

Selected Statutory Provisions related to the ISC – as of 2/13/06

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

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

27.5303 Public defenders; conflict of interest.

27.5304 Private court-appointed counsel; compensation.

29.007 Court-appointed counsel.

29.014 Article V Indigent Services Advisory Board.

29.015 Contingency fund; limitation of authority to transfer funds in contracted due process services appropriation categories.

29.018 Cost sharing of due process costs; legislative intent.

29.019 Billings rendered for pre-July 1, 2004, services.

92.231 Expert witnesses; fee.

The 2005 Florida Statutes

[Title V](#)

JUDICIAL BRANCH

[Chapter 27](#)

STATE ATTORNEYS; PUBLIC DEFENDERS; RELATED OFFICES

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

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

(2) Private counsel appointed by the court to provide representation shall be selected from a registry of individual attorneys established by the circuit Article V indigent services committee or procured through a competitive bidding process.

(3) In utilizing a registry:

(a) Each circuit Article V indigent services committee shall compile and maintain a list of attorneys in private practice, by county and by category of cases. From October 1, 2005, through September 30, 2007, the list of attorneys compiled by the Eleventh Judicial Circuit shall provide the race, gender, and national origin of assigned attorneys. To be included on a registry, attorneys shall certify that they meet any minimum requirements established in general law for court appointment, are available to represent indigent defendants in cases requiring court appointment of private counsel, and are willing to abide by the terms of the contract for services. To be included on a registry, an attorney also must enter into a contract for services with the Justice Administrative Commission. Failure to comply with the terms of the contract for services may result in termination of the contract and removal from the registry. Each attorney on the registry shall be responsible for notifying the circuit Article V indigent services committee and the Justice Administrative Commission of any change in his or her status. Failure to comply with this requirement shall be cause for termination of the contract for services and removal from the registry until the requirement is fulfilled.

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

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

(d) Quarterly, each circuit Article V indigent services committee shall provide a current copy of each registry to the Chief Justice of the Supreme Court, the chief judge, the state attorney and public defender in each judicial circuit, the clerk of court in each county, the Justice Administrative Commission, and the Indigent Services Advisory Board. From October 1, 2005, through September 30, 2007, the report submitted by the Eleventh Judicial Circuit shall include the race, gender, and national origin of all attorneys listed in and appointed under the registry.

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

(5) The Justice Administrative Commission shall approve uniform contract forms for use in procuring the services of private court-appointed counsel and uniform procedures and forms for use by a court-appointed attorney in support of billing for attorney's fees, costs, and related expenses to demonstrate the attorney's completion of specified duties.

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

(7)(a) An attorney appointed to represent a defendant or other client is entitled to

payment pursuant to s. [27.5304](#), only upon full performance by the attorney of specified duties, approval of payment by the court, except for payment based on a flat fee per case as provided in s. [27.5304](#); and attorney submission of a payment request to the Justice Administrative Commission. Upon being permitted to withdraw from a case, a court-appointed attorney shall submit a copy of the order to the Justice Administrative Commission at the time it is issued by the court. If an attorney is permitted to withdraw or is otherwise removed from representation prior to full performance of the duties specified in this section for reasons other than breach of duty, the trial court shall approve payment of attorney's fees and costs for work performed in an amount not to exceed the amounts specified in s. [27.5304](#). Withdrawal from a case prior to full performance of the duties specified shall create a rebuttable presumption that the attorney is not entitled to the entire flat fee for those cases paid on a flat-fee-per-case basis.

(b) The attorney shall maintain appropriate documentation, including a current and detailed hourly accounting of time spent representing the defendant or other client. These records and documents are subject to review by the Justice Administrative Commission, subject to the attorney-client privilege and work product privilege.

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

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

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

History.--s. 13, ch. 2003-402; s. 6, ch. 2004-265; s. 1, ch. 2005-236.

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

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

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

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

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

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

(2)(a) The responsibility of the circuit Article V indigent services committee is to manage the appointment and compensation of court-appointed counsel within a circuit pursuant to ss. [27.40](#) and [27.5303](#). The committee shall also set the compensation rates of due process service providers in cases where the court has appointed counsel or declared a person indigent for costs, not to exceed any rates specified in the General Appropriations Act such that the total amount expended does not exceed the amount budgeted in the General Appropriations Act for the particular due process service. The circuit Article V indigent services committee shall meet at least quarterly.

(b) Each circuit Article V indigent services committee shall maintain a registry pursuant to s. [27.40](#), even when procuring counsel through a competitive bidding process. However, if counsel is procured through a competitive bidding process, the registry shall be used only when counsel obtained through that process is unable to provide representation due to a conflict of interest or reasons beyond their control. The committee shall apply any eligibility and performance standards set by the Legislature.

(c) Each circuit Article V indigent services committee shall develop a schedule of standard fees and expense allowances for the categories of cases specified in s. [27.5304](#), consistent with the overall compensation rates in that section and within the amount of appropriated funds allocated by the Justice Administrative Commission to the circuit for this purpose.

(d) Each circuit Article V indigent services committee shall establish a schedule of standard allowances for due process expenses for cases in which the court has declared a person indigent for costs, within the amount of appropriated funds allocated by the Justice Administrative Commission to the circuit for this purpose.

(3) Notwithstanding any other provision of this section, a circuit Article V indigent services committee may approve, and the Justice Administrative Commission shall investigate and evaluate the use of funds for, alternate models for the provision of criminal and civil due process services and representation other than a model based on a per-case fee if a more cost-effective and efficient system can be provided. An alternate model may include court reporting services and the provision of court-appointed counsel.

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

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

Appropriations Act.

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

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

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

The Justice Administrative Commission shall separately track expenditures on private court-appointed counsel for the following categories of cases: criminal conflict, civil conflict, dependency and termination of parental rights, and guardianship. From October 1, 2005, through September 30, 2007, the Justice Administrative Commission shall also track and issue a report on the race, gender, and national origin of private court-appointed counsel for the Eleventh Judicial Circuit.

History.--s. 14, ch. 2003-402; s. 7, ch. 2004-265; s. 2, ch. 2005-236.

27.5303 Public defenders; conflict of interest.--

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

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

more attorneys to represent the accused. The court shall specify the basis for the conflict.

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

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

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

(3) Private court-appointed counsel shall be compensated as provided in s. [27.5304](#).

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

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

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

History.--s. 19, ch. 2003-402; s. 10, ch. 2004-265.

27.5304 Private court-appointed counsel; compensation.--

(1) Private court-appointed counsel shall be compensated by the Justice Administrative Commission in an amount not to exceed the fee limits established in this section. The attorney also shall be reimbursed for reasonable and necessary expenses in accordance with s. [29.007](#). If the attorney is representing a defendant charged with more than one offense in the same case, the attorney shall be compensated at the rate provided for the most serious offense for which he or she represented the defendant. This section does not allow stacking of the fee limits established by this section. Private court-appointed counsel providing representation under an alternative model shall enter into a uniform contract with the Justice Administrative Commission and shall use the Justice Administrative Commission's

uniform procedures and forms in support of billing for attorney's fees, costs, and related expenses. Failure to comply with the terms of the contract for services may result in termination of the contract.

(2) The Justice Administrative Commission shall review an intended billing by private court-appointed counsel for attorney's fees based on a flat fee per case for completeness and compliance with contractual, statutory, and circuit Article V indigent services committee requirements. The commission may approve the intended bill for a flat fee per case for payment without approval by the court if the intended billing is correct. For all other intended billings, prior to filing a motion for an order approving payment of attorney's fees, costs, or related expenses, the private court-appointed counsel shall deliver a copy of the intended billing, together with supporting affidavits and all other necessary documentation, to the Justice Administrative Commission. The Justice Administrative Commission shall review the billings, affidavit, and documentation for completeness and compliance with contractual and statutory requirements. If the Justice Administrative Commission objects to any portion of the proposed billing, the objection and reasons therefor shall be communicated to the private court-appointed counsel. The private court-appointed counsel may thereafter file his or her motion for order approving payment of attorney's fees, costs, or related expenses together with supporting affidavits and all other necessary documentation. The motion must specify whether the Justice Administrative Commission objects to any portion of the billing or the sufficiency of documentation and shall attach the Justice Administrative Commission's letter stating its objection. The attorney shall have the burden to prove the entitlement to attorney's fees, costs, or related expenses. A copy of the motion and attachments shall be served on the Justice Administrative Commission at least 5 business days prior to the date of a hearing. The Justice Administrative Commission shall have standing to appear before the court to contest any motion for order approving payment of attorney's fees, costs, or related expenses and may participate in a hearing on the motion by use of telephonic or other communication equipment unless ordered otherwise. The Justice Administrative Commission may contract with other public or private entities or individuals to appear before the court for the purpose of contesting any motion for order approving payment of attorney's fees, costs, or related expenses. The fact that the Justice Administrative Commission has not objected to any portion of the billing or to the sufficiency of the documentation is not binding on the court. The court retains primary authority and responsibility for determining the reasonableness of all billings for attorney's fees, costs, and related expenses, subject to statutory limitations. Private court-appointed counsel is entitled to compensation upon final disposition of a case, except as provided in subsections (7), (8), and (10). Before final disposition of a case, a private court-appointed counsel may file a motion for fees, costs, and related expenses for services completed up to the date of the motion in any case or matter in which legal services have been provided by the attorney for more than 1 year. The amount approved by the court may not exceed 80 percent of the fees earned, or costs and related expenses incurred, to date, or an amount proportionate to the maximum fees permitted under this section based on legal services provided to date, whichever is less. The court may grant the motion if counsel shows that failure to grant the motion would work a particular hardship upon counsel.

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

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

2. For noncapital, nonlife felonies represented at the trial level: \$2,500.

3. For life felonies represented at the trial level: \$3,000.

4. For capital cases represented at the trial level: \$3,500.

5. For representation on appeal: \$2,000.

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

(4) By January 1 of each year, the Article V Indigent Services Advisory Board shall recommend to the Legislature any adjustments to the compensation provisions of this section.

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

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

(6) A private attorney appointed in lieu of the public defender to represent an indigent defendant may not reassign or subcontract the case to another attorney or allow another attorney to appear at a critical stage of a case who is not on the registry developed under s. [27.40](#).

(7) Private court-appointed counsel representing a parent in a dependency case that is open may submit a request for payment to the Justice Administrative Commission at the following intervals:

(a) Upon entry of an order of disposition as to the parent being represented.

(b) Upon conclusion of a 12-month permanency review.

(c) Following a judicial review hearing.

In no case, however, may counsel submit requests under this subsection more than once per quarter, unless the court finds extraordinary circumstances justifying more frequent submission of payment requests.

(8) Private court-appointed counsel representing an individual in an appeal to a district court of appeal or the Supreme Court may submit a request for payment to the Justice Administrative Commission at the following intervals:

- (a) Upon the filing of an appellate brief, including, but not limited to, a reply brief.
 - (b) When the opinion of the appellate court is finalized.
- (9) Private court-appointed counsel may not bill for preparation of invoices whether or not the case is paid on the basis of an hourly rate or by flat fee.
- (10) The Justice Administrative Commission shall develop a schedule to provide partial payment of criminal attorney fees for cases that are not resolved within 6 months. The schedule must provide that the aggregate payments shall not exceed limits established by law. Any partial payment made pursuant to this subsection shall not exceed the actual value of services provided to date. Any partial payment shall be proportionate to the value of services provided based on payment rates included in the contract, not to exceed any limit provided by law.

History.--s. 20, ch. 2003-402; s. 11, ch. 2004-265; s. 4, ch. 2005-236.

[Title V](#)
JUDICIAL BRANCH

[Chapter 29](#)
COURT SYSTEM FUNDING

29.007 Court-appointed counsel.--For purposes of implementing s. 14, Art. V of the State Constitution, the elements of court-appointed counsel to be provided from state revenues appropriated by general law are as follows:

- (1) Private attorneys appointed by the court to handle cases where the defendant is indigent and cannot be represented by the public defender under ss. [27.42](#) and [27.53](#).
- (2) Private attorneys appointed by the court to represent indigents or other classes of litigants in civil proceedings requiring court-appointed counsel in accordance with state and federal constitutional guarantees and federal and state statutes.
- (3) Reasonable court reporting and transcription services necessary to meet constitutional or statutory requirements, including the cost of transcribing and copying depositions of witnesses and the cost of foreign language and sign-language interpreters and translators.
- (4) Witnesses, including expert witnesses, summoned to appear for an investigation, preliminary hearing, or trial in a case when the witnesses are summoned on behalf of an indigent, and any other expert witnesses approved by the court.
- (5) Mental health professionals appointed pursuant to s. [394.473](#) and required in a court hearing involving an indigent, mental health professionals appointed pursuant to s. [916.115](#)(2) and required in a court hearing involving an indigent, and any other mental health professionals required by law for the full adjudication of any civil case involving an indigent person.

(6) Reasonable pretrial consultation fees and costs.

(7) Travel expenses reimbursable under s. [112.061](#) reasonably necessary in the performance of constitutional and statutory responsibilities.

Subsections (3), (4), (5), (6), and (7) apply when court-appointed counsel is appointed; when the court determines that the litigant is indigent for costs; or when the litigant is acting pro se and the court determines that the litigant is indigent for costs at the trial or appellate level. This section applies in any situation in which the court appoints counsel to protect a litigant's due process rights. The Justice Administrative Commission shall approve uniform contract forms for use in processing payments for due process services under this section. In each case in which a private attorney represents a person determined by the court to be indigent for costs, the attorney shall execute the commission's contract for private attorneys representing persons determined to be indigent for costs.

History.--s. 7, ch. 2000-237; s. 43, ch. 2003-402; s. 16, ch. 2005-236.

129.014 Article V Indigent Services Advisory Board.--

(1) There is created the Article V Indigent Services Advisory Board. The board shall exist for the purpose of advising the Legislature in establishing qualifications and compensation standards governing the expenditure of state appropriated funds for those providing state-funded due process services for indigents provided through the courts, state attorneys, public defenders, and private court-appointed counsel. These services include, but are not limited to, court-appointed counsel, court reporting and transcription services, interpreter services, and expert witnesses. Standards recommended by the board shall take into account local variations and market conditions and availability of attorneys and other service providers. The board shall also exist for the purpose of advising the Legislature on cost containment strategies and policies.

(2) The board shall be composed of 12 members, appointed as follows:

(a) The Governor shall appoint three members as follows: one state attorney, one public defender, and one clerk of court.

(b) The President of the Senate and the Speaker of the House of Representatives shall each appoint three members. Of the members appointed by the President of the Senate, one shall be a county commissioner and one shall be an attorney in private practice with significant criminal trial experience. Of the members appointed by the Speaker of the House of Representatives, one shall be a county commissioner and one shall be an attorney in private practice with significant civil trial experience. The President of the Senate and the Speaker of the House of Representatives may each appoint a member from their respective chambers.

(c) The Chief Justice of the Supreme Court shall appoint three members as follows: three trial court judges, representing a cross-section of small, medium, and large

circuits, different regions of the state, and court divisions. Appointments shall be made effective July 1, 2003.

(3) Members shall be appointed for 4-year terms, except for an appointment to fill an unexpired term, in which event the appointment shall be for the remainder of the unexpired term only. In the case where a member must hold office to be qualified for board membership, the member's term shall also expire upon failure to maintain the office, whichever occurs first.

(4) The members shall elect a chairperson annually and shall meet at the call of the chairperson, at the request of a majority of the membership, or at the request of the President of the Senate or the Speaker of the House of Representatives. Members shall serve without pay but shall be entitled to reimbursement for their expenses in carrying out their duties as provided in s. [112.061](#). Public officer members shall be reimbursed through the budget entity through which they are compensated.

(5) The board shall:

(a) Recommend qualifications for those providing authorized state-funded due process services, including qualifications for state-funded court reporters, interpreters, and private court-appointed counsel, in addition to those set forth in s. [27.40](#). At a minimum, the board shall incorporate into the eligibility and performance standards for court-appointed counsel requirements relating to length of membership in The Florida Bar, continuing legal education, and relevant trial experience. At a minimum, the experience standards for criminal cases must require participation in three criminal trials for an attorney to be eligible for a third-degree felony case and five criminal trials to be eligible for a case involving a felony of the second degree or a higher degree.

(b) Recommend any needed adjustments to existing compensation standards for private court-appointed counsel and other providers of due process services pursuant to s. [27.5304](#).

(c) Identify due process services for indigents that should be included on the state contract and bid competitively on a circuit, region, or statewide basis.

(d) Recommend statewide contracting standards for procurement of state-funded due process services and developing uniform contract forms for use in procuring services.

(e) Advise the Legislature on strategies and policies to contain costs.

(f) Recommend uniform standards to be applied by the public defender and the court in determining whether or not there is a conflict of interest pursuant to s. [27.5303](#).

(6) To aid in the transition to full implementation of Revision 7 to Article V, the board shall issue its initial recommendations by November 1, 2003. Thereafter, the board shall issue any additional recommendations or revisions thereto by September 1 of each year.

(7) In preparing budgets and entering into contractual arrangements for the procurement of state-funded due process services for fiscal year 2004-2005, the Chief Justice and the circuit Article V indigent services committees are authorized and encouraged to consider the advice and recommendations of the board.

(8) The Justice Administrative Commission shall provide staff support to the board.

History.--s. 48, ch. 2003-402; s. 70, ch. 2005-236.

¹**Note.**--Repealed July 1, 2006, by s. 70, ch. 2005-236.

29.015 Contingency fund; limitation of authority to transfer funds in contracted due process services appropriation categories.--

(1) An appropriation may be provided in the General Appropriations Act in the Justice Administrative Commission to serve as a contingency fund for the purpose of alleviating deficits in contracted due process services appropriation categories, including private court-appointed counsel appropriation categories, that may occur from time to time due to extraordinary events that lead to unexpected expenditures.

(2) In the event that a state attorney or public defender incurs a deficit in a contracted due process services appropriation category, the following steps shall be taken in order:

(a) The state attorney or public defender shall first attempt to identify surplus funds from other appropriation categories within his or her office and submit a budget amendment pursuant to chapter 216 to transfer funds from within the office.

(b) In the event that the state attorney or public defender is unable to identify surplus funds from within his or her office, he or she shall certify this to the Justice Administrative Commission along with a complete explanation of the circumstances which led to the deficit and steps the office has taken to reduce or alleviate the deficit. The Justice Administrative Commission shall inquire as to whether any other office has surplus funds in its contracted due process services appropriation categories which can be transferred to the office that is experiencing the deficit. If other offices indicate that surplus funds are available within the same appropriation category, the Justice Administrative Commission shall transfer the amount needed to fund the deficit and notify the Governor and the chair and vice chair of the Legislative Budget Commission 14 days prior to a transfer pursuant to the notice, review, and objection provisions of s. [216.177](#). If funds appropriated for this purpose are available in a different budget entity, the Justice Administrative Commission shall request a budget amendment pursuant to chapter 216.

(c) If no office indicates that surplus funds are available to alleviate the deficit, the Justice Administrative Commission may request a budget amendment to transfer funds from the contingency fund. Such transfers shall be in accordance with all applicable provisions of chapter 216 and shall be subject to review and approval by the Legislative Budget Commission. The Justice Administrative Commission shall

submit the documentation provided by the office explaining the circumstances that led to the deficit and the steps taken by the office and the Justice Administrative Commission to identify surplus funds to the Legislative Budget Commission.

(3) In the event that there is a deficit in a statewide contracted due process services appropriation category provided for private court-appointed counsel necessary due to withdrawal of the public defender due to an ethical conflict, the following steps shall be taken in order:

(a) The Justice Administrative Commission shall first attempt to identify surplus funds from other contracted due process services appropriation categories within the Justice Administrative Commission and submit a budget amendment pursuant to chapter 216 to transfer funds from within the commission.

(b) In the event that the Justice Administrative Commission is unable to identify surplus funds from within the commission, the commission shall inquire of each of the public defenders as to whether any office has surplus funds in its contracted due process services appropriations categories which can be transferred. If any public defender office or offices indicate that surplus funds are available, the Justice Administrative Commission shall request a budget amendment to transfer funds from the office or offices to alleviate the deficit upon agreement of the contributing office or offices.

(c) If no public defender office has surplus funds available to alleviate the deficit, the Justice Administrative Commission may request a budget amendment to transfer funds from the contingency fund. Such transfers shall be in accordance with all applicable provisions of chapter 216 and shall be subject to review and approval by the Legislative Budget Commission. The Justice Administrative Commission shall submit the documentation provided by the office explaining the circumstances that led to the deficit and the steps taken by the Justice Administrative Commission to identify surplus funds to the Legislative Budget Commission.

(4) In the event that there is a deficit in a statewide appropriation category provided for private court-appointed counsel other than for conflict counsel as described in subsection (3), the following steps shall be taken in order:

(a) The Justice Administrative Commission shall first attempt to identify surplus funds from other contracted due process services appropriation categories within the Justice Administrative Commission and submit a budget amendment pursuant to chapter 216 to transfer funds from within the commission.

(b) In the event that the Justice Administrative Commission is unable to identify surplus funds from within the commission, the commission may submit a budget amendment to transfer funds from the contingency fund. Such transfers shall be in accordance with all applicable provisions of chapter 216 and shall be subject to review and approval by the Legislative Budget Commission. The Justice Administrative Commission shall submit documentation explaining the circumstances that led to the deficit and the steps taken to identify surplus funds to the Legislative Budget Commission.

(5) Notwithstanding any provisions in chapter 216 to the contrary, no office shall transfer funds from a contracted due process services appropriation category or from

a contingency fund category authorized in this section except as specifically authorized in this section. In addition, funds shall not be transferred from a state attorney office to alleviate a deficit in a public defender office and funds shall not be transferred from a public defender office to alleviate a deficit in a state attorney office.

History.--s. 49, ch. 2003-402; s. 19, ch. 2005-236.

29.018 Cost sharing of due-process services; legislative intent.--It is the intent of the Legislature to provide state-funded due-process services to the state courts system, state attorneys, public defenders, and court-appointed counsel in the most cost-effective and efficient manner. The state courts system, state attorneys, public defenders, and the Justice Administrative Commission on behalf of court-appointed counsel may enter into contractual agreements to share, on a pro rata basis, the costs associated with court reporting services, court interpreter and translation services, court experts, and all other due-process services funded by the state pursuant to this chapter. These costs shall be budgeted within the funds appropriated to each of the affected users of services.

History.--s. 95, ch. 2004-265; s. 20, ch. 2005-236.

29.019 Billings rendered for pre-July 1, 2004, services.--Billings submitted for payment of due process services, including, but not limited to, court reporter services, court interpreter services, expert witness services, mental health evaluations, and court-appointed counsel services must be paid by the counties if the services were rendered before July 1, 2004. Counties must also pay for the entire cost of any flat-fee-per-case payment pursuant to a contract or professional services agreement with court-appointed counsel for appointments made before July 1, 2004, regardless of whether work on the case is actually concluded prior to July 1, 2004. Except for flat-fee contracts with court-appointed counsel, billings for services on any case that commenced prior to July 1, 2004, but continues past July 1, 2004, must be submitted with an itemized listing of payment due for services rendered before July 1, 2004, and on or after July 1, 2004. The county shall pay the portion of the bill for services rendered before July 1, 2004, and provide a copy of the itemized bill to the Justice Administrative Commission or the Office of the State Courts Administrator as appropriate for payment of the portion of the bill for services provided on or after July 1, 2004.

History.--s. 97, ch. 2004-265.

92.231 Expert witnesses; fee.--

(1) The term "expert witness" as used herein shall apply to any witness who offers himself or herself in the trial of any action as an expert witness or who is subpoenaed to testify in such capacity before a state attorney in the investigation of a criminal matter, or before a grand jury, and who is permitted by the court to qualify and testify as such, upon any matter pending before any court.

¹(2) Any expert or skilled witness who shall have testified in any cause shall be allowed a witness fee including the cost of any exhibits used by such witness in an amount agreed to by the parties, and the same shall be taxed as costs. In instances where services are provided for the state, including for state-paid private court-appointed counsel, payment from state funds shall be in accordance with standards adopted by the Legislature after receiving recommendations from the Article V Indigent Services Advisory Board.

¹(3) In a criminal case in which the state or an indigent defendant requires the services of an expert witness whose opinion is relevant to the issues of the case, the expert witness shall be compensated in accordance with standards adopted by the Legislature after receiving recommendations from the Article V Indigent Services Advisory Board.

History.--ss. 1, 2, ch. 25090, 1949; s. 19, ch. 29737, 1955; s. 1, ch. 59-201; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 2, ch. 78-361; s. 1, ch. 78-379; s. 512, ch. 95-147; s. 78, ch. 2003-402; s. 37, ch. 2005-236.

¹**Note.**--Section 37, ch. 2005-236, amended subsections (2) and (3), effective July 1, 2006, to read:

(2) Any expert or skilled witness who shall have testified in any cause shall be allowed a witness fee including the cost of any exhibits used by such witness in an amount agreed to by the parties, and the same shall be taxed as costs. In instances where services are provided for the state, including for state-paid private court-appointed counsel, payment from state funds shall be in accordance with standards adopted by the Legislature.

(3) In a criminal case in which the state or an indigent defendant requires the services of an expert witness whose opinion is relevant to the issues of the case, the expert witness shall be compensated in accordance with standards adopted by the Legislature.

Note.--Former s. 90.231.