



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 Region 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 #			



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 - 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
- NO

Florida 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

Submit

Clear Form

[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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(850) 488-2415
SUNCOM 278-2415
FAX (850) 488-8944

E. Frank Farrell
Executive Director

STATE OF FLORIDA
JUSTICE ADMINISTRATIVE COMMISSION

Post Office Box 1654
117 West College Avenue
Tallahassee, Florida 32302

COMMISSIONERS

State Attorney
Curtis A. Golden

Public Defender
Diamond R. Litty

State Attorney
Jerry Hill

Public Defender
Dennis Roberts

January 22, 2004

Mr. William O. Monroe, CPA
Auditor General
State of Florida
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1450

Dear Mr. Monroe:

Thank you for the opportunity to respond to the preliminary and tentative audit findings and recommendations of your audit of the:

Capital Collateral Regional Counsel - Northern Region
Transfer of Responsibilities to the Registry of Attorneys - Pilot Program

The following response addresses finding number one:

Finding No. 1:

Certifications Forward...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).

Because Section 216.301(1)(a), Florida Statutes, requires that certified forward amounts unpaid at December 31, 2003, revert to the State's General Revenue Fund on that date, we are unaware of any legal authority to transfer certified forward moneys unspent at that date to another entity for payment of expenses of the subsequent fiscal year.

Recommendations

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

The Justice Administrative Commission administratively serves the offices of State Attorneys, Public Defenders, and Capital Collateral Regional Counsels

unemployment compensation for former CCRC-Northern Region employees who continue to receive unemployment compensation benefits past December 31, 2003.

Agency 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 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.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Frank Farrell". The signature is written in a cursive style with a large initial "E" and a long, sweeping underline.

E. Frank Farrell
Executive Director

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

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 #			

July 30, 2003

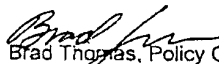
Mr. Bill Jennings
Capital Collateral Counsel – Middle Region
3801 Corporex Park Drive, Suite 210
Tampa, Florida 33691

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/rjd



STATE OF FLORIDA
LAW OFFICE OF THE
CAPITAL COLLATERAL
REGIONAL COUNSEL
MIDDLE REGION



BILL JENNINGS
CAPITAL COLLATERAL REGIONAL COUNSEL

VICKI BUTTS
EXECUTIVE DIRECTOR

February 04, 2004

Mr. William O. Monroe, CPA
Auditor General
State of Florida
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1450

Re: Response to Preliminary and Tentative Audit Findings

Dear Mr. Monroe:

Listed below, please find Capital Collateral Regional Counsel - Middle Region's response to the preliminary and tentative audit finds and recommendations on the operations audit of the Capital Collateral Regional Counsel-Northern Region, Transfer of Responsibilities to the Registry of Attorneys - Pilot Program.. I would like to thank you for the opportunity to respond to the findings.

Finding No. 1: Certifications Forward

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).

Because Section 216.301(1)(a), Florida Statutes, requires that certified forward amounts unpaid at December 31, 2003, revert to the State's General Revenue Fund on that date, we are unaware of any legal authority to transfer certified forward moneys unspent at that date to another entity for payment of expenses of the subsequent fiscal year.

Recommendations:

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.

Agency 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.

Finding No. 7: Unaccounted for Equipment

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.

Mr. William O. Monroe, CPA
February 04, 2004
Page Three

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.

Recommendation:

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

Agency 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.

Again, thank you for the opportunity to respond to these findings. Should you have questions, please do not hesitate to contact me.

Sincerely,



Bill Jennings
Capital Collateral Regional Counsel
Middle Region

BJ/vb

Attachments

STATE OF FLORIDA

OFFICE OF THE GOVERNOR

Executive Order Number 03-119

WHEREAS, the 2003 Legislature did not fund the Office of the Capital Collateral Regional Counsel - Northern Region for fiscal year 2003-2004, and

WHEREAS, on July 1, 2003, funding for the Office of the Capital Collateral Regional Counsel - Northern Region ceases to exist, and

WHEREAS, during the 2003-2004 fiscal year, the capital cases currently assigned to the Capital Collateral Regional Counsel - Northern Region are to be reassigned to a private registry of lawyers, and

WHEREAS, Governor Bush has been advised that it is necessary to appoint a transition director in order to effect a smooth transfer of case files and the closing of the Office of the Capital Collateral Regional Counsel - Northern Region.

NOW, THEREFORE, I, JEB BUSH, Governor of Florida, in obedience to my solemn constitutional duty to "take care that the laws be faithfully executed," and pursuant to the Constitution and the laws of the State of Florida, do hereby promulgate the following Executive Order, effective immediately:

Section 1.

Bill Jennings, Capital Collateral Regional Counsel – Middle Region, is hereby appointed as Transition Director for the Capital Collateral Regional Counsel - Northern Region, for the purpose of overseeing the transition of case files to the private registry or other assigned counsel.

Section 2.

The Transition Director is not responsible for representing the client. The Transition Director is authorized to take custody of the files and incur reasonable expenses as is necessary to implement the transition of cases from the Office of the Capital Collateral Regional Counsel - Northern Region and is further authorized to oversee administrative functions associated with the transition.

Section 3.

In any case where there may be a conflict of interest between the Capital Collateral Regional Counsel – Middle Region and the client, correspondence shall be provided to the client's counsel of record.

Section 4.

Capital Collateral Regional Counsel, Michael Reiter, is requested to cooperate and render whatever assistance is necessary to the Transition Director in the performance of his duties.

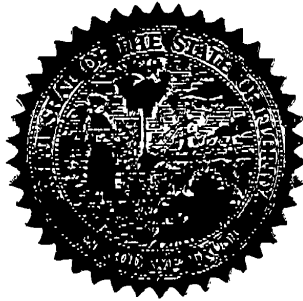
Section 5.

Within thirty (30) days of the date of this appointment, the Transition Director shall report to the Governor on the progress being made in the transition.

Section 6.

The period of this appointment shall expire on August 31, 2003, unless extended by executive order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capitol this 1st day of July, 2003.



Jeb Bush

GOVERNOR

ATTEST:

Glenda E. Hood

SECRETARY OF STATE

2003 JUL -1 PM 3:08
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

FILED



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

RECEIVED BY
RECEIVED BY
CROC-MIDDLE
CROC-MIDDLE

July 25, 2003

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

Dear Mr. Jennings:

The General Appropriation Act of 2003 (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. The Governor's Office of Policy and Budget authorizes the use of fiscal year 2002-03 funds to pay certain expenses that may be incurred in FY 2003-04 that have been identified as necessary to facilitate closure of the office.

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 are deemed appropriate in this unique situation. Authorized expenditures include contracted staff, rent, utilities, case file shipping expenses, and other necessary expenditures as approved by the Office of Policy and Budget. This authorization is for 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



Governor's Mentoring Initiative
BE A MENTOR. BE A BIG HELP.
1-800-825-3786



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

December 31, 2003

Post-It* Fax Note	7671	Date	12/31	# of pages	1
To	Don Barchdale	From	Gus Delaney		
Co./Dept.	CCOC-Mid	Co.	EOG/OPB/PSU		
Phone #		Phone #	922-4020		
Fax #	913-740-3554	Fax #			

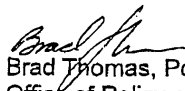
Mr. Bill Jennings
Capital Collateral Counsel – Middle Region
3801 Corporex Park Drive, Suite 210
Tampa, Florida 33691

Dear Mr. Jennings:

This office provided you authority to pay certain expenditures related to the closing of the Capital Collateral Counsel – Northern Region through September 30, 2003 in a letter dated July 30, 2003. The purpose of this letter is to extend the initial anticipated period that your office was provided authority to approve the use of certified forward monies for the Northern Region to December 31, 2003 to specifically cover unemployment compensation benefits for former employees of the Northern Region.

Thank you for your effort in making this transition successful.

Sincerely,


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

BT/mjd



Jim King
President



Representative Sandra "Sandy" Adams
Senator Walter G. "Skip" Campbell, Jr.
Judge Charles T. Canady
Representative Dan Gelber
Judge Richard A. Luce
Senator J. Alex Villalobos

The Florida Legislature
COMMISSION ON CAPITAL CASES

Johnnie Byrd
Speaker



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

February 9, 2004

Mr. William O. Monroe, CPA
Auditor General
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

Re: Capital Collateral Regional Counsel – Northern Region

Dear Mr. Monroe:

Our response to your Preliminary & Tentative Findings is enclosed.

I will not be submitting the "management representation letter" that has been requested by your staff to accompany our response. I believe the matters covered by the letter exceed the scope of the "status report" authorized by Section 27.701(2), Florida Statutes. Furthermore, I believe it has been the practice of the Auditor General not to audit units of the Legislature. See Section 27.709(1)(f), Florida Statutes, providing that the Commission on Capital Cases is staffed by the Office of Legislative Services.

Sincerely,

A handwritten signature in cursive script that reads "Roger R. Maas".

Roger R. Maas
Executive Director

Enclosures

The Commission on Capital Cases'
Response to the Auditor General's
Operational Audit of the
Capital Collateral Regional Counsel – Northern Region
Transfer of Responsibilities to the Registry Attorneys
- Pilot Program -

Introduction

This response pertains only to the sections of the Operational Audit that makes recommendations involving the Commission on Capital Cases. The Auditor General's findings have been copied verbatim and are shown in italics.

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 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.

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).

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.

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 and did not include all of the required certifications. Specifically, the forms 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 applications 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.

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). By submitting the online application, an attorney certifies that he/she meets the minimum requirements of 27.704(2). (See Attachment 2, Online Application.)

The commission has replaced the questioned online application with the standard application in a PDF file format (See Attachment 4, Standard Application). 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.

February 9, 2004

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.

(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 .

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
- NO

Florida Bar Number

ATTACHMENT 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

HINSON.MARYJEAN

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

<P>
<P> [REDACTED]
<P>
<P>
<P> You have entered the following information:
<P>
<P>
<P> Telephone Number: [REDACTED]
<P>
<P> Mailing Address: [REDACTED] [REDACTED]
<P>
<P> E-mail address: [REDACTED]
<P>
<P> Judicial Circuit: ALL
<P>
<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>
<P> Do you have three years experience: YES
<P>
<P> You have participated in at least five criminal trials: YES
<P>
<P> You are a member of good standing in the florida bar: YES
<P>
<P> Florida Bar Number: [REDACTED]
<P>
<P> Years admitted: [REDACTED]
<P>
<P> You will be available: [REDACTED]
<P>
<P> You commented that:
<P>
<P>

ATTACHMENT 3

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

STATE OF FLORIDA

OFFICE OF THE GOVERNOR

Executive Order Number 03-119

WHEREAS, the 2003 Legislature did not fund the Office of the Capital Collateral Regional Counsel - Northern Region for fiscal year 2003-2004, and

WHEREAS, on July 1, 2003, funding for the Office of the Capital Collateral Regional Counsel - Northern Region ceases to exist, and

WHEREAS, during the 2003-2004 fiscal year, the capital cases currently assigned to the Capital Collateral Regional Counsel - Northern Region are to be reassigned to a private registry of lawyers, and

WHEREAS, Governor Bush has been advised that it is necessary to appoint a transition director in order to effect a smooth transfer of case files and the closing of the Office of the Capital Collateral Regional Counsel - Northern Region.

NOW, THEREFORE, I, JEB BUSH, Governor of Florida, in obedience to my solemn constitutional duty to "take care that the laws be faithfully executed," and pursuant to the Constitution and the laws of the State of Florida, do hereby promulgate the following Executive Order, effective immediately:

Section 1.

Bill Jennings, Capital Collateral Regional Counsel – Middle Region, is hereby appointed as Transition Director for the Capital Collateral Regional Counsel - Northern Region, for the purpose of overseeing the transition of case files to the private registry or other assigned counsel.

Section 2.

The Transition Director is not responsible for representing the client. The Transition Director is authorized to take custody of the files and incur reasonable expenses as is necessary to implement the transition of cases from the Office of the Capital Collateral Regional Counsel - Northern Region and is further authorized to oversee administrative functions associated with the transition.

Section 3.

In any case where there may be a conflict of interest between the Capital Collateral Regional Counsel – Middle Region and the client, correspondence shall be provided to the client's counsel of record.

Section 4.

Capital Collateral Regional Counsel, Michael Reiter, is requested to cooperate and render whatever assistance is necessary to the Transition Director in the performance of his duties.

Section 5.

Within thirty (30) days of the date of this appointment, the Transition Director shall report to the Governor on the progress being made in the transition.

Section 6.

The period of this appointment shall expire on August 31, 2003, unless extended by executive order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capitol this 1st day of July, 2003.



Jeb Bush

GOVERNOR

ATTEST:

Glenda E. Hood

SECRETARY OF STATE

FILED
2003 JUL - 1 PH 3: 08
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA