Heath, Ronald Palmer	10/10/2003	N		Counsel conflict with D. Todd Doss
Hazen, Jeffrey M.	Booker, Stephen Todd	8/20/2003	N		
Hazen, Jeffrey M.	Grim, Jr., Norman Mearle	8/15/2003	N		
Hazen, Jeffrey M.	Hurst, Timothy Lee	6/18/2003	N		
Hazen, Jeffrey M.	Jones, Harry	6/20/2003	N		
Hazen, Jeffrey M.	Windom, Curtis	8/8/2003	N		

Kurtitz, Richard R.	Hardwick, John	8/14/2003	N		Filed Motion to Hold Proceedings in Abeyance pending FSC's decision on Atkins (mental retardation issues) ; Reopened 6/26/03 *Handling the case through Federal Court Proceedings
McClain, Martin J. & Linda McDermott PB	Groover, Tommy Sands	NOA 12/24/2003	N		
McClain, Martin J.	Marek, John	6/30/2003	N		
McClain, Martin J.	Moore, Thomas	9/8/2003	Y	10 Days	10 days to file brief once contract is executed; Brief filed 4/6/04
McClain, Martin J.	Mordenti, Michael	7/21/2003	N		
McClain, Martin J.	Smith, Derrick T.	7/18/2003	N		Motion to Toll Time Granted until McClain receives complete transcript
McDermott, Linda	Bogle, Brett A.	7/1/2003	N		Working without contract
McDermott, Linda	Cherry, Roger Lee	7/15/2003	Y	10 Days	10 days to file brief once contract is executed; Brief filed 3/29/04
McDermott, Linda	Cruse, William Bryan	6/20/2003	N		
McDermott, Linda	Davis, Mark A.	7/18/2003	Y	10 Days	10 days to file brief once contract is executed; Brief filed 4/29/04
McDermott, Linda	Geralds, Mark Allen	6/11/2003	N		
McDermott, Linda PB	Hodges, George M.	NOA 8/18/2003	N		
McDermott, Linda	Kokal, Gregory Alan	6/22/2003	N		
McDermott, Linda	Peterka, Daniel Jon	8/12/2003	N		
McDermott, Linda	Rutherford, Arthur Dennis	8/1/2003	Y	10 Days	10 days to file brief once contract is executed; Brief filed 3/18/04
McDermott, Linda	Shellito, Michael W.	6/24/2003	N		
Mills, J. Edwin	Johnston, David Eugene	8/15/2003	N		
Morrow, Jefferson	Reese, John Loveman	7/1/2003	N		
Olive, Mark PB	Whitton, Gary Richard	10/24/2003	N		
Printy, Gary	Pace, Bruce Douglas	8/19/2003	N		Case Moving to Federal Court
Reiter, Michael P.	Branch, Eric Scott	7/1/2003	N		
Reiter, Michael P.	Carroll, Elmer Leon	6/23/2003	N		
Reiter, Michael P.	Kormondy, Johnny Shane	6/23/2003	N		
Reiter, Michael P.	Lawrence, Jonathan Huey	6/23/2003	N		
Reiter, Michael P.	Lukehart, Andrew	6/30/2003	N		
Tassone, Jr., Frank J.	Ferrell, Ronnie	6/26/2003	N		
Tassone, Jr., Frank J.	Freeman, John D.	7/1/2003	N		
Tassone, Jr., Frank J.	Sweet, William Earl	7/1/2003	N		
Tassone, Jr., Frank J.	Watts, Tony Randall	7/1/2003	N		
Westling, Dale G.	Asay, Mark James	7/1/2003	N		
Westling, Dale G.	Clark, Jr., Ronald Wayne	7/1/2003	N		
Westling, Dale G.	Groover, Tommy Sands	7/3/2003	N		*Handling the case through State Court Proceedings
Westling, Dale G.	Stein, Steven	7/1/2003	N		

Attorneys who have not responded



CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

TOM GALLAGHER

July 26, 2004

Roger Maas, Executive Director
Commission on Capital Cases
600 South Calhoun Street
Tallahassee, Florida 32399-1400

Dear Mr. Maas:

Re: Capital Collateral Expenditures for July 1, 2003 through June 30, 2004

The total expenditures for the Capital Collateral Registry Attorney Program for the fiscal year July 1, 2003 through June 30, 2004 were \$1,550,673.60. The breakdown is as follows:

DFS Administration Expenses:

Salaries/Benefits	\$127,955.32
Other Administrative Expenses:	1,078.71

Attorney Fees and Expenses:

Attorney Fees:	\$1,026,375.17
Investigator Fees:	108,248.00
Attorney Miscellaneous Expenses:	277,507.73
Attorney Education Expenses:	<u>9,508.67</u>
Total Activity	\$ 1,421,639.57 <u>1,421,639.57</u>

Total Expenditures for the Program: \$ 1,550,673.60

The Cash Balance is as follows:

Beginning cash balance 7/1/03	\$ 312,510.48
Plus cash receipts 7/1/03-6/30/04 ⁱ	1,425,000.00
Less Paid Expenditures 7/1/03-6/30/04	<u>1,550,673.60</u>
Ending Cash Balance 6/30/04	\$ <u>186,836.88</u>

The Appropriation Balance is as follows:

Appropriation Balance 7/1/03 ⁱⁱ	\$ 3,808,068.00
Less Paid Expenditures 7/1/03 - 6/30/04	<u>1,550,673.60</u>
Appropriation Balance 6/30/04	\$ <u>2,257,394.40</u>

Mr. Roger Maas
July 26, 2004
Page Two

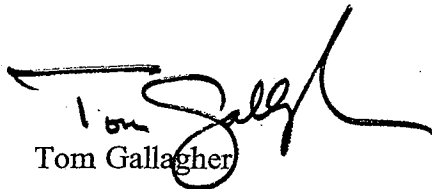
We have broken out expenditures relating to the CCRC North Privatization Pilot Project per your request. Attorney fees and expenses paid out under the pilot project for the fiscal year July 1, 2003 through June 30, 2004 were \$552,002.39. Please note that these costs are included in the total expenditures listed above. The pilot project breakdown is as follows:

Attorney Fees/Expenses for the CCRC North Privatization Pilot Project:

Attorney Fees:	\$413,558.17
Investigator Fees:	35,940.00
Attorney Miscellaneous Expenses:	99,160.92
Attorney Education Expenses:	<u>3,343.30</u>
Total Expenditures	\$ 552,002.39 *

Please contact Susan Cureton at (850) 410-9328 or scureton@dfs.state.fl.us if you have any questions.

Sincerely,


Tom Gallagher

TG/fe

* **Commission Note:** The total expenditures of \$552,002.39 has been revised to \$574,502.39 to reflect an earlier, unrecorded payment.

ⁱ General Appropriation for 2003-04, Section 4, 818, total appropriated cash amount of \$1,425,000 (transferred to DFS in quarterly installments).

ⁱⁱ General Appropriation for 2003-04, Section 6, 2286AO and 2286AS

FLORIDA DEPARTMENT OF FINANCIAL SERVICES
CCRC North-P Payments
 July 1, 2003 through June 30, 2004

No.	ATTORNEY	INMATE NAME	CASE NUMBER	CCRC	ORDER APPT.	CONTRACT SIGNED	TOTAL PAID As of 6/30/04	TOTAL APPROVED (pending court order)	GRAND TOTAL
1	Brewer, Heidi E.	Bradley, Donald	96-1277 CF A	North-P	6/24/2003	7/14/2003	\$12,573.65		\$12,573.65
2	Brewer, Heidi E.	Johnson, Paul Beasley	88-488-CF-A//CF81-0112A1-XX	North-P	7/31/2003	2/24/2004	\$2,589.33		\$2,589.33
3	Brewer, Heidi E.	Miller, Jr. David	97-6680-CFA	North-P	6/24/2003	7/14/2003	\$32,700.04	\$7,880.00	\$40,580.04
4	Brewer, Heidi E.	Muhammad, Askari Abdullah	80-341-CF-A	North-P	8/4/2003	8/26/2003	\$9,294.73		\$9,294.73
5	Brewer, Heidi E.	Muhammad, Askari Abdullah	74-5978	North-P	6/24/2003	7/14/2003	\$2,741.18		\$2,741.18
6	Brewer, Heidi E.	Taylor, Stephen	91-2456-CF	North-P	6/30/2003	8/11/2003	\$1,350.00		\$1,350.00
7	Brody, Harry P.	Derrick, Samuel J.	CRC 87-01775 CFAWS	North-P	6/19/2003	8/7/2003	\$2,500.00		\$2,500.00
8	Brody, Harry P.	Hendrix, Robert Eugene	CR 90-1297-JL	North-P	6/20/2003	8/7/2003	\$12,605.52		\$12,605.52
9	Brody, Harry P.	Jones, David W.	95-1632CFA	North-P	7/1/2003	8/7/2003	\$22,622.49		\$22,622.49
10	Brody, Harry P.	Ponticelli, Anthony John	87-2719-CF-A-W	North-P	6/19/2003	7/16/2003	\$40,855.66		\$40,855.66
11	Brody, Harry P.	Walls, Frank A.	87-856A	North-P	6/23/2003	8/7/2003	\$23,129.73		\$23,129.73
12	Brody, Harry P.	Williamson, Johnny	85-130 CF	North-P	6/23/2003	2/25/2004	\$10,487.86		\$10,487.86
13	Brunvand, Bjorn	Rose, Milo A.	CRC82-08683CFANO-I	North-P	7/14/2003	8/25/2003	\$0.00		\$0.00
14	Creel, Richard M.	Koon, Raymond Leon	82-134-CF-A-31-HDH	North-P	7/1/2003	9/8/2003	\$3,000.00		\$3,000.00
15	Doss, D. Todd	Barwick, Darryl	86-940CF	North-P	6/25/2003	7/14/2003	\$2,631.14	\$6,982.71	\$9,613.85
16	Doss, D. Todd	Fennie, Alfred	91-756CF	North-P	7/1/2003	7/24/2003	\$9,000.00		\$9,000.00
17	Doss, D. Todd	Gorby, Olen	90-1189 CF	North-P	6/18/2003	7/14/2003	\$9,796.80		\$9,796.80
18	Doss, D. Todd	Hill, Clarence	82-4973-CFA	North-P	7/1/2003	2/18/2004	\$2,556.95		\$2,556.95
19	Doss, D. Todd	Melton, Antonio	91-373CF	North-P	6/23/2003	7/14/2003	\$0.00	\$1,095.00	\$1,095.00
20	Doss, D. Todd	Morrison, Jr., Raymond	97-991 CFA	North-P	6/26/2003	2/24/2004	\$2,538.57		\$2,538.57
21	Doss, D. Todd	Orme, Roderick	92-442CF	North-P	6/23/2003	7/14/2003	\$22,652.43		\$22,652.43
22	Doss, D. Todd	Stephens, Jason D.	97-9232CF	North-P	7/1/2003	2/18/2004	\$2,674.38		\$2,674.38
23	Giordano, Michael V.	Beasley, Curtis W.	CF95-4842A1-XX	North-P	8/20/2003	11/12/2003	\$0.00		\$0.00
24	Harper, Robert A.	Heath, Ronald Palmer	01-1989-CF-003026-A	North-P	10/10/2003	11/18/2003	\$0.00		\$0.00
25	Hazen, Jeffrey M.	Booker, Stephen Todd	77-2332-CFA	North-P	8/20/2003	9/3/2003	\$22,500.00		\$22,500.00
26	Hazen, Jeffrey M.	Grim, Jr., Norman Mearle	98-510	North-P	8/15/2003	9/3/2003	\$6,959.77		\$6,959.77
27	Hazen, Jeffrey M.	Hurst, Timothy Lee	98-1795 CFA	North-P	6/18/2003	7/28/2003	\$28,696.06		\$28,696.06
28	Hazen, Jeffrey M.	Jones, Harry	91-1932-AF	North-P	6/20/2003	7/28/2003	\$14,057.19		\$14,057.19
29	Hazen, Jeffrey M.	Windom, Curtis	48-1992-CF-1305-O	North-P	8/8/2003	9/3/2003	\$2,500.00		\$2,500.00
30	Kuritz, Richard R.	Hardwick, Jr., John Gary	85-3779 CF	North-P	8/14/2003	9/3/2003	\$0.00		\$0.00
31	McClain, Martin J.	Marek, John	83-7088-CF	North-P	6/30/2003	8/25/2003	\$5,647.69		\$5,647.69
32	McClain, Martin J.	Moore, Thomas James	16-1993-CF-1659-AXXX-MA	North-P	9/8/2003	3/5/2004	\$0.00		\$0.00
33	McClain, Martin J.	Mordenti, Michael	90-3870	North-P	7/21/2003	8/25/2003	\$14,205.44		\$14,205.44
34	McClain, Martin J.	Smith, Derrick T.	CRC83-02653CFANO-I	North-P	7/18/2003	3/8/2004	\$0.00	\$2,980.70	\$2,980.70
35	McDermott, Linda	Bogle, Brett A.	91-CF-012952	North-P	7/1/2003	3/1/2004	\$0.00		\$0.00
36	McDermott, Linda	Cherry, Roger Lee	1986-04473-CFAWS	North-P	7/15/2003	3/1/2004	\$8,300.00		\$8,300.00
37	McDermott, Linda	Cruise, William Bryan	05-1987-CF-1763-AXXX	North-P	6/20/2003	7/18/2003	\$0.00		\$0.00
38	McDermott, Linda	Davis, Mark A.	CRC85-08933CFANO	North-P	7/18/2003	3/1/2004	\$0.00	\$11,058.19	\$11,058.19
39	McDermott, Linda	Geralds, Mark Allen	89-495	North-P	6/11/2003	7/18/2003	\$20,131.52		\$20,131.52

FLORIDA DEPARTMENT OF FINANCIAL SERVICES
CCRC North-P Payments
 July 1, 2003 through June 30, 2004

No.	ATTORNEY	INMATE NAME	CASE NUMBER	CCRC	ORDER APPT.	CONTRACT SIGNED	TOTAL PAID As of 6/30/04	TOTAL APPROVED (pending court order)	GRAND TOTAL
40	McDermott, Linda	Kokal, Gregory Alan	83-8975-CF	North-P	6/22/2003	7/18/2003	\$21,211.29		\$21,211.29
41	McDermott, Linda	Peterka, Daniel Jon	89 CF 966	North-P	8/12/2003	3/1/2004	\$20,406.75		\$20,406.75
42	McDermott, Linda	Rutherford, Arthur Dennis	85-I-476	North-P	8/1/2003	3/1/2004	\$7,100.00		\$7,100.00
43	McDermott, Linda	Shellito, Michael W.	95-1449 CF	North-P	6/24/2003	7/18/2003	\$3,018.32		\$3,018.32
44	Mills, J. Edwin	Johnston, David Eugene	48-1983-CF-5401-O	North-P	8/15/2003	9/17/2003	\$22,500.00		\$22,500.00
45	Morrow, Jefferson	Reese, John Loveman	92-4174 CF	North-P	7/1/2003	8/20/2003	\$10,400.00	\$2,900.00	\$13,300.00
46	Reassigned CCRC-S/Federal	Pace, Bruce Douglas	88-CF-689	North-P	8/19/2003	9/10/2003	\$9,252.32		\$9,252.32
47	Reiter, Michael P.	Branch, Eric Scott	93-870F	North-P	7/1/2003	7/23/2003	\$34,306.77	\$3,063.23	\$37,370.00
48	Reiter, Michael P.	Carroll, Elmer Leon	CR90-12464	North-P	6/23/2003	7/23/2003	\$22,297.60		\$22,297.60
49	Reiter, Michael P.	Komondy, Johnny Shane	93-3302	North-P	6/23/2003	7/23/2003	\$6,016.61		\$6,016.61
50	Reiter, Michael P.	Lawrence, Jonathan Huey	98-270 CFA	North-P	6/23/2003	7/23/2003	\$3,017.40		\$3,017.40
51	Reiter, Michael P.	Lukehart, Andrew	96-2645-CFA	North-P	6/30/2003	4/23/2003	\$19,786.47		\$19,786.47
52	Tassone, Jr., Frank J.	Ferrell, Ronnie	91-8142 CFA	North-P	6/26/2003	8/19/2003	\$10,385.81		\$10,385.81
53	Tassone, Jr., Frank J.	Freeman, John D.	16-1986-CF-11599-AXXX-MA	North-P	7/1/2003	8/11/2003	\$12,860.75		\$12,860.75
54	Tassone, Jr., Frank J.	Sweet, William Earl	91-2899 CF	North-P	7/1/2003	8/11/2003	\$7,160.50		\$7,160.50
55	Tassone, Jr., Frank J.	Watts, Tony Randall	88-11505 CF	North-P	7/1/2003	8/11/2003	\$3,917.00		\$3,917.00
56	Westling, Dale G.	Asay, Mark James	87-6876 CF	North-P	7/1/2003	8/25/2003	\$9,066.67	\$2,590.17	\$11,656.84
57	Westling, Dale G.	Clark, Jr., Ronald Wayne	90-10067-CF	North-P	7/1/2003	8/25/2003	\$0.00		\$0.00
58	Westling, Dale G.	Stein, Steven	91-1505-CF	North-P	7/1/2003	8/25/2003	\$500.00		\$500.00
59	Westling, Dale G./Federal-Marty McClain & Linda McDermott	Groover, Tommy Sands	82-1659 CFA	North-P	7/3/2003	8/25/2003	\$0.00		\$0.00
TOTALS							\$574,502.39	\$38,550.00	\$613,052.39

Fiscal Year 2003-2004 Report – Pilot Project

Yearly Payments to Transition Attorneys

The budget for CCRC-North's 2002-2003 fiscal year was \$2,700,000.

The actual cost for the privatization of CCRC-North was \$850,000, of which \$250,000 was a one-time expense and approximately \$600,000 will be recurring costs.

Assuming the costs remain constant, the privatization of CCRC-North will save the state \$2.1 million annually, which is over three-fourths of the cost of operating the office for the 2002-2003 fiscal year.

Fiscal Year 2003-2004 Report – Pilot Project

Summary of the Five-Case-Cap Situation

Upon closure of the CCRC-N, several of the former CCRC-N attorneys were appointed to more than five registry cases, contrary to s. 27.711(9), Florida Statutes.

Florida Statute 27.711(9) provides:

An attorney may not represent more than five defendants in capital postconviction litigation at any one time.

There are six registry attorneys who have more than five cases.

Several legal challenges have been instituted in the Florida Supreme Court and various Circuit Courts regarding the five-case cap. Senate Bill 610 proposed raising the case cap to 10, but the bill died in committee.

On 12/12/03, the Florida Supreme Court issued an order in *Peterka v. State* and *Rutherford v. State* that clarified the ambiguity of the legislation regarding the five-case cap. The Florida Supreme Court noted, “In sum, except for conflict cases, the four- and five- defendant limits were intended to apply to new, unassigned cases, not to already assigned cases with rule 3.850 or 3.851 motions or habeas corpus petitions pending.” (emphasis added)

Status of Cases Affected by Case Cap as of 9/13/04

Brody, Harry	1 Bonifay, James	3.850 Appeal filed 4/19/04
	2 Derrick, Samuel	3.850 filed 3/24/97
	3 Hendrix, Robert	3.850 Appeal filed 1/12/04; Habeas filed 8/31/04
	4 Jones, David	3.850 filed 6/12/01
	5 Ponticelli, Anthony	3.850 Appeal filed 9/12/03; Habeas filed 10/20/03
	6 Walls, Frank	3.850 Appeal filed 4/8/03; Habeas filed 11/06/03
	7 Williamson, Johnny	3.850 filed 7/15/93
Doss, D. Todd	1 Barwick, Darryl	3.850 filed 3/18/97
	2 Fennie, Alfred	Cert. Denied 4/5/04; State Remedies Exhausted
	3 Gorby, Olen	3.850 Appeal Denial Affirmed 5/13/04, Rehearing denied 7/23/04
	4 Hill, Clarence	3.850 Appeal filed 07/29/04
	5 #Knight, Thomas	3.850 Appeal filed 4/8/03; Habeas filed 7/12/04
	6 Melton, Antonio	3.850 Appeal filed 8/26/04
	7 Morrison, Raymond	3.850 filed 9/18/03
	8 Orme, Roderick	3.850 filed 4/30/03; Habeas filed 8/7/03
	9 Stephens, Jason	3.850 filed 10/23/02
Hazen, Jeffrey	1 Banks, Chadwick	State Remedies Exhausted - Moving to Federal Court
	2 Booker, Stephen	3.850 filed 9/26/01
	3 Grim, Norman	Cert. Denied 10/6/03 - 3.850 pending
	4 Hurst, Timothy Lee	3.850 filed 10/16/03
	5 Hutchinson, Jeffrey	Direct Appeal Affirmed 7/1/04, Mandate 7/22/04
	6 Jones, Harry	3.850 filed 3/21/97
	7 Windom, Curtis	3.850 Appeal Denial Affirmed and Habeas denied 5/6/04, Mandate 8/9/04
Malnik, Kenneth	1 Archer, Robin	3.850 Appeal filed 3/19/04
	2 Blackwood, Lynford	3.850 Appeal filed 9/2/03; Habeas filed 05/14/04 (case remanded for resentencing)
	3 *Hartley, Kenneth	3.850 Appeal filed 7/13/04, Voluntarily dismissed 8/16/04
	4 *Mungin, Anthony	3.850 Appeal filed 4/29/03; Habeas filed 10/10/03
	5 Raleigh, Bobby	3.850 Appeal filed 4/17/03; Habeas filed 12/30/03
	6 Scott, Paul	3.850 Denied 10/21/03
	1 *Groover, Tommy	Federal Habeas filed 10/17/94; State Habeas filed 3/11/04; 3.850 filed 6/11/02
McClain, Martin	2 Jennings, Bryan	Cert. Denied 3/22/04; State Remedies Exhausted - Moving to Federal Court
	3 Jimenez, Jose	Federal Habeas filed 1/20/04; State Habeas filed 5/26/04
	4 Marek, John	3.850 Appeal filed 2/16/04
	5 Moore, Thomas	3.850 Appeal filed 3/20/03, Denial Affirmed 6/7/04; Habeas filed 5/13/04
	6 Mordenti, Michael	3.850 Appeal filed 5/24/02; Habeas filed 12/19/02
	7 Pittman, David	3.850 filed 6/1/99
	8 Smith, Derrick	3.850 Appeal filed 3/13/03

McDermott, Linda	1	Bogle, Brett	3.850 filed 3/18/97	
	2	Cherry, Roger	3.850 Appeal filed 9/12/02	
	3	Cruse, William	3.850 filed 8/25/93 - Incompetent as of 3/20/02	
	4	Davis, Mark	3.850 Appeal filed 6/26/02; Habeas filed 04/30/04	
	5	Geralds, Mark	3.850 filed 9/22/97	
	6	*Groover, Tommy	Federal Habeas filed 10/17/94; State Habeas filed 3/11/04; 3.850 filed 6/11/02	
	7	*Hodges, George	3.850 Appeal Denial Affirmed and Habeas Denied 6/19/03; Federal Habeas pending	
	8	#Knight, Thomas	3.850 Appeal filed 4/8/03; Habeas filed 7/12/04	
	9	Kokal, Gregory	3.850 Appeal filed 4/25/01; 3.853 Appeal filed 8/12/03	
	10	Peterka, Daniel	3.850 Appeal filed 6/26/02; Habeas filed 3/21/03	
	11	Rutherford, Arthur	3.850 Appeal filed 2/10/03, Denial Affirmed 5/25/04, Rehearing denied 7/23/04	
	12	Shellito, Michael	3.850 filed 4/20/99	
	13	*Zack, Michael	3.850 Appeal filed 8/8/03; Habeas 2/12/04	

* Handling the case as a private attorney or Pro Bono

Handling the case with co-counsel

Updated 9/13/04

Supreme Court of Florida

FRIDAY, DECEMBER 12, 2003

CASE NO. SC02-1410
Lower Tribunal No. 89-966C

DANIEL JON PETERKA

vs. STATE OF FLORIDA

Appellant(s)

Appellee(s)

This case is here on appeal of the circuit court's order denying Daniel Jon Peterka's first rule 3.850 motion following an evidentiary hearing. See Fla. R. Crim. P. 3.850. The case is set for oral argument; the initial and answer briefs have been filed; and the reply brief has not yet been filed. Peterka was represented in this proceeding by attorney Linda McDermott of CCRC-N¹ until July 1, 2003, when funding for CCRC-N was discontinued.² Jurisdiction subsequently was relinquished to the circuit court for appointment of counsel.

The circuit court appointed Michael A. Flowers as registry counsel.

McDermott then filed a motion for reconsideration, and the circuit court vacated its prior order and appointed McDermott. The State now has filed in this Court a

¹ The Office of the Capital Collateral Regional Counsel—Northern Region.

² See generally ch. 2003-399, § 84, Laws of Fla.

"Notice to Court," contending that McDermott has been appointed to represent more than five capital defendants, in violation of the statutory limits for registry counsel. See ch. 27, part IV, Fla. Stat. (2003). The State asks this Court to "appoint statutorily qualified registry counsel." This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const.

First, section 27.708(2) requires that "[t]he capital collateral regional counsel . . . must timely comply with all provisions of the Florida Rules of Criminal Procedure governing collateral review of capital cases." (Emphasis added.) Florida Rules of Criminal Procedure and related rules set forth strict time limits for filing capital postconviction motions and habeas corpus petitions, holding hearings, and filing motions for rehearing, appeals, and appellate briefs.³ And second, section 27.701(2) mandates that after July 1, 2003, "the responsibilities [of CCRC-N] shall be met through a pilot program using only attorneys from the registry of attorneys." These "responsibilities" presumably include the above responsibility to comply with the time limits in the rules.

To be appointed as registry counsel, former CCRC-N attorneys must satisfy several requirements, including the four- and five-defendant limits in sections 27.710(3) and 27.711(9). Applying those limits to former CCRC-N attorneys

³ See Fla. R. Crim. P. 3.850, 3.851; Fla. R. App. P. 9.142.

would dictate that new counsel be appointed in all cases exceeding the five-defendant limit. If a rule 3.850 or 3.851 motion or habeas corpus petition is pending in any such case, however, new counsel ordinarily would require substantial time in which to consult with the defendant, familiarize himself or herself with the record, research the issues, and possibly time to formulate and file an amended or revised motion or petition or appellate brief, as well as time to prepare for any evidentiary hearing or oral argument that was ordered, which might entail additional investigation, interviewing of witnesses, and testing of the defendant. In many such cases, the time limits in the rules could not reasonably be met and the mandate in section 27.701(2) could not be satisfied. Sections 27.710(3) and 27.711(9) thus appear to conflict with sections 27.701(2) and 27.708(2) in this regard.

In light of the ambiguity created by this conflict, the legislative materials addressing sections 27.710(3) and 27.711(9) are instructive.⁴ Those materials

⁴ See DeBolt v. Dept. of Health & Rehab. Serv., 427 So. 2d 221, 224 (Fla. 1983) ("Where . . . two statutes are found to be in conflict, rules of statutory construction must be applied to reconcile . . . the conflict. We are aided in this task by the maxim that 'legislative intent is the pole star by which we must be guided in interpreting the provisions of a law.' In our attempt to discern the legislative intent behind the conflicting statutes, we must consider 'the history of the Act, . . . the purpose of the enactment, and the law then in existence bearing on the same subject.'") (citations omitted); City of Clearwater v. Acker, 755 So. 2d 597, 600 (Fla. 1999) (same); see also City of Boca Raton v. Gidman, 440 So. 2d 1277, 1282 (Fla. 1983); Fla. State Racing Comm'n v. McLaughlin, 102 So. 2d 574, 576 (Fla. 1958); Van Pelt v. Hilliard, 78 So. 693, 696-97, 75 Fla. 792 (Fla. 1918); Curry v. Lehman, 47 So. 18, 20, 55 Fla. 847 (Fla. 1908).

indicate that the four- and five-defendant limits were not intended to apply in cases, such as the present, wherein postconviction motions or petitions are pending. The Senate staff analysis of the legislative act that created sections 27.710(3) and 27.711(9) provided as follows in relevant part:

It is the intent of this legislation to alleviate the backload of the CCRC's capital cases which are ripe for the [postconviction] process to begin yet do not have an attorney assigned to them.

Fla. S. Crim. Just. Comm., CS for SB 1328 (1998) Staff Analysis 13 (March 3, 1998) (emphasis added). Further, the House staff analyses of the same legislative act evinced an identical legislative intent.⁵ In sum, except for conflict cases, the four- and five-defendant limits were intended to apply to new, unassigned cases, not to already assigned cases with rule 3.850 or 3.851 motions or habeas corpus petitions pending.

Based on the foregoing, it is ordered that, to the extent a capital postconviction case already was assigned to CCRC-N counsel and a rule 3.850 or 3.851 motion or habeas corpus petition was pending as of July 1, 2003, the assigned attorney may be reassigned as registry counsel for purposes of obtaining

⁵ See Fla. H.R. Comm. Civ. Just. & Claims, CS for SB 1328 (1998) Bill Research 12 (April 20, 1998) ("It is the intent of this legislation to alleviate the backload of the CCRC's capital cases which are ripe for the [postconviction] process to begin yet do not have an attorney assigned to them."); Fla. H.R. Comm. Crim. Just. Approp., CS for SB 1328 (1998) Bill Research 12 (April 23, 1998) (same).

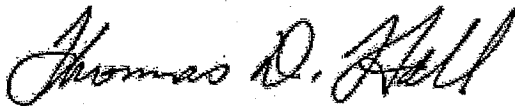
a ruling on that motion or petition and pursuing any appeal thereof. Such an assignment falls outside the intended purview of sections 27.710(3) and 27.711(9). Once a ruling on the pending motion or petition becomes final, however, those sections apply and registry counsel must meet the four- and five-defendant limits. This construction harmonizes the otherwise conflicting statutory provisions, effectuates legislative intent, and promotes the overall purpose of chapter 27, part IV, which is to ensure that challenges to capital convictions and sentences proceed "in a timely manner."

The State's "Notice to Court" is hereby denied.

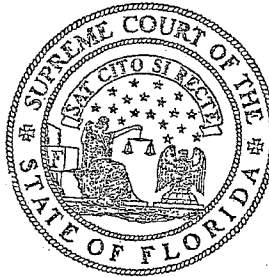
ANSTEAD, C.J., and WELLS, PARIENTE, LEWIS, QUINCE and BELL, JJ.,
concur.
CANTERO, J., dissents.

A True Copy

TEST:



Thomas D. Hall
Clerk, Supreme Court



kb

Served:

LINDA MCDERMOTT
CHARMAINE M. MILLSAPS
ROGER MAAS ✓
HON. NEWMAN C. BRACKIN, CLERK
HON. G. ROBERT BARRON, JUDGE

DANIEL JON PETERKA
RICHARD T. DONELAN, JR.
WILLIAM J. THURBER, IV
TERRY CATLEDGE
ROBERT ELMORE

Supreme Court of Florida

FRIDAY, DECEMBER 12, 2003

CASE NO. SC03-243

Lower Tribunal No. 85-I-476

ARTHUR DENNIS RUTHERFORD

vs. STATE OF FLORIDA

Appellant(s)

Appellee(s)

This case is here on appeal following the circuit court's summary denial of Arthur Dennis Rutherford's successive rule 3.850 motion. See Fla. R. Crim. P. 3.850. The initial and answer briefs already have been filed; the reply brief has not yet been filed. Rutherford was represented in this proceeding by attorney Linda McDermott of CCRC-N¹ until July 1, 2003, when funding for CCRC-N was discontinued.² McDermott then filed in this Court a "Motion for Appointment," and this Court temporarily relinquished jurisdiction to the circuit court for appointment of counsel. The circuit court appointed McDermott as registry counsel.

Rutherford now has filed in this Court a "Motion to Compel Department of

¹ The Office of the Capital Collateral Regional Counsel—Northern Region.

² See generally ch. 2003-399, § 84, Laws of Fla.

Financial Services to Issue Contract," wherein he seeks to compel the Florida Department of Financial Services (the "Department") to issue a contract to McDermott to serve as registry counsel in this case. See ch. 27, part IV, Fla. Stat. (2003). The Department, on the other hand, contends that because McDermott currently represents five or more capital defendants under the registry program, the Department appears to lack statutory authority to issue her a contract in this case. See §§ 27.710(3), 27.711(9), Fla. Stat. (2003). The Department "earnestly solicits guidance from the Court concerning this issue." This Court has jurisdiction. See art. V, §§ 3(b)(1), 3(b)(7), 3(b)(8), Fla. Const.

First, section 27.708(2) requires that "[t]he capital collateral regional counsel . . . must timely comply with all provisions of the Florida Rules of Criminal Procedure governing collateral review of capital cases." (Emphasis added.) Florida Rules of Criminal Procedure and related rules set forth strict time limits for filing capital postconviction motions and habeas corpus petitions, holding hearings, and filing motions for rehearing, appeals, and appellate briefs.³ And second, section 27.701(2) mandates that after July 1, 2003, "the responsibilities [of CCRC-N] shall be met through a pilot program using only attorneys from the registry of attorneys." These "responsibilities" presumably

³ See Fla. R. Crim. P. 3.850, 3.851; Fla. R. App. P. 9.142.

include the above responsibility to comply with the time limits in the rules.

To be appointed as registry counsel, former CCRC-N attorneys must satisfy several requirements, including the four- and five-defendant limits in sections 27.710(3) and 27.711(9). Applying those limits to former CCRC-N attorneys would dictate that new counsel be appointed in all cases exceeding the five-defendant limit. If a rule 3.850 or 3.851 motion or habeas corpus petition is pending in any such case, however, new counsel ordinarily would require substantial time in which to consult with the defendant, familiarize himself or herself with the record, research the issues, and possibly time to formulate and file an amended or revised motion or petition or appellate brief, as well as time to prepare for any evidentiary hearing or oral argument that was ordered, which might entail additional investigation, interviewing of witnesses, and testing of the defendant. In many such cases, the time limits in the rules could not reasonably be met and the mandate in section 27.701(2) could not be satisfied. Sections 27.710(3) and 27.711(9) thus appear to conflict with sections 27.701(2) and 27.708(2) in this regard.

In light of the ambiguity created by this conflict, the legislative materials

addressing sections 27.710(3) and 27.711(9) are instructive.⁴ Those materials indicate that the four- and five-defendant limits were not intended to apply in cases, such as the present, wherein postconviction motions or petitions are pending. The Senate staff analysis of the legislative act that created sections 27.710(3) and 27.711(9) provided as follows in relevant part:

It is the intent of this legislation to alleviate the backload of the CCRC's capital cases which are ripe for the [postconviction] process to begin yet do not have an attorney assigned to them.

Fla. S. Crim. Just. Comm., CS for SB 1328 (1998) Staff Analysis 13 (March 3, 1998) (emphasis added). Further, the House staff analyses of the same legislative act evinced an identical legislative intent.⁵ In sum, except for conflict cases, the four- and five-defendant limits were intended to apply to new, unassigned cases,

⁴ See DeBolt v. Dept. of Health & Rehab. Serv., 427 So. 2d 221, 224 (Fla. 1983) ("Where . . . two statutes are found to be in conflict, rules of statutory construction must be applied to reconcile . . . the conflict. We are aided in this task by the maxim that 'legislative intent is the pole star by which we must be guided in interpreting the provisions of a law.' In our attempt to discern the legislative intent behind the conflicting statutes, we must consider 'the history of the Act, . . . the purpose of the enactment, and the law then in existence bearing on the same subject.'") (citations omitted); City of Clearwater v. Acker, 755 So. 2d 597, 600 (Fla. 1999) (same); see also City of Boca Raton v. Gidman, 440 So. 2d 1277, 1282 (Fla. 1983); Fla. State Racing Comm'n v. McLaughlin, 102 So. 2d 574, 576 (Fla. 1958); Van Pelt v. Hilliard, 78 So. 693, 696-97, 75 Fla. 792 (Fla. 1918); Curry v. Lehman, 47 So. 18, 20, 55 Fla. 847 (Fla. 1908).

⁵ See Fla. H.R. Comm. Civ. Just. & Claims, CS for SB 1328 (1998) Bill Research 12 (April 20, 1998) ("It is the intent of this legislation to alleviate the backload of the CCRC's capital cases which are ripe for the [postconviction] process to begin yet do not have an attorney assigned to them."); Fla. H.R. Comm. Crim. Just. Approp., CS for SB 1328 (1998) Bill Research 12 (April 23, 1998) (same).

not to already assigned cases with rule 3.850 or 3.851 motions or habeas corpus petitions pending.

Based on the foregoing, it is ordered that, to the extent a capital postconviction case already was assigned to CCRC-N counsel and a rule 3.850 or 3.851 motion or habeas corpus petition was pending as of July 1, 2003, the assigned attorney may be reassigned as registry counsel for purposes of obtaining a ruling on that motion or petition and pursuing any appeal thereof. Such an assignment falls outside the intended purview of sections 27.710(3) and 27.711(9). Once a ruling on the pending motion or petition becomes final, however, those sections apply and registry counsel must meet the four- and five-defendant limits. This construction harmonizes the otherwise conflicting statutory provisions, effectuates legislative intent, and promotes the overall purpose of chapter 27, part IV, which is to ensure that challenges to capital convictions and sentences proceed "in a timely manner."

Because the Department has expressed its willingness to abide by this Court's order, a ruling on the present motion is deferred.

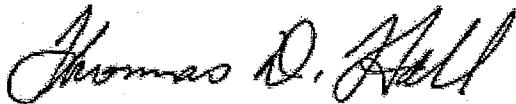
ANSTEAD, C.J., and WELLS, PARIENTE, LEWIS, QUINCE and BELL, JJ.,
concur.

CANTERO, J., dissents.

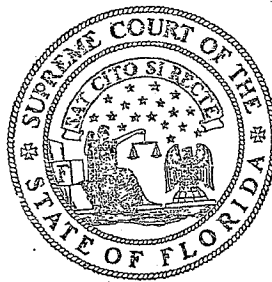
BELL, J., recused.

A True Copy

TEST:



Thomas D. Hall
Clerk, Supreme Court



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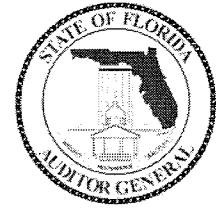
Served:

LINDA MCDERMOTT
CHARMAINE M. MILLSAPS
ROGER MAAS ✓
HON. PAUL RASMUSSEN, JUDGE
JOHN A. MOLCHAN
ARTHUR DENNIS RUTHERFORD
HON. MARY JOHNSON, CLERK
RICHARD T. DONELAN, JR.
WILLIAM J. THURBER, IV
TERRY CATLEDGE



AUDITOR GENERAL

WILLIAM O. MONROE, CPA



CAPITAL COLLATERAL REGIONAL COUNSEL – NORTHERN REGION

TRANSFER OF RESPONSIBILITIES TO THE REGISTRY OF ATTORNEYS – PILOT PROGRAM

SUMMARY

Section 27.701(2), Florida Statutes, provides for the implementation of a pilot program whereby the responsibilities of the Capital Collateral Regional Counsel (CCRC) – Northern Region were transferred, effective July 1, 2003, to a registry of attorneys in private practice maintained by the Executive Director of the Commission on Capital Cases. The summary of our findings related to implementation of the pilot program is as follows:

- Costs incurred to implement the pilot program at the CCRC – Northern Region office totaled \$59,593.03. Additionally, former employees of the CCRC – Northern Region were paid \$154,816.93 for unused annual and sick leave as of their dates of termination. Continued operating costs that were incurred to keep the office open during the transition period were \$38,518.08.
- No funds were appropriated to pay for costs incurred during the 2003-04 fiscal year in connection with the implementation of the pilot program. The source of funding has not been determined for unemployment compensation benefits earned but not paid from certifications forward as of December 31, 2003, and benefits earned after December 31, 2003, for former CCRC – Northern Region employees.
- Salary increases and awards of approximately \$13,500 were provided to CCRC - Northern Region employees in the month preceding the implementation of the pilot program at the CCRC - Northern Region office.
- Several registry attorneys were assigned capital cases in excess of the 5-case limit established by Section 27.711(9), Florida Statutes.
- Some of the registry attorneys assigned cases within the jurisdiction of the U.S. District Court for North Florida were not included on the Federal registry for that Court.
- Records were not available to demonstrate that the registry attorneys appointed to provide representation in former CCRC – Northern Region cases met the continuing education requirements established by Section 27.710, Florida Statutes.
- Several of the registry applications filed by attorneys appointed to provide representation in former CCRC – Northern Region cases were filed by e-mail and did not include the certifications required to demonstrate compliance with eligibility requirements.
- Delivery of case files to appointed registry attorneys was accomplished in a timely manner.
- Documentation of a physical inventory of equipment owned by the CCRC - Northern Region taken at the time of the implementation of the pilot program was not available for our examination and several items included on the property listing and identified as having been “trashed” or otherwise disposed of, were not documented as to their disposition.

INTRODUCTION

Sections 27.701 and 27.702, Florida Statutes, provide for the establishment of capital collateral regional counsel (CCRC) offices to represent each person convicted of a capital crime and sentenced to death in Florida, for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed on such person in the State and Federal courts. The regional offices are funded by State appropriations and the Justice Administrative Commission provides administrative support and services to the offices.

Section 27.709, Florida Statutes, establishes the Commission on Capital Cases (CCC), which reviews the administration of justice in capital collateral cases and the operations of the regional counsels. Pursuant to Section 27.710, Florida Statutes, the CCC is also responsible for compiling and maintaining a Statewide registry of attorneys in private practice who meet specified minimum requirements and are available for appointment to represent persons in postconviction collateral proceedings. Such attorneys are compensated at rates specified in law for the various collateral proceedings.

Prior to the revision of Section 27.701(2), Florida Statutes, by Chapter 2003-399, Laws of Florida, there were three CCRC offices, designated the northern, middle, and southern CCRC offices. Section 27.701(2), Florida Statutes, as revised, provides that responsibilities of the CCRC office for the northern region shall be met through a pilot program using only attorneys from the registry of attorneys in private practice, and that we shall present a status report on the implementation of the pilot program to the President of the Senate and the Speaker of the House of Representatives by February 27, 2004.

The CCRC – Middle Region was appointed as transition director for the CCRC – Northern Region by the Governor's Executive Order Number 03-119 for the purpose of overseeing the transition of case files to the private registry or other assigned counsel

and administrative functions associated with the pilot program.

The Justice Administrative Commission (JAC), which is established by Section 43.16, Florida Statutes, to maintain a central office for administrative services and assistance to CCRCs and other judicial offices, took custody of the administrative records of the CCRC - Northern Region upon implementation of the pilot program.

SCOPE, OBJECTIVES, AND METHODOLOGY

This operational audit focused on the implementation of the pilot program for transferring responsibilities of the Capital Collateral Regional Counsel – Northern Region to the registry of attorneys in private practice. Our objectives were:

- To document our understanding of management controls relevant to the implementation of the pilot program.
- To evaluate management's actions in administering its assigned responsibilities in accordance with applicable laws, rules and other guidelines.
- To determine the extent to which management controls promoted and encouraged the achievement of management's control objectives in the categories of compliance with controlling laws, administrative rules, and other guidelines; the economic and efficient administration of the functions related to implementation of the pilot program; the reliability of financial records and reports; and the safeguarding of assets.
- To provide a summary of the total costs associated with the initial implementation of the pilot program.
- To identify recommended statutory and fiscal changes in the categories of substantive law and policy and budget issues that may be included in the audit report and reported to the Legislature.

In conducting our audit, we reviewed the records and procedures of the CCRCs for the middle and northern regions and the CCC, and interviewed applicable staff of those organizations as well as the JAC. Our audit included examinations of various transactions (as well as events and conditions) occurring during the period

July 1, 2003, through December 31, 2003, and selected actions taken prior to July 1, 2003.

In addition to requiring that we present a status report on the implementation of the pilot program transferring responsibilities of the CCRC - Northern Region to the registry of attorneys, Section 27.701(2), Florida Statutes, requires that we schedule a performance review of the pilot program to determine the effectiveness and efficiency of using attorneys from the registry of attorneys compared to the capital collateral regional counsels. That review, which is required to include comparisons of the timeliness and costs of the pilot program and the capital collateral regional counsels is required to be submitted to the President of the Senate and the Speaker of the House of Representatives by January 30, 2007. Accordingly, a determination of the effectiveness and efficiency of the capital collateral regional counsels as compared with the registry of attorneys is not included within the scope of this audit.

**COST OF INITIAL IMPLEMENTATION
OF PILOT PROGRAM**

Expenditures made on behalf of the CCRC - Northern Region from the date of the closing of the office on July 1, 2003, through December 31, 2003, are shown in Table 1 below:

**Table 1
CCRC - Northern Region Expenditures
July 1, 2003, through December 31, 2003**

Category	General Revenue	Trust Fund	Total
Salaries	\$ 15,448.85	\$1,145.05	\$ 16,593.90
Temporary Employment	18,386.32		18,386.32
Unemployment Compensation	34,686.99		34,686.99
Freight	6,696.33		6,696.33
Examination/Tests	19,270.50		19,270.50
Investigations	3,957.95		3,957.95
Telephone	6,614.56		6,614.56
Rent	35,539.66		35,539.66
Travel	6,909.15		6,909.15
Consulting	4,250.00		4,250.00
Utilities	8,932.29		8,932.29
Other Expenses	8,575.90		8,575.90
Totals	\$169,268.50	\$1,145.05	\$170,413.55

Of the expenditures made during this period, \$72,302.44 related to costs incurred during the 2002-03 fiscal year and \$38,518.08 was spent for ongoing costs while closing the office (primarily rent, equipment rentals, and utilities). These costs would have been incurred regardless of whether the pilot project had been implemented. The remaining \$59,593.03 represents costs incurred as a result of implementation of the pilot program as shown in Table 2 below:

Table 2
CCRC – Northern Region
Pilot Program Implementation Costs
July 1, 2003, through December 31, 2003

Category	Amount
Temporary Employment	\$18,386.32
Unemployment Compensation	34,686.99
Freight	6,348.59
Travel	45.00
Other Expenses	126.13
Total	\$59,593.03

In addition, the CCRC - Northern Region paid \$154,816.93 for unused annual and sick leave for terminating employees. This amount was paid on June 30, 2003, from 2002-03 fiscal year appropriations. Additional costs incurred by the CCRC – Middle Region, primarily staff time and travel, in connection with implementation of the pilot program were not separately identified as such and are not included in the above amounts.

FINDINGS AND RECOMMENDATIONS

Personnel and Payroll

Finding No. 1: Certifications Forward

Certifications forward at June 30, 2003, as approved by the Executive Office of the Governor (EOG), totaled \$193,209.24, including \$192,064.19 from the General Revenue Fund and \$1,145.05 from the Capital Collateral Trust Fund, which was established pursuant to Section 27.702(3)(a), Florida Statutes, for the deposit of reimbursement of expenses by the Federal government pursuant to 18 U.S.C., Section 3006A, when providing representation to indigent persons in Federal courts. Of the amounts shown in Table 1, all of which were paid from moneys certified forward from the 2002-03 fiscal year, \$98,111.11 was for expenses incurred during the 2003-04 fiscal year.

Section 216.301, Florida Statutes, provides that any balance of any appropriation, except an appropriation for fixed capital outlay, which is not disbursed but which is expended or contracted to be expended shall, at the end of each fiscal year, be certified by the head of the affected state agency or the judicial or legislative branches, on or before August 1 of each year, to the Executive Office of the Governor. On or before September 1 of each year, the Executive Office of the Governor shall review and approve or disapprove, consistent with legislative policy and intent, any or all of the items and amounts certified by the head of the affected state agency.

Any balance of any appropriation, except an appropriation for fixed capital outlay, for any given fiscal year remaining after charging against it any lawful expenditure shall revert to the fund from which appropriated and shall be available for reappropriation by the Legislature. The EOG, on July 25, 2003, authorized the use of 2002-03 fiscal year funds to pay certain expenses incurred in the 2003-04 fiscal year as necessary to facilitate closure of the CCRC – Northern Region office. Authorized expenses to be paid from the 2002-03 fiscal year certified forward moneys included “contracted staff, rent, utilities, case file shipping expenses, and other necessary expenditures.” EOG indicated that: “The actions taken to close the office are determined to be a continuation of fiscal year 2002-03 responsibilities and the use of certified forward moneys are deemed appropriate in this unique situation.” The authorization was for a period not to exceed three months (ending September 30, 2003). On December 31, 2003, EOG extended the authorization to December 31, 2003, to specifically cover unemployment compensation benefits for former employees of CCRC – Northern Region.

The Legislature did not appropriate moneys for expenses incurred during the 2003-04 fiscal year on behalf of the CCRC – Northern Region office. The unemployment compensation amount included in Table 2 represents the amount of unemployment compensation paid from certifications forward to eight former CCRC - Northern Region employees for the

quarter ended September 30, 2003, and a portion of the quarter ended December 31, 2003. The unemployment compensation amount for the remainder of the quarter ended December 31, 2003, was not available at the completion of this audit.

On December 31, 2003, at the request of the CCRC – Middle Region, the JAC prepared a journal voucher to transfer \$22,181.70 of the unexpended certifications forward at that date to the CCRC – Middle Region for use during the remainder of the 2003-04 fiscal year to provide for the payment of continuing CCRC – Northern Region expenses (primarily unemployment compensation).

Additionally, it is not apparent what funds will be available for further unemployment compensation benefits to be paid for the quarter ended December 31, 2003, or for subsequent quarters. The unemployment compensation claim expiration dates for the former employees range from June 28, 2004, through August 23, 2004.

Recommendation: We recommend that the CCRC – Middle Region and the JAC consult with the Office of Policy and Budget of the Executive Office of the Governor to identify a proper source of funding for unemployment compensation for former CCRC – Northern Region employees who continue to receive unemployment compensation benefits past December 31, 2003. We further recommend that the Legislature consider appropriating moneys for costs incurred in connection with any future closing of State agencies.

CCRC – Middle Region Response

Pursuant to authorization from the Office of Policy and Budget, CCRC – Middle Region was authorized to utilize CCRC – North Region's certified forward funds to cover necessary expenditures due to the closing of the CCRC – North Region. As indicated, Executive Office of the Governor authorization indicated that: "The actions taken to close the office are determined to be a continuation of fiscal year 2002-2003 responsibilities and the use of certified forward moneys are deemed appropriate in this unique situation." CCRC – Middle requested the balance of CCRC – North Region's certified forward funds (\$22,181.70) be transferred in order to cover continuing obligations of CCRC – North's unemployment compensation through June 30, 2004 and other straggling

invoices that are still being processed through CCRC – Middle as these expenditures would also be considered a continuation of fiscal year 2002-2003 responsibilities. \$34,686.99 had been expended for CCRC – North unemployment compensation for the period July 1, 2003 through December 19, 2003. As a budget was not established to cover these unexpected expenditures, the balance of these funds were required in order to cover CCRC – North's obligations. A separate account has been designated to track these funds and will only be expended on CCRC – North expenditures.

As recommended, Capital Collateral Regional Counsel – Middle Region will continue to consult with the Office of Policy and Budget of the Executive Office of the Governor to identify a proper source of funding for unemployment compensation benefits for former CCRC – Northern Region employees who continue to receive unemployment compensation benefits as well as other obligations.

Justice Administrative Commission Response

Since the Justice Administrative Commission (JAC) was uncertain as to how to proceed with the CCRC – Middle Region's request to transfer certified forward monies, we contacted the Office of Policy and Budget for assistance. Please see the attached letter dated July 30, 2003 [Exhibit A of this report.], authorizing the JAC to process the requested action.

As recommended, the JAC will consult with the Office of Policy and Budget to identify a proper source of funding for unemployment compensation benefits for former CCRC – Northern Region employees who continue to receive unemployment compensation benefits.

Finding No. 2: Salary Increases and Awards

Our review of expenditures incurred by the CCRC – Northern Region in the months immediately preceding the closing of the office disclosed that several salary increases and awards were provided to employees based on Personnel Action Forms completed during the month of June 2003. Specifically, eight employees were provided \$5,000 annual salary increases, and five employees were provided with \$3,500 annual salary increases, effective June 1, 2003. The salary increases in effect for one month prior to the termination of the employees totaled \$4,790.64. The revised salaries also resulted in increased payments for accumulated leave for the terminating employees, as such leave payments are based on the rate of pay at the time of termination. The total increase in the leave payments resulting from

the June salary increases was approximately \$5,500. Additionally, four employees, including the Capital Collateral Regional Counsel, received nonrecurring awards of \$765.11 each in June 2003. The basis for providing these awards was not established in the records provided for our examination. While we do not question whether the salary increases and awards, which totaled approximately \$13,500, were justified from the standpoint of the employees' experience and performance, the benefits derived by the State from the provision of salary increases and awards during the month preceding the closing of the office and termination of the employees are not apparent.

Recommendation: We recommend that in the event of any future closing or downsizing of State agencies, the Legislature consider providing guidance on the provision of salary increases and awards to terminating employees prior to their termination from employment.

Assignment of Cases

Appointment of registry attorneys to provide capital collateral representation to inmates under death sentences are made by the judges in the circuit courts where the proceedings are being heard. On June 30, 2003, there were 63 active capital cases being represented by CCRC – Northern Region attorneys. Of the 63 cases, 62 were reassigned to registry attorneys and 1 case was transferred to the CCRC – Southern Region. Of the 62 cases reassigned to the registry attorneys, 45 were reassigned to attorneys who had been employed or contracted by the CCRC – Northern Region immediately prior to the implementation of the pilot program, including 38 cases that were assigned to the same attorneys who had previously provided representation for the cases as employees of the CCRC – Northern Region.

Appointments to provide capital collateral representation were made on or before June 30, 2003, for 42.9 percent of the former CCRC – Northern Region cases. For the remaining cases, appointments ranged from 1 to 102 days after the implementation of the pilot program, with an average of 26 days.

Finding No. 3: Case Assignments Exceeding the 5-case Limit.

Section 27.710(3), Florida Statutes, establishes a 5-case limit on the assignment of cases to registry attorneys. Contrary to this limitation, four registry attorneys were assigned a total of 11 former CCRC – Northern Region cases in excess of their 5-case limit, and two other registry attorneys were each assigned a total of three cases that exceeded the limit when considering other previously assigned cases.

An attorney who is assigned a capital collateral case is required to enter into a contract with the State Chief Financial Officer (CFO) for the payment of fees specified in Section 27.711, Florida Statutes, for representation of the inmate. The CFO makes payments to the attorneys based on supporting documentation, including a court order authorizing the payment.

For those cases assigned in excess of the 5-case limit, the CFO declined to enter into contracts for payment and has not made payments to the attorneys for services rendered.

We were advised by the Executive Director of the Commission on Capital Cases that there are currently several cases before the Florida Supreme Court challenging the nonpayment of fees based on the 5-case limit. On December 12, 2003, the Florida Supreme Court ruled, with respect to two such cases involving a single registry attorney, that when a case is assigned to a registry attorney who was also the attorney that represented the inmate as a CCRC – Northern Region employee, the assignment is not subject to the 5-case limit. The Supreme Court's decision was based, at least in part on an ambiguity created by conflicting provisions of law (Sections 27.710(3) and 27.711(9), Florida Statutes, which establish the 5-case limit, versus the mandates imposed on registry attorneys pursuant to Sections 27.701(2) and 27.708(2), Florida Statutes, which require the registry attorneys assigned cases as a result of the closing of the CCRC – Northern Region office to

comply with Florida Rules of Criminal Procedure that establish strict time limits for filing the various motions and petitions).

Recommendation: We recommend that the Legislature consider amending these provisions of law as necessary to resolve the conflict identified by the Florida Supreme Court.

Finding No. 4: Eligibility to Provide Representation in Federal Court

Section 27.701(2), Florida Statutes, provides that each attorney participating in the pilot program transferring responsibilities of the CCRC – Northern Region to the registry of attorneys be qualified to provide representation in Federal court.

While the registry attorneys assigned former CCRC - Northern Region cases had generally been admitted to the bar for one or more of the three U. S. District Courts in Florida, we found that three registry attorneys, providing representation in a total of six cases being heard in circuit courts located within the area covered by the U.S. District Court for the Northern Region, had not been admitted to the bar of the U.S. District Court for the Northern Region. The applications utilized by the Executive Director of the Commission on Capital Cases generally did not provide for information as to qualifications to provide representation in Federal court.

While Section 27.701(2), Florida Statutes, does not clearly require that the attorney be qualified to provide representation in the particular bar of the U. S. District Court for the area where the case is being heard in circuit court, it would seem unreasonable to allow the attorney to comply with the Federal court eligibility requirement by being admitted to the bar of a U.S. District Court other than the one where the cases to which he or she has been appointed are likely to be heard in Federal proceedings.

Recommendation: We recommend that the Executive Director of the Commission on Capital Cases determine which registry attorneys providing representation in former CCRC -

Northern Region cases have not been admitted to the Federal bar in the districts where the cases are being heard in circuit court and require those attorneys to demonstrate that they have been admitted to the bar or remove them from the registry. The Executive Director should also assure that applications for registry appointment provide information as to qualifications to provide representation in Federal court. We also recommend that the Legislature clarify the Federal court eligibility requirement to specify that the attorney assigned to a case be qualified to provide representation in the U.S. District Court for the district where the case is being heard in circuit court.

Commission on Capital Cases Response

*Florida Statute 27.701(2) states an attorney participating in the pilot program "...must be **qualified** (emphasis added) to provide representation in federal court." All the attorneys on the registry have met the current qualifications to be admitted to the Federal Bar, simply by being in good standing with the Florida Bar. Also, an attorney may be admitted to the Federal Bar without having submitted an application to be listed on the commission's Federal Registry. The only qualifications to be admitted to the bar of the U.S. District Court of the Northern Region are: (1) an attorney must be in good standing with The Florida Bar (or the bar of any state), and (2) must successfully complete a tutorial on the court's local rules (See Attachment 1, USDC-N Local Rules). [Exhibit B of this report]*

The commission had previously considered this issue and decided against making a statutory change because the requirement had no bearing on whether the attorney would be appointed to the case by a federal judge.

Follow-up to Response

The Executive Director of the Commission on Capital Cases, in his response to this finding, stated that all attorneys on the registry have met the qualifications to be admitted to the Federal bar simply by being in good standing with the Florida bar. However, the Executive Director further stated that the qualifications for admission to the bar of the United States District Court for the Northern Region are good standing with the Florida bar and successful completion of a tutorial on the Court's local rules, an apparent contradiction with his earlier statement. The United States District Court for the Northern Region confirmed to us that the attorneys referred to in the finding had not been admitted to the bar for that Court. Consequently, those attorneys are

not qualified to provide representation in that Court.

Finding No. 5: Continuing Education Requirements

Section 27.710(1), Florida Statutes, requires that the Executive Director of the Commission on Capital Cases (CCC) compile and maintain a registry of attorneys in private practice who have certified that they meet the minimum requirements for appointment to the registry, are available for appointment by the court, and have attended within the last year a continuing legal education program of at least 10 hours' duration devoted specifically to the defense of capital cases, if available. This requirement has been interpreted in practice to apply at the time of appointment to the registry, with no statutory requirement for continuing education beyond the time of appointment. It is not clear from our reading of this section of law whether the continuing education requirement is intended to apply only at the time of appointment to the registry or on a continuing basis after appointment.

We were informed by the Executive Director of the CCC that documentation evidencing that attorneys have met this requirement is not required to be submitted to the CCC. As a result, we were unable to affirm from CCC records that the registry attorneys appointed to the former CCRC - Northern Region cases complied with the continuing legal education requirement.

Recommendation: We recommend that the Executive Director of the CCC require each attorney to provide documentation of successful completion of the required continuing education prior to appointment to the registry and retain such documentation. We further recommend that the Legislature consider revising the continuing education requirement to clarify that it applies on a continuing basis after appointment to assist in assuring that attorneys providing postconviction capital collateral representation maintain the highest level of skills.

Finding No. 6: Certification of Eligibility Requirements

Section 27.710(2), Florida Statutes, requires that to be eligible for court appointment as counsel in postconviction capital collateral proceedings, an attorney must certify on an application provided by the Executive Director of the CCC that he or she satisfies the minimum requirements for private counsel set forth in Section 27.704(2), Florida Statutes. These minimum requirements include membership in good standing with the Florida bar, at least three years' experience in the practice of criminal law, and participation in at least five felony jury trials, five felony appeals, or five capital postconviction evidentiary hearings, or any combination of at least 5 of such proceedings. Additionally, Section 27.710(3), Florida Statutes, provides that an attorney who applies for registration and court appointment as counsel in postconviction capital collateral proceedings must certify that he or she is counsel of record in not more than four such proceedings and, if appointed, will continue representation until the sentence is reversed, reduced, or carried out, or unless permitted to withdraw by the trial court.

While the "Application for Statewide Attorney Registry" used in the past provides for each of these certifications, the applications submitted by former CCRC - Northern Region attorneys appointed to the registry to provide representation in former CCRC - Northern Region cases were generally filed by e-mail [see exhibit C as an example] and did not include all of the required certifications. Specifically, the e-mail did not address participation in felony jury trials, felony appeals, or capital postconviction evidentiary hearings; representation in not more than four such proceedings; and continued representation. Further, the e-mail did not provide for signatures attesting to any of the certifications.

Recommendation: We recommend that the Executive Director of the CCC require that each attorney providing postconviction capital

collateral representation provide the certifications required by law.

Commission on Capital Cases Response

Unfortunately, the Auditor General's report confused the online application with the electronic receipt that is received by the commission after an attorney submits an online application (See Attachment 3, Electronic Receipt). [Exhibit C of this report] By submitting the online application, an attorney certifies that he/she meets the minimum requirements of 27.704(2). (See Attachment 2, Online Application.) [Exhibit D of this report]

The commission has replaced the questioned online application with the standard application in a PDF file format (See Attachment 4, Standard Application). [Exhibit E of this report] This change now requires an attorney to print, complete, sign, and mail the standard application to the Commission on Capital Cases.

Each of the five attorneys who submitted an online application has also submitted a signed hard copy of the application.

Follow-up to Response

The Executive Director of the Commission on Capital Cases, in his response to this finding, stated that the finding confused the online application with the electronic receipt received by the Commission after an attorney submits an online application and that by submitting the online application an attorney certifies that he or she meets the minimum requirements of Section 27.704(2), Florida Statutes. However, the electronic receipt referred to by the Executive Director is the only documentation provided for examination in response to our request for evidence of the required certifications. It is not our intent to suggest that the use of electronic media for filing applications is inappropriate, but rather that the documentation provided to us to evidence the required certification was not adequate. The Executive Director further stated that each of the attorneys who submitted an online application has also submitted a signed hard copy of the application. The hard copies referred to by the Executive Director were apparently requested and received after the close of our audit fieldwork.

Transfer of Case Files

The Governor, in Executive Order Number 03-119, assigned to the CCRC - Middle Region responsibility

for "overseeing the transition of case files to the private registry or other assigned counsel."

An accounting of case file boxes prepared by the CCRC - Middle Region indicated that there were 3,253 case file boxes, an average of 52.5 boxes per case, that were determined to be relevant to the cases reassigned to registry attorneys. Of these case file boxes, 1,838 were provided directly to the registry attorneys, and 1,415 were shipped to the registry attorneys. The case file boxes provided directly to the registry attorneys were documented by signed confirmations of the delivery. The case files shipped to the registry attorneys were documented by shipping invoices; however, the invoices did not indicate the specific cases to which the boxes were attributed. As a result, in those instances where a registry attorney was assigned multiple cases, we could not verify the shipping of the boxes for specific cases.

Based on the documentation provided, the case files were delivered to the appropriate appointed registry attorneys in a timely manner. The average number of days between assignment of the attorneys and delivery of the case files was 18 days, with a range from 1 to 41 days.

Disposition of Equipment

Finding No. 7: Unaccounted for Equipment

Section 273.055(3), Florida Statutes, prescribes the methods by which surplus State-owned tangible personal property may be disposed of (i.e., selling or transferring the property to another governmental entity; selling or donating the property to any private nonprofit agency; selling the property through a sale open to the public; or contracting for the leasing of storage space or disposal of scrap property). Auditor General Rule 10.370 provides requirements for documenting the disposition of tangible personal property.

We were informed by the CCRC - Middle Region that, except for certain property items considered to no longer have any significant value (primarily

computer docking stations), all of the CCRC - Northern Region tangible personal property was either transferred to another governmental entity or donated to a private nonprofit agency.

We were informed by CCRC - Middle Region personnel and former CCRC - Northern Region personnel that a physical inventory of equipment owned by the CCRC - Northern Region was conducted at June 30, 2003; however, documentation regarding any such physical inventory was not available for our audit and CCRC - Middle Region personnel did not participate in the physical inventory. As a result, we could not reliably identify all of the equipment on hand as of that date.

We were provided a listing dated July 1, 2003, of CCRC - Northern Region equipment and attempted to determine the disposition of each equipment item based on signed receipts also provided for our examination. Our examination disclosed that sixteen items on the inventory listing, in addition to the docking stations, were identified as "trashed" or otherwise disposed of. These equipment items included computer monitors, printers, and central processing units, all of which were identified on the inventory listing as having minimal, if any, value. Documentation such as the manner of disposition and the identity of employees witnessing the disposition of each of these items, as required by Auditor General Rule 10.370, was not available for our examination. As a result, we could not confirm the dispositions of these items as identified by the CCRC - Middle Region.

Recommendation: We recommend that all dispositions of tangible personal property items be documented in accordance with the requirements of the Rules of the Auditor General.

CCRC - Middle Region Response

35,000 square feet of furnished office space and equipment was processed and distributed during the period July 1, 2003 through August 31, 2003. Every effort was made to document the disposition of capital outlay and non capital outlay equipment.

As recommended, should Capital Collateral Regional Counsel - Middle Region be involved with any future closing of State agencies, the disposition of tangible personal property items will be documented in accordance with the requirements of the Rules of the Auditor General.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



William O. Monroe, CPA
Auditor General

AUDITEE RESPONSES

In letters dated January 22, 2004, February 4, 2004, and February 9, 2004, the Executive Director of the Justice Administrative Commission, the Capital Collateral Regional Counsel – Middle Region, and the Executive Director of the Commission on Capital Cases, respectively, provided written responses to our preliminary and tentative findings. Excerpts from these responses are included under applicable findings and recommendations. These responses can be viewed in their entirety on the Auditor General's Web site.

To promote accountability in government and improvement in government operations, the Auditor General makes operational audits of selected programs, activities, and functions of State agencies. This operational audit was made in accordance with applicable **Government Auditing Standards** issued by the Comptroller General of the United States. This audit was conducted by Hardee Ratliff, CPA. Please address inquiries regarding this report to James M. Dwyer, CPA, Audit Manager, via E-mail at jimdwyer@aud.state.fl.us or by telephone at (850) 487-9031.

This report, and other audit reports prepared by the Auditor General, can be obtained on our Web site at <http://www.state.fl.us/audgen>; by telephone at (850) 487-9024; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

EXHIBIT - A
JUSTICE ADMINISTRATIVE COMMISSION
ATTACHMENT



JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

July 30, 2003

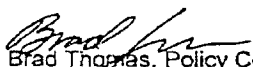
Mr. Bill Jennings
Capital Collateral Counsel – Middle Region
3801 Corporex Park Drive, Suite 210
Tampa, Florida 33691

Dear Mr. Jennings:

The Executive Office of the Governor is authorized under the provisions of s. 216.301, Florida Statutes, to approve or disapprove agencies' requests to certify forward balances of appropriations at the end of a fiscal year into the next fiscal year to cover obligations incurred in the ending fiscal year. Due to the fact that the General Appropriation Act for Fiscal Year 2003-04 (Senate Bill 4-A) provided that the responsibilities for the Capital Collateral Region Counsel for the Northern Region be met through a pilot program using private registry attorneys, and no funds were provided for a transition period to transfer the remaining case files and to effectuate closing of the office, we recognize the need to cover such obligations.

The actions taken to close the office are determined to be a continuation of fiscal year 2002-03 responsibilities and the use of certified forward monies is deemed appropriate in this unique situation. Therefore, it is the intent of this office to approve the certified forward request your office will make under the provisions of s. 216.301, Florida Statutes. It is my understanding that authorized expenditures will include: contracted staff, rent, utilities, case file shipping expenses, and other necessary expenditures as approved by the Office of Policy and Budget. It is also my understanding that the disbursements covering these obligations will be completed within a period not to exceed three months (ending 9/30/03).

Sincerely,


Brad Thomas, Policy Coordinator
Office of Policy and Budget
Public Safety Policy Unit

BT/mjd

Post-it® Fax Note	7571	Date	7/30	# of pages	1
To	Vicki Butz	From	James Delaney		
Co./Dept.	CCRC-M	Co.	OPB-PSU		
Phone #		Phone #	922-4020		
Fax #	512-1120	Fax #			



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EXHIBIT – B
COMMISSION ON CAPITAL CASES
ATTACHMENT 1, USDC-N LOCAL RULES

U.S. District Court - Northern District

RULE 11.1 Attorneys

(A) **Qualifications for Admission.** An attorney is qualified for admission to the bar of this district if the attorney: (1) is currently a member in good standing of The Florida Bar or the Bar of any state; and (2) has successfully completed the tutorial on this court's local rules, located on the district's Internet Home Page, www.flnd.uscourts.gov. To participate in the court's 15 Electronic Case Filing, the attorney must also have successfully completed the computer based training tutorial on the CM/ECF System, available on the district's Internet Home Page, www.flnd.uscourts.gov.

Attorneys admitted as of January 1, 2004, are not subject to any new admission requirements and remain members in good standing, but will be required to successfully complete the computerbased training tutorial on the CM/ECF System before they will be able to participate in the court's Electronic Case Filing.

(B) **Procedure for Admission and Proof of Qualifications.** Each applicant for admission shall submit a verified petition setting forth the information specified on the form provided by the Clerk of this Court, together with an application fee in the amount set by the court by administrative order and payable to the Clerk, a signed oath of admission, and a current certificate of good standing from The Florida Bar or the bar of any state. Each applicant must successfully complete the tutorial on local rules, located on the district's Internet Home Page, www.flnd.uscourts.gov. To participate in the court's Electronic Case Filing, the attorney must also have successfully completed the computer based training tutorial on the CM/ECF System, available on the district's Internet Home Page, www.flnd.uscourts.gov.

(C) **Appearances.**

(1) **Who May Appear Generally.** Only members of the bar of this district may appear as counsel of record in this district.

(2) **Pro Hac Vice Appearance.** Prior to any appearance, any attorney who is not a member of the bar of this district must request permission in writing to appear, certifying that he or she has successfully completed the computer-based tutorial on local rules of the Northern District of Florida and the computer-based tutorial on this court's CM/ECF System, available on the district's Internet home page, www.flnd.uscourts.gov. In addition, a certificate of good standing from The Florida Bar, from the bar of any state, or from the United States district court to which said attorney has been admitted, together with an admission fee in the amount set by the court by administrative order, shall accompany said request. Upon completion of these requirements the attorney will be admitted to the bar of this district. With the advent of electronic case filing, this court no longer draws any substantive distinction between membership in the bar of this district and pro hac vice admission. An attorney admitted pro hac vice will be treated as a member of the bar of this district and will remain a member, even after termination of the case, until such time as the attorney affirmatively withdraws from the bar of this district or no longer meets the admission qualifications.

EXHIBIT – B (CONTINUED)
COMMISSION ON CAPITAL CASES
ATTACHMENT 1, USDC-N LOCAL RULES

(3) Counsel for the United States or a State Officer or Agency. Any attorney representing the United States, or any officer or agency thereof, may, without petitioning for admission, appear and participate in particular cases in which the United States or such counsel's agency is involved, provided the attorney has successfully completed the tutorial on local rules of the Northern District of Florida and the tutorial on CM/ECF available on the district's Internet home page .

Any attorney representing the State of Florida, or any officer or agency thereof, who is a member of The Florida Bar and is not a member of the bar of this district may by motion request to appear *pro hac vice* in any such case without having to file a certificate of good standing, provided the attorney has successfully completed the tutorial on local rules of the Northern District of Florida and the tutorial on CM/ECF available on the district's Internet home page www.flnd.uscourts.gov.

Upon completion of these requirements, the attorney will be admitted.

Any attorney representing the United States or the State of Florida and who is an employee of the United States or the State of Florida, respectively, is exempt from paying the admission fee.

(4) Temporary Waiver in Exceptional Cases. In an exceptional case, when the interest of justice is best served by a waiver of the admission requirements, the judge before whom the matter is pending may permit a person not admitted to the bar of this district to temporarily appear in any aspect of the pending matter, civil or criminal. An appearance permitted under this paragraph applies only to the pending matter, and normally will be conditioned upon prompt compliance with the more formal requirements set out in this rule .

EXHIBIT - C
COMMISSION ON CAPITAL CASES
ATTACHMENT 3, ELECTRONIC RECEIPT

HINSON.MARYJEAN

From: KRIEGNER.BOB
Sent: Monday, June 09, 2003 10:37 AM
To: HINSON.MARYJEAN
Subject: Application Information

<P> [REDACTED]
<P> [REDACTED]
<P> [REDACTED]
<P> [REDACTED]
<P> You have entered the following information:
<P> [REDACTED]
<P> Telephone Number: [REDACTED]
<P> [REDACTED]
<P> Mailing Address: [REDACTED] [REDACTED]
<P> [REDACTED]
<P> E-mail address: [REDACTED]
<P> [REDACTED]
<P> Judicial Circuit: ALL
<P> [REDACTED]
<P> Circuits you would prefer to take Cases:
1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20
<P> [REDACTED]
<P> Do you have three years experience: YES
<P> [REDACTED]
<P> You have participated in at least five criminal trials: YES
<P> [REDACTED]
<P> You are a member of good standing in the florida bar: YES
<P> [REDACTED]
<P> Florida Bar Number: [REDACTED]
<P> [REDACTED]
<P> Years admitted: [REDACTED]
<P> [REDACTED]
<P> You will be available: [REDACTED]
<P> [REDACTED]
<P> You commented that:
<P> [REDACTED]
<P> [REDACTED]

ATTACHMENT 3

EXHIBIT - D
COMMISSION ON CAPITAL CASES
ATTACHMENT 2, ONLINE APPLICATION

Registry Application

Page 1 of 2

John McKay
President



Tom Feeney
Speaker



The Florida Legislature
Commission on Capital Cases

Application for Statewide Attorney Registry

First Name: Last Name: Telephone number: Mailing Address: E-mail Address: In which judicial circuit do you practice?:

From which circuits would you select cases?:

☐ First ☐ Second ☐ Third ☐ Fourth ☐ Fifth ☐ Sixth ☐ Seventh ☐ Eighth ☐ Ninth ☐ Tenth
☐ Eleventh
☐ Twelfth ☐ Thirteenth ☐ Fourteenth ☐ Fifteenth ☐ Sixteenth ☐ Seventeenth ☐ Eighteenth
☐ Nineteenth ☐ Twentieth

Do you have at least three years' experience in the practice of criminal law?

☐ YES☐ NO

Have you participated in at least five felony trials, five felony appeals or five capital postconviction evidentiary hearings or any combination of at least five such?

☐ YES☐ NO

Are you a member in good standing of the Florida Bar?

☐ YES☐ NOFlorida Bar Number

ATTACHMENT 2

EXHIBIT - D (CONTINUED)
COMMISSION ON CAPITAL CASES
ATTACHMENT 2, ONLINE APPLICATION

Registry Application

Page 2 of 2

Year Admitted |

When will you be available? |

By signing this application, you are certifying that:

- That you satisfy the minimum requirements set forth in s. 27.704(2), Florida Statutes;
- That you are counsel of record for not more than four postconviction Capital Collateral Proceedings; and
- That, if appointed to represent a person in postconviction Capital Collateral Proceedings, you will continue such representation under the terms and conditions set forth in s. 27.711, Florida Statutes, until the sentence is reversed, reduced, or carried out or unless permitted to withdraw from representation by the Trial Court.

Comments:

Date

[[Commission Members](#)] [[Resource Attorneys](#)] [[Registry Attorneys](#)] [[Florida Statute](#)] [[Inmate Legal Status](#)] [[Commission Minutes & References](#)] [[Other Links](#)] [[Events Calendar](#)] [[E-mail](#)]

EXHIBIT - E
COMMISSION ON CAPITAL CASES
ATTACHMENT 4, STANDARD APPLICATION

Jim King
President



Johnnie Byrd
Speaker



The Florida Legislature
COMMISSION ON CAPITAL CASES
APPLICATION FOR STATEWIDE
ATTORNEY REGISTRY

- 1) Name _____ Telephone _____
- 2) Firm Name _____
- 3) Address _____
- 4) E-mail Address _____
- 5) In which judicial circuit do you practice? _____
- 6) From which circuits would you accept cases? _____

- 7) Do you have at least 3 years' experience in the practice of criminal law and have you participated in at least five felony trials, five felony appeals or five capital postconviction evidentiary hearings or any combination of at least five such proceedings? _____
- 8) Are you a member in good standing of the Florida Bar? _____
- 9) Florida Bar Number _____ Year Admitted _____
- 10) To which federal courts are you admitted? _____

- 11) Do you want to be on the Federal Attorney Registry? _____

BY SIGNING THIS APPLICATION, YOU ARE CERTIFYING:
THAT YOU SATISFY THE MINIMUM REQUIREMENTS SET FORTH IN S. 27.704(2) AND 27.710(1), FLORIDA STATUTES; THAT YOU ARE COUNSEL OF RECORD FOR NOT MORE THAN FOUR POSTCONVICTION CAPITAL COLLATERAL PROCEEDINGS; THAT, IF APPOINTED TO REPRESENT A PERSON IN POSTCONVICTION CAPITAL COLLATERAL PROCEEDINGS, YOU WILL CONTINUE SUCH REPRESENTATION UNDER THE TERMS AND CONDITIONS SET FORTH IN S. 27.711, FLORIDA STATUTES, UNTIL THE SENTENCE IS REVERSED, REDUCED, OR CARRIED OUT OR UNLESS PERMITTED TO WITHDRAW FROM REPRESENTATION BY THE TRIAL COURT; AND, THAT YOU WILL COMPLY WITH ALL CLE REQUIREMENTS.

Signature

Date

ATTACHMENT 4

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The Commission on Capital Cases is a legislative commission charged with the responsibility of advising making recommendations to the Governor, Legislature, and the Supreme Court on issues involving the administration of justice in capital collateral cases.

Copies of this report may be obtained by telephone (850/921-4704), by FAX (850/921-4737), by mail (CCC, 402 S Monroe Street, Tallahassee, FL 32399-1300) or online (<http://www.floridacapitalcases.leg.state.fl.us>).