



**AUDITOR GENERAL**  
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**CAPITAL COLLATERAL REGIONAL COUNSEL PILOT PROGRAM**  
Performance Review

CAPITAL COLLATERAL REGIONAL COUNSEL PILOT PROGRAM

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**SUMMARY OF FINDINGS**

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The Legislature established a pilot program effective July 1, 2003, transferring responsibilities of the Capital Collateral Regional Counsel (CCRC) representing the northern region of the State to a registry of attorneys established by the Executive Director of the Commission on Capital Cases. Section 27.701(2), Florida Statutes<sup>1</sup>, requires us to conduct a performance review of the operations of the pilot program to determine the effectiveness and efficiency of using attorneys from the registry compared to the CCRCs. A summary of our findings for the period July 1, 2003, through June 30, 2006, and selected actions through November 30, 2006, follows:

- **Finding No. 1:** When considering all costs of delivering capital collateral representation services, the capital collateral regional counsel system is significantly more costly than the use of the registry of attorneys. The difference in cost is a result, in part, of the administrative costs of the CCRC. Additionally, although complete information was not obtained from the registry attorneys, it appears from the information provided by the registry attorneys that the higher cost of delivery by the CCRCs can also be attributed to significantly more time expended on a per case basis by CCRC attorneys and investigators, numbers of witnesses and experts interviewed, use of experts, and public records requests. Based on the average costs of legal counsel provided per case and the average cost per hour for attorney, over both fiscal years, the CCRCs provided an average of 355 hours of legal counsel per case and the registry attorneys provided an average of 196 hours per case, after adjustment for hours applied above the statutory limits and denied payment.
- **Finding No. 2:** Useful comparisons as to the timeliness of capital collateral representation proceedings are difficult due to the long duration and small number of cases, each subject to varying circumstances that can impact the length of time required to complete the case. Further, such comparisons should be made in light of the fact that there are significant aspects of a capital collateral case that are not directly impacted by the efforts of the CCRC or registry attorneys assigned to the cases. The time spent on both the CCRC middle and southern cases and the registry cases in the capital collateral representation phase represents approximately one-half of the time between sentencing of an inmate and completion of the capital collateral appeals in State and Federal court. Additionally, only about 33 percent of the time spent on a case in the capital collateral appeal phase in State court is directly impacted by the CCRC attorney (41 percent for registry attorneys). Registry attorneys tend to file more requests for extensions, but this has not generally resulted in increased length of the capital collateral representation process. The overall length of time under the direct control of the CCRC and registry attorneys required for a capital case to complete the capital collateral representation process in State court is 2.0 years for CCRC cases and 2.1 years for registry cases.
- **Finding No. 3:** The CCRCs achieved a higher incidence of providing relief to death row inmates with 14 instances over 2 years as compared to 5 for the registry; however, due to the length of the appellate processes and limited number of cases, this statistic could vary significantly from year to year. The court's monitoring of the performance of counsel assigned to capital cases, required by Section 27.711(12), Florida Statutes, has not occurred. Legislative performance measures intended to provide an indication as to quality of representation are the number of substantiated Florida Bar grievances filed and the numbers of factual issues raised by the attorneys. The CCRCs reported no substantiated Florida Bar grievances during the audit period and the Executive Director of the Commission on Capital Cases reported one Florida Bar grievance related to a registry attorney. As a result, substantiated Florida Bar

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<sup>1</sup> All references to Florida Statutes are to the 2005 Florida Statutes unless otherwise noted.

grievances do not appear to be a significant factor in a comparison of quality of representation between CCRC and registry attorneys. Higher average numbers per case of factual issues raised by the CCRC attorneys indicate a tendency on the part of the CCRCs to raise more factual issues than registry attorneys. According to the Executive Director and the CCRCs for the middle and southern regions, when there is a complete change of attorneys in a capital case, the extensive case file associated with a capital case, often compiled over a period of many years, creates a burden for the new attorney in terms of becoming sufficiently familiar with the case to provide effective and timely representation. This situation is more prevalent with registry attorneys than with CCRC attorneys.

- **Finding No. 4:** The various states with significant death row populations have a variety of systems for representation of death row inmates in postconviction appeal proceedings, ranging from no State involvement to a centralized State agency providing counsel for such purpose. Most states utilize a combination of State employed counsel and private attorneys. There is no specific model for providing postconviction capital collateral representation that has been consistently applied in states with significant death row populations, except that the use of private attorneys is generally combined with the use of a state agency or nonprofit organization to provide counsel or to assist the private counsel.

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## INTRODUCTION

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Chapter 27, Part IV, Florida Statutes, establishes Capital Collateral Regional Councils (CCRCs) to provide for the collateral representation of persons convicted and sentenced to death in Florida. Prior to July 1, 2003, there were three CCRCs representing the northern, middle, and southern regions of the State. Chapter 2003-399, Laws of Florida, amended Section 27.701(2), Florida Statutes, effective July 1, 2003, to establish a pilot program transferring the responsibilities of the CCRC representing the northern region to a registry of private attorneys established by the Executive Director of the Commission on Capital Cases (Executive Director) pursuant to Section 27.710, Florida Statutes. Section 27.701(2), Florida Statutes, also requires that the Auditor General schedule a performance review of the pilot program to determine the effectiveness and efficiency of using attorneys from the registry compared to the CCRCs. The review is required to include, at a minimum, comparisons of the timeliness and costs of the pilot and the counsels. The registry of private attorneys was established in 1998 to provide capital collateral representation when the CCRCs were unable to provide such representation due to CCRC staffing limitations or ethical conflict situations with respect to the CCRCs. In addition to the pilot program cases, the registry attorneys represent death row inmates throughout the State. Because of the limited number of active pilot program cases, the fact that many of the pilot project cases (45 of 62) were assigned to attorneys formerly employed by the CCRC for the northern region, and the primary objective of determining the effectiveness and efficiency of using attorneys from the registry compared to the CCRCs, our review included comparisons of CCRC cases and all registry cases.

The Legislature annually approves performance measures and standards for the CCRCs to provide a means of assessing their performance in fulfilling the capital collateral representation duties described in Section 27.702, Florida Statutes. Section 27.711(14), Florida Statutes, extended the application of the legislative performance measures to the attorneys participating in the pilot program. Additionally, for the purposes of the pilot program, the CCRCs and the Executive Director agreed upon additional performance measures for the CCRCs and all registry attorneys to further demonstrate their performance. While performance standards were not established for the agreed-upon measures, they do serve as a basis for comparison of the CCRC and registry methods of providing capital collateral representation. The performance measure results for the 2004-05 and 2005-06 fiscal years are included in Appendices A and B, respectively, of this report and are discussed under appropriate subheadings.

**FINDINGS AND CONCLUSIONS**

**Finding No. 1: Costs of Capital Collateral Representation**

Cost-Related Performance Measures

The widely different organizational structures established for the delivery of capital collateral representation by the CCRCs and the registry result in significantly different costs of providing such services. In order to compare the State’s costs of providing capital collateral services to death row inmates by the CCRCs and the registry, the CCRCs and the Executive Director agreed to using total annual expenditures as a performance measure (item 2a on Appendices A and B), as well as annual expenditures for legal representation (item 2b on Appendices A and B). To compare the full cost of delivery of such services under the CCRC and registry methods, with differing case loads, it is necessary to consider all costs associated with each method on a per case basis. The total costs per case of operating the CCRC offices and the registry for the 2004-05 fiscal year were as follows:

TABLE 1

<b>Total CCRC and Registry Costs</b>				
<b>2004-05 Fiscal Year</b>				
<b>Description</b>	<b>CCRC Middle</b>	<b>CCRC Southern</b>	<b>CCRC Combined</b>	<b>Registry</b>
Legal Counsel & Investigation:				
Attorneys	\$1,138,636	\$1,303,194	\$2,441,830	\$1,393,099
Investigators	679,164	337,275	1,016,439	186,064
Total Legal Counsel & Investigation	\$1,817,800	\$1,640,469	\$3,458,269	\$1,579,163
Administrative Costs:				
Capital Collateral Regional Counsel Offices	\$1,715,698	\$1,358,309	\$3,074,007	
Commission on Capital Cases	-	-	-	378,056
Education & Miscellaneous Expenses	-	-	-	355,493
Department of Financial Services	-	-	-	135,731
Justice Administrative Commission	14,989	31,354	46,343	-
Total Administrative Costs	\$1,730,687	\$1,389,663	\$3,120,350	\$869,280
Total Costs	\$3,548,487	\$3,030,132	\$6,578,619	\$2,448,443
Deduct Federal Reimbursement	90,713	150,571	241,284	-
Total Costs, Less Federal Reimbursement	\$3,457,774	\$2,879,561	\$6,337,335	\$2,448,443
Active Cases with Costs Charged	91	75	166	94
Active Cases - Costs Charged in State Court Only	85	72	157	N/A
Average Total Cost per Active Case	\$38,994	\$40,402	\$39,630	\$26,047
Average Total Cost less Federal Reimbursement per Case in State Court Only	\$40,680	\$39,994	\$40,365	N/A

The total costs per case of operating the CCRC offices and the registry for the 2005-06 fiscal year were as follows:

TABLE 2

Total CCRC and Registry Costs				
2005-06 Fiscal Year				
Description	CCRC Middle	CCRC Southern	CCRC Combined	Registry
Legal Counsel & Investigation:				
Attorneys	\$1,225,884	\$1,239,175	\$2,465,059	\$1,374,862
Investigators	583,636	408,673	992,309	184,544
Total Legal Counsel & Investigation	\$1,809,520	\$1,647,848	\$3,457,368	\$1,559,406
Administrative Costs:				
Capital Collateral Regional Counsel Offices	\$1,645,082	\$1,348,531	\$2,993,613	
Commission on Capital Cases	-	-	-	420,546
Education & Miscellaneous Expenses	-	-	-	271,507
Department of Financial Services	-	-	-	142,446
Justice Administrative Commission	14,576	27,838	42,414	-
Total Administrative Costs	\$1,659,658	\$1,376,369	\$3,036,027	\$834,499
Total Costs	\$3,469,178	\$3,024,217	\$6,493,395	\$2,393,905
Deduct Federal Reimbursement	151,083	46,492	197,575	-
Total Costs, Less Federal Reimbursement	\$3,318,095	\$2,977,725	\$6,295,820	\$2,393,905
Active Cases with Costs Charged	93	76	169	98
Active Cases - Costs Charged in State Court Only	82	68	150	N/A
Average Total Cost per Active Case	\$37,303	\$39,792	\$38,422	\$24,428
Average Total Cost less Federal Reimbursement per Case in State Court Only	\$40,465	\$43,790	\$41,972	N/A

The legal counsel and investigation costs identified in these tables for the CCRCs include the salary and related costs actually paid to attorneys and investigators, respectively, to provide capital collateral representation and investigation services on behalf of death row inmates. Legal counsel costs for the registry attorneys include payments made to registry attorneys for all cases at \$100 per hour based on Section 27.711(4), Florida Statutes. Investigative costs for registry attorneys consist of the amounts paid to registry attorneys for investigative services at \$40 per hour pursuant to Section 27.711(5), Florida Statutes. Total costs for the CCRCs include all costs incurred by the CCRCs to operate the respective CCRC offices and costs incurred by the Justice Administrative Commission for administrative services provided to the CCRCs. Total costs for the CCRCs are reduced by the amount of Federal reimbursements to the State for representation of capital defendants in Federal court. For the registry, total costs include the administrative costs of the Commission on Capital Cases, which administers the registry, amounts paid to registry attorneys for miscellaneous expenses (Section 27.711(6), Florida Statutes) and legal education (Section 27.711(7), Florida Statutes), and costs incurred by the Department of Financial Services to administer the payments to the registry attorneys. A portion of the administrative costs of the Commission on Capital Cases relates to activities unrelated to the administration of the registry; however, the records to distinguish the costs of the registry from other costs were not maintained and we were not provided sufficient information to form a reasonable basis for allocation of the costs. As a result, the administrative

costs for the registry shown in Tables 1 and 2 may be overstated to the extent of costs unrelated to the registry. Such overstatement would not be sufficiently large to alter the conclusions in this report.

To establish a consistent definition of active cases for computing average total cost per active case, we considered all cases that had any level of activity during the respective fiscal years. For calculating average total cost less Federal reimbursements per case in State court only, we eliminated from the number of active cases those cases with Federal court activity only.

The average total costs per active case shown on these tables represent a 52 percent and 57 percent higher cost for the CCRCs as compared to the registry for the 2004-05 and 2005-06 fiscal years, respectively. The significant differences between total costs per active case may be attributed to the costs of the CCRC organization structures in place, as well as the time expended by CCRC attorneys as compared to registry attorneys. Significant costs incurred by the CCRCs, in addition to attorney and investigator salaries and benefits, include salaries and benefits for support staff, building rental, furniture and equipment, and utilities, all of which, for registry attorneys, are expected to be covered by the \$100 per hour fee paid to them.

Legislative Performance Measures

The Legislature approved two performance measures and standards related to the cost of providing representation in capital collateral proceedings, “cost per case for case preparation” and “cost per case for providing legal counsel.” The performance standards for these measures were \$19,347 and \$19,511, respectively, for both the 2004-05 and 2005-06 fiscal years. Because “case preparation” costs were not accumulated for the registry cases, for the purposes of the legislative performance measures, we focused on a comparison of the “costs per case for providing legal counsel (see item 3 on Appendices A and B).” Table 3 shows the average costs per case for providing legal counsel by the CCRCs and the registry:

TABLE 3

Legal Counsel Costs				
Description	CCRC Middle	CCRC Southern	CCRC Combined	Registry
<b>2004-05 Fiscal Year</b>				
Legal Counsel Costs: <sup>(1)</sup>				
Attorneys	\$1,138,635	\$1,303,194	\$2,441,829	\$1,393,099
Less Federal Reimbursements	(88,389)	(150,571)	(238,960)	
Total Legal Counsel Costs	<u>\$1,050,246</u>	<u>\$1,152,623</u>	<u>\$2,202,869</u>	<u>\$1,393,099</u>
Active Cases with Legal Counsel in State Court	85	72	157	72
Average Legal Counsel Cost per Case	\$12,356	\$16,009	\$14,031	\$19,349
<b>2005-06 Fiscal Year</b>				
Legal Counsel Costs: <sup>(1)</sup>				
Attorneys	\$1,225,884	\$1,239,175	\$2,465,059	\$1,374,862
Less Federal Reimbursements	(151,083)	(46,492)	(197,575)	
Total Legal Counsel Costs	<u>\$1,074,801</u>	<u>\$1,192,683</u>	<u>\$2,267,484</u>	<u>\$1,374,862</u>
Active Cases with Legal Counsel in State Court	82	68	150	74
Average Legal Counsel Cost per Case	\$13,107	\$17,539	\$15,117	\$18,579

(1) Legal counsel costs represent only salaries and benefits paid to CCRC attorneys and payments made to registry attorneys. They do not include administrative costs of the CCRC offices or the costs of the Commission on Capital Cases, which is responsible for administering the registry.



Costs for providing legal counsel represent the compensation paid to CCRC and registry attorneys. The performance measure approved by the Legislature did not describe the specific costs to be included as costs for providing legal counsel. The CCRCs reported as costs for providing legal counsel the attorney salary and related costs, and the Executive Director reported registry attorney payments. Administrative costs were not included in the costs for providing legal counsel. The CCRCs and the Executive Director should seek clarification from the Legislature for the specific costs to be included in this performance measure.

Because the State is reimbursed by the Federal government for costs incurred by CCRC attorneys in representing capital defendants in Federal court, for the purposes of this table, the compensation paid to the CCRC attorneys is reduced by the amount of the Federal reimbursements received by the State. As indicated in the above table, the average per case costs for providing legal counsel for the CCRCs and for the registry cases compared favorably with the performance standards. However, the registry's costs per case for providing legal counsel exceeded that of the combined CCRCs for each year.

The comparison of the costs per case for providing legal counsel should be evaluated in light of the differing compensation paid to CCRC and registry attorneys (see Appendices A and B, item 4). The average per hour cost identified by the Executive Director of the Commission on Capital Cases (Executive Director) for registry attorneys was \$100, the rate established by Section 27.711, Florida Statutes, for payment to registry attorneys. The combined average per hour costs identified by the CCRCs for attorneys of approximately \$41 for each fiscal year was based on salaries and benefits actually paid by the CCRCs, adjusted to remove Federal reimbursements and hours spent in Federal court and, for the CCRC for the southern region, to include privately contracted attorneys. However, the difference in legal counsel costs per case between the CCRCs and the registry may be attributable, at least in part, to a recognition that the registry attorneys are expected to cover certain costs in addition to a salary amount and benefits, such as office facilities, clerical and technical support, and utilities. Such costs are otherwise provided to CCRC attorneys through the operating costs of the CCRC offices; however, the CCRCs and the Executive Director have not allocated such administrative costs to cases or specific activities and they are not included in Table 3, as well as Tables 4 and 5, below. The difference in legal counsel costs per case, as compared to the significantly differing rates of compensation for the registry (\$100 per hour) and CCRC attorneys (\$41 per hour), can also be attributed to the fact that significantly more hours per case are applied by CCRC attorneys than by registry attorneys. Based on the average costs of legal counsel provided per case and the average cost per hour for attorney, over both fiscal years, the CCRCs provided an average of 355 hours of legal counsel per case and the registry attorneys provided an average of 196 hours per case, after adjustment for hours applied above the statutory limits and denied payment. The hours applied by the attorneys to conduct specific activities are discussed further under Level of Effort.

#### Level of Effort

The Legislature approved several performance measures and standards related to level of effort provided by the CCRCs (see Appendices A and B, items 12, 14, 15, and 17 through 22). The CCRCs and the Executive Director agreed to two additional performance measures related to level of effort (see items 13 and 16 on Appendices A and B). These performance measures generally relate to the number of cases handled and the number of specific actions taken with respect to the cases. As indicated on Appendices A and B, while the number of active cases handled by the combined CCRCs was slightly less than the standard established by the Legislature, the standards for the specific actions other than number of death warrants signed were generally exceeded. While the performance measures and standards generally list number of actions taken, Table 4 indicates the number of actions per active case and average costs for certain level of effort measures for the 2004-05 and 2005-06 fiscal years. These numbers of actions are not intended to provide an indication of effectiveness of the attorneys' efforts, but rather the amount of effort applied.



TABLE 4

<b>LEVEL OF EFFORT PERFORMANCE MEASURE RESULTS</b>				
<b>PERFORMANCE MEASURE</b>	<b>CCRC MIDDLE</b>	<b>CCRC SOUTHERN</b>	<b>CCRC COMBINED</b>	<b>REGISTRY</b>
<b>2004-05 FISCAL YEAR</b>				
No. of Active Cases	91	75	166	149
Witnesses and Experts Interviewed per Case <sup>(1)</sup>	41.1	20.3	31.7	13.4
Experts Used per Active Case	2.4	2.4	2.4	1.6
Cases with Public Records Requests	68	37	105	15
Average Legal Counsel Costs per Case for: <sup>(2)</sup>				
Filing 3.851 Motion	\$10,639	\$11,435	\$11,037	\$17,612
Holding Evidentiary Hearing	\$14,721	\$18,781	\$17,016	\$21,206
State Appellate Actions	\$8,671	\$10,338	\$9,690	\$15,251
<b>2005-06 FISCAL YEAR</b>				
No. of Active Cases	93	76	169	153
Witnesses and Experts Interviewed per Case <sup>(1)</sup>	38.3	20.6	30.3	13.5
Experts Used per Active Case	3.0	2.2	2.6	2.3
Cases with Public Records Requests	80	43	123	17
Average Legal Counsel Costs per Case for: <sup>(2)</sup>				
Filing 3.851 Motion	\$21,460	\$12,605	\$17,033	\$18,359
Holding Evidentiary Hearing	\$17,475	\$16,926	\$17,325	\$24,589
State Appellate Actions	\$10,976	\$15,010	\$12,237	\$17,263

(1) Due to the limited response by registry attorneys to requests for information concerning the numbers of witnesses and experts interviewed, the averages for this category are based on only approximately 20 percent of the registry cases.

(2) Legal counsel costs represent only salaries and benefits paid to CCRC attorneys and payments made to registry attorneys. They do not include administrative costs of the CCRC offices or the costs of the Commission on Capital Cases, which is responsible for administering the registry.

As indicated above, the CCRCs have identified many more witnesses and experts interviewed per case than have the registry attorneys. The information provided by the registry attorneys for witnesses and experts interviewed, experts used, and public records requested, is incomplete as only approximately 20 percent of the registry attorneys responded to requests by the Executive Director for such information. The majority of those registry attorneys responding were registry attorneys who were assigned former CCRC northern region cases and many of the responding attorneys were former CCRC northern region attorneys. This lack of response illustrates a problem in obtaining complete and accurate information from the registry attorneys. Although Section 27.711(14), Florida Statutes, requires that attorneys participating in the pilot program (registry attorneys assigned cases formerly handled by the CCRC for the northern region), as a condition of payment for services, report on the performance measures adopted by the Legislature for the CCRCs, registry attorneys assigned non-pilot registry cases were not required by law to report such information. While performance measure data was collected from the pilot program attorneys by the Executive Director for the purposes

of this pilot program, the attorneys participating in the pilot program did not provide the required information as a precondition of payment for services, and the Department of Financial Services made the payments to the pilot program attorneys without documentation of a review of such information. Further, performance information provided by registry attorneys is not subject to supervision and review to assure completeness and accuracy. By contrast, the CCRCs have established recordkeeping requirements for these activities and their information appears to be more complete and accurate. Table 4 shows that CCRC legal counsel costs for filing 3.851 motions, holding evidentiary hearings, and handling State appellate actions are less than the legal counsel costs incurred by registry attorneys; however, these costs do not include administrative costs. Table 5 shows the hours applied per case by CCRC and registry attorneys. Hours shown for the CCRCs are based on actual hours recorded by the attorneys and, for the registry, are based on hours billed by the attorneys.

TABLE 5

<b>ATTORNEY HOURS APPLIED PER CASE TO CAPITAL COLLATERAL APPEAL ACTIVITIES</b>				
<b>PERFORMANCE MEASURE</b>	<b>CCRC MIDDLE</b>	<b>CCRC SOUTHERN</b>	<b>CCRC COMBINED</b>	<b>REGISTRY</b>
<b>2004-05 FISCAL YEAR</b>				
Filing 3.851 Motion	279	293	286	180
Holding Evidentiary Hearings	386	479	439	218
Handling State Appellate Actions	227	254	243	154
Total	892	1,026	968	552
<b>2005-06 FISCAL YEAR</b>				
Filing 3.851 Motion	563	331	447	208
Holding Evidentiary Hearings	458	433	451	252
Handling State Appellate Actions	81	233	129	173
Total	1,102	997	1,027	633

The above table shows that the combined CCRC attorneys spent 75 and 62 percent more time on these activities than the registry attorneys during the 2004-05 and 2005-06 fiscal years, respectively. While this comparison does not provide any information as to the efficiency or effectiveness of the efforts by the respective attorneys, it does demonstrate that the CCRC attorneys have been applying considerably more time on these activities than the registry attorneys. A larger disparity exists with respect to the level of investigative time applied by the CCRCs and the registry attorneys. For the two year period from July 1, 2004, through June 30, 2006, the combined CCRC offices applied nearly five times as many investigative hours per case than the registry attorneys.

**Conclusion:** When considering all costs of delivering capital collateral representation services, the capital collateral regional counsel system is significantly more costly than the use of the registry of attorneys. The difference in costs is a result, in part, of the administrative costs of the CCRC. Additionally, although complete information was not obtained from the registry attorneys, it appears from the information provided by the registry attorneys that the higher cost of delivery by the CCRCs can also be attributed to significantly more time expended on a per case basis by CCRC attorneys and investigators, numbers of witnesses and experts interviewed, use of experts, and public records requests. Based on the average costs of legal counsel provided per case and the average cost per hour for attorney, over both fiscal years, the CCRCs provided an average of 355 hours of legal counsel per case and the registry attorneys provided an average of 196 hours per case, after adjustment for hours applied above the statutory limits and denied payment.

### Follow-up to Management Responses

*The CCRCs, in their response to Finding No. 1, stated that attorney-related efforts and costs provide a better “apples to apples” comparison than does including all administrative costs, due to many differences in planning, budgeting, and accountability requirements for CCRCs compared to registry law firms. The only provisions in law for reimbursement of registry attorney costs, in addition to the \$100 per hour fee, are \$15,000 per case for miscellaneous expenses, defined to include preparation of transcripts, compensation of expert witnesses, and copying, and \$500 per fiscal year for education. As indicated in the finding, all other costs of the registry attorneys such as support staff, building rental, furniture and equipment, and utilities, are expected to be covered by the \$100 per hour fee. Tables 1 and 2 are intended to present the total costs incurred to provide capital collateral representation services by the CCRCs and the registry. A comparison that excludes a portion of the costs incurred by the CCRCs (administrative costs) would not be valid for this purpose.*

*The Executive Director, in his response to Finding No. 1, stated that the methodology in the Tables is flawed for the following reasons:*

- *Costs associated with Federal pleadings should not be subtracted from the total legal costs incurred by the CCRCs, as the Federal contribution is additional revenue, not a cost reduction.*

*We reduced the total legal costs incurred by the CCRCs in Tables 1 and 2 by the amount of Federal reimbursements to determine the total net cost to the State of the capital collateral representation services provided by the CCRCs.*

- *Administrative costs of the CCRCs should not have been excluded from the calculation of legal costs.*

*We prepared Table 3 using the information reported by the CCRCs and the Executive Director for a legislative performance measure (item 2b on Appendices A & B), which did not include administrative costs. Administrative costs have been included in Tables 1 and 2 to provide a comparison of the total costs of the CCRCs and the registry.*

- *Inclusion of the full budget of the Commission on Capital Cases in Tables 1 and 2 results in a skewed result because the staff of the Commission performs work unrelated to the registry.*

*As indicated in the finding, records to distinguish the costs of the registry from other cost were not maintained and we were not provided sufficient information to form a reasonable basis for allocation of the costs. The Executive Director further stated in his response that the administrative staff of the Commission, while not working directly for the registry, does work related to the CCRCs and the registry, which is estimated to be 50 percent; however, the Executive Director did not provided any documentation in support of this estimate.*

- *CCRC attorneys for the southern region also work under contract for the CCRCs as private attorneys, but it is not apparent that their legal costs are included in the total legal costs of the CCRCs.*

*The amounts paid to CCRC attorneys under contract with the CCRC for the southern region are included in the total legal costs for the CCRCs.*

- *Tables 1 and 2 show the educational and miscellaneous expenses for the registry, but amounts for educational expenses for the CCRC attorneys are not included.*

*To the contrary, education expenses incurred by the CCRCs are included in the administrative costs identified for the CCRCs.*

- *With respect to Tables 4 and 5, the report presumes that “level of effort” is analogous to quality of representation, which cannot be measured quantitatively.*

*To the contrary, as specifically stated in the finding, the numbers of actions included in Tables 4 and 5 are not intended to provide an indication of effectiveness of the attorneys’ efforts, but rather the amount of effort applied. Therefore, the “level of effort” discussed in the report is not analogous to quality of representation.*

*In her response to Finding No. 1, the Chief Financial Officer (CFO) stated that the quarterly performance reports required by law to be provided by the registry lawyers to the President of the Senate and the Speaker of the House are not required to be provided to the CFO and are different from the billings and supporting documentation that the registry lawyers must submit as a condition of payment for services. The CFO concluded that the documentation on which the CFO may condition payment does not include the quarterly performance reports. Notwithstanding the fact that the performance reports are not specifically required to be submitted to the CFO, the requirement in Section 27.711(14), Florida Statutes, that the performance information be considered as a condition of payment for northern region pilot program cases imposes a requirement on the CFO to obtain documentation that the performance reports have been filed.*

## **Finding No. 2: Timeliness**

Section 27.701(2), Florida Statutes, requires that this performance review of the capital collateral regional counsel pilot program consider timeliness in comparing the CCRCs to the registry. A comparison of the timeliness of death penalty cases is complicated by the long duration and limited number of cases. Additionally, while some delays in the collateral proceedings may be readily attributed to either the attorneys providing the collateral representation or the courts, other delays may not be readily attributable to the CCRC or registry attorneys.

### Time not Attributable to CCRC or Registry Attorney Actions

Any discussion of timeliness with respect to death penalty cases should consider the fact that a significant portion of the time between sentencing and conclusion of a case can be attributed to the time spent on direct appeals by the defendants, as well as time spent during the capital collateral representation phase that is not directly within the control of the CCRC or registry attorneys. Table 6 shows the numbers of days as reported by the CCRCs and the Executive Director that elapsed for specified activities that occurred during the 2004-05 and 2005-06 fiscal years combined for cases that had court rulings. For the purposes of reporting on performance measures 23 through 26f on Appendices A and B, the CCRCs and the Executive Director included only cases for which the trial court sentencing occurred on or after January 1, 1999, and which would have completed the direct appeal process close to or during the audit period. This was done because earlier cases would have been subject to different rules of procedure allowing more time to file post-conviction motions and a moratorium imposed by the Florida Supreme Court on filing post-conviction motions to allow for the reorganization of the collateral counsel into regions. The shaded areas in Table 6 represent activities for which the length of time may be directly attributable to the efforts of the CCRC or registry attorneys.

TABLE 6

Elapsed Days for Capital Case with Court Rulings				
Phase	CCRC Middle	CCRC Southern	CCRC Combined	Registry
Direct Appeal (Trial Court Sentencing to Assignment to CCRC or Registry)	1,043	1,048	1,045	1,083
Collateral Appeal:				
Assignment of Case to Filing of 3.851 Motion	408	554	447	421
Filing of 3.851 to Evidentiary Hearing	461	399	444	374
Evidentiary Hearing to Circuit Court Ruling	120	132	123	108
Circuit Court Order to Notice of Appeal	25	25	25	59
Notice of Appeal to Filing of Collateral Record	74	207	121	78
Filing of Collateral Record to Filing of Initial Brief	100	83	94	154
Filing Initial Brief to Filing Answer Brief	106	101	103	76
Filing Answer Brief to Filing Reply Brief	58	46	52	72
Filing Reply Brief to Oral Argument	101	96	98	130
Oral Argument to Court Mandate	363	623	471	266
Court Mandate to Writ of Certiorari with U. S. Supreme Court	74	145	109	63
Filing Writ of Certiorari to U. S. Supreme Court Mandate	<u>87</u>	<u>133</u>	<u>110</u>	<u>71</u>
Total Collateral Appeal in State Court	<u>1,977</u>	<u>2,544</u>	<u>2,197</u>	<u>1,872</u>
Collateral Appeal in Federal Court	<u>1,345</u>	<u>1,606</u>	<u>1,400</u>	<u>1,108</u>
Trial Court Sentencing to End of Collateral Appeal Process	<u>4,365</u>	<u>5,198</u>	<u>4,642</u>	<u>4,063</u>
Collateral Appeal Time in State Court Directly Under CCRC or Registry Control (shaded areas)	665	853	727	769
Collateral Appeal Time in State Court Not Directly Under CCRC or Registry Control	<u>1,312</u>	<u>1,691</u>	<u>1,470</u>	<u>1,103</u>
Total Collateral Appeal in State Court	<u>1,977</u>	<u>2,544</u>	<u>2,197</u>	<u>1,872</u>
Percent of Collateral Appeal Time in State Court Directly Under CCRC or Registry Attorney Control	<b>34%</b>	<b>33%</b>	<b>33%</b>	<b>41%</b>

Table 6 provides an indication of the numbers of days elapsed prior to the completion of various steps in the appellate processes; however, due to the long-term nature of the cases, the number of cases considered to produce the average numbers of days is small. They show that only approximately 33 percent of the time spent by the CCRCs in collateral appeal in State court is directly attributable to the timeliness of the actions of the CCRC attorneys, and approximately 41 percent of time spent by registry attorneys is directly attributable to the timeliness of registry attorney actions. The overall length of time under the direct control of the CCRC and registry attorneys required for a capital case to complete the capital collateral representation process in State court is 2.0 years for CCRC cases and 2.1 years for registry cases.

A summary of the time spent on the cases where the specific activities were completed during the 2004-05 and 2005-06 fiscal years combined, follows:

TABLE 7

SUMMARY OF ELAPSED YEARS FOR CAPITAL CASE PHASES				
PHASE	CCRC MIDDLE	CCRC SOUTHERN (1)	CCRC COMBINED (1)	REGISTRY
Direct Appeal (not conducted by CCRC or registry)	2.9	2.9	2.9	3.0
Collateral Appeal in State Court	5.4	7.0	6.0	5.1
Collateral Appeal in Federal Court	3.7	4.4	3.8	3.0
Total	12.0	14.3	12.7	11.1
Time Spent in Collateral Appeal in State Court as a Percentage of Total	45%	49%	47%	46%

Table 7 indicates that, for the CCRC for the middle and southern region cases, and the registry cases, the time spent on a case in the capital collateral representation phase in State court was approximately one-half of the time between sentencing of an inmate and completion of the capital collateral appeals in State and Federal court.

Legislative Performance Measures

The only timeliness performance measure approved by the Legislature was the “Percent of cases in which post-conviction motion, post-conviction appeal, federal habeas corpus motion or federal appeal is timely filed without extension.” The approved performance standard for this measure was 80 percent and 90 percent for the 2004-05 and 2005-06 fiscal years, respectively. The following results were reported by the CCRCs and the Executive Director, using the time frames established in the Rules of Criminal Procedure for the filing of motions and appeals:

TABLE 8

PERCENT OF CASES IN WHICH MOTIONS AND APPEALS TIMELY FILED WITHOUT EXTENSION				
Court	CCRC Middle	CCRC Southern	CCRC COMBINED	REGISTRY
<b>2004-05 FISCAL YEAR</b>				
State Court	93	76	83	71
Federal Court	95	86	93	73
Combined Courts	94	78	86	71
<b>2005-06 FISCAL YEAR</b>				
State Court	86	83	84	63
Federal Court	88	63	76	68
Combined Courts	87	77	82	64

For the purposes of Table 8, only extensions requested by the CCRC or registry attorneys were considered. As indicated above, only the CCRC for the middle region achieved the performance standard approved by the Legislature



for the 2004-05 fiscal year, with a combined performance measure of 94 percent. Neither CCRC achieved the performance standard for the 2005-06 fiscal year. The registry and the CCRC for the southern region did not achieve the performance measure for either year. For each fiscal year, the CCRC for the middle region had the highest percentage of cases in which the motions were filed timely without extension, while the registry cases had the lowest such percentage for each fiscal year.

Additional Performance Measures

Following are the additional performance results for the timeliness measures agreed to by the CCRCs and the Executive Director for the 2004-05 and 2005-06 fiscal years:

TABLE 9

PERFORMANCE MEASURE	CAPITAL COLLATERAL REGIONAL COUNSELS			REGISTRY
	MIDDLE	SOUTHERN	COMBINED	
<b>2004-05 FISCAL YEAR</b>				
Number of extensions granted due to record on appeal other than transcripts not being prepared	1	8	9	4
Number of extensions granted due to transcripts not being prepared	1	5	6	2
Number of extensions granted following court consideration	5	18	23	32
Percentage of requested extensions granted following court consideration	100%	100%	100%	94%
Number of State (State Attorney, Attorney General, or other State agency) requested extensions	15	9	24	4
<b>2005-06 FISCAL YEAR</b>				
Number of extensions granted due to record on appeal other than transcripts not being prepared	0	0	0	5
Number of extensions granted due to transcripts not being prepared	0	6	6	11
Number of extensions granted following court consideration	7	13	20	37
Percentage of requested extensions granted following court consideration	100%	100%	100%	95%
Number of State (State Attorney, Attorney General, or other State agency) requested extensions	10	8	18	6

As shown in Table 9, the performance measure results indicate that the registry attorneys are much more likely to request and receive an extension; however, the extensions have not resulted in increased time spent in State court as compared to CCRC attorneys. As indicated in Table 6, the time spent by cases awaiting the scheduling of evidentiary



hearings by the court and awaiting court mandates tended to be shorter for registry cases. This may be due to the fewer numbers of issues raised by the registry attorneys (see Table 10).

#### Timely Filing of 3.851 Motions

The initial postconviction motion filed by the attorney assigned to a capital collateral representation defendant is a motion for collateral relief after the death sentence has been imposed and affirmed on direct appeal. This motion is generally referred to as a 3.851 motion in reference to the Florida Rule of Criminal Procedure that establishes the circumstances and timing of such motions as well as procedures and content with respect to the motion. Florida Rule of Criminal Procedure 3.851(d)(1) requires that a 3.851 motion be filed by the prisoner within one year after the judgment and sentence becomes final. Rule 3.851 further states that a judgment becomes final on the expiration of the time permitted to file in the United States Supreme Court a petition for writ of certiorari seeking review of the Florida Supreme Court decision affirming a judgment and sentence of death (90 days after the opinion becomes final) or on the disposition of the petition for writ of certiorari, if filed, by the United States Supreme Court. This timely filing of a 3.851 motion is significant because, even though the State court allows an appeal to be filed more than one year after the court mandate under specified circumstances, the Federal court typically does not allow an appeal to be filed late. If a 3.851 appeal is not filed in State court within the prescribed time limitation, the death row inmate, in all likelihood, has lost the ability to appeal in Federal court.

An amicus curiae brief filed in June 2006 in a case before the United States Supreme Court on writ of certiorari to the United States Court of Appeals for the Eleventh Circuit listed eight Florida death row inmates, seven of whom were represented by registry counsel and one by a CCRC, who had their Federal habeas corpus petitions rejected as untimely as a result of the failure to file the motion for collateral relief within the prescribed time limitation. The brief listed eight additional death row inmates, all of whom were represented by registry attorneys, who had Federal habeas corpus petitions pending, which the State was arguing should be barred as untimely. Our review of the motions filed in these cases affirmed the information provided in the brief.

In addition to reviewing the performance measure results, we analyzed the filings for 30 capital cases (including 19 CCRC cases, 10 registry cases, and 1 private attorney case) for which collateral proceedings were initiated subsequent to July 1, 2003. Our analysis disclosed that the 3.851 motions for all CCRC and registry cases were filed prior to the deadline.

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**Conclusion:** Useful comparisons as to the timeliness of capital collateral representation proceedings are difficult due to the long duration and small number of cases, each subject to varying circumstances that can impact the length of time required to complete the case. Further, such comparisons should be made in light of the fact that there are significant aspects of a capital collateral case that are not directly impacted by the efforts of the CCRC or registry attorneys assigned to the cases. The time spent on both the CCRC middle and southern cases and the registry cases in the capital collateral representation phase in State court represents approximately one-half of the time between sentencing of an inmate and completion of the capital collateral appeals in State and Federal court. Additionally, only about 33 percent of the time spent on a case in the capital collateral appeal phase in State Court is directly impacted by the CCRC attorney (41 percent for registry attorneys). Registry attorneys tend to file more requests for extensions, but this has not generally resulted in increased length of the capital collateral representation process. The overall length of time under the direct control of the CCRC and registry attorneys required for a capital case to complete the capital collateral representation process in State court is 2.0 years for CCRC cases and 2.1 years for registry cases.

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### Follow-up to Management Responses

*In their response to Finding No. 2, the CCRCs included additional information that would modify the elapsed days for certain steps in the collateral appeal process. This additional information is based on the inclusion of additional cases involving post-conviction actions that resulted from a new rule of criminal procedure or statute or a new rule of law adopted by the U.S. Supreme Court or Florida Supreme Court. These cases involve mental retardation and DNA issues which are atypical in terms of the shorter length of time required to file the 3.851 motion and conduct an evidentiary hearing. All of the 3.851 motions filed by the CCRC for the southern region for the 2005-06 fiscal year resulted from DNA or mental retardation changes and their inclusion would produce atypical results. In lieu of adding these cases to the CCRC for the southern region data, we eliminated such cases from the CCRC for the middle region and registry data to present comparable results for the initial filing of 3.851 motions.*

*The Executive Director, in his response to Finding No. 2, indicated agreement with the conclusion that the time to complete the capital process is not significantly influenced by the decision to use registry attorneys, as opposed to CCRC attorneys, but states that the use of percentages in Table 9 to demonstrate the rate that requested exemptions are granted by the courts is statistically inappropriate. The percentages presented in Table 9 are the actual rates by which requested extensions were granted and are not used to statistically extrapolate results to a larger population of data.*

*The Executive Director also stated that the figures reported under "CCRC Combined" in Tables 6, 7, 8, and 10 (see Finding No. 3) are neither totals nor averages and no methodological explanation is given. To arrive at the figures reported under "CCRC Combined," we computed amounts in the same manner as for the individual CCRCs. The averages computed for each line item were computed using combined data from the two CCRCs. For example, to determine combined averages for the number of days for each step in the appeal process (Table 6), we totaled the numbers of days for all applicable cases for the two CCRCs and divided by the total number of cases for the two CCRCs. This, in essence, produces a weighted average for the combined columns in each table, which provided for the most accurate combination of amounts.*

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### **Finding No. 3: Quality Considerations**

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#### Court Decisions Granting Relief

A goal of the CCRC and registry attorneys is, whenever appropriate, to obtain a court decision that grants relief to the death row inmate. Such relief can include a decision to release the inmate, grant the inmate a new trial, provide a new sentencing, or provide other relief. One of the agreed-upon performance measures (item 41 on Appendices A and B) was the "Number of Court Decisions to Release Inmate or Grant New Trial, New Sentencing, or Other Relief." For the combined 2004-05 and 2005-06 fiscal years, the combined CCRCs and the registry reported 14 and 5 such decisions, respectively. This indicates a higher incidence of success by the CCRCs in achieving this goal during the two-year period. However, because of the length of time that each case spends in the various appellate processes and the limited number of cases, such results may vary significantly from year to year depending on the status of the population of active cases in each year.

#### Quality of Representation

Section 27.711(12), Florida Statutes, provides that the court shall monitor the performance of assigned counsel to ensure that the capital defendant is receiving quality representation. The court is also required to receive and evaluate allegations that are made regarding the performance of assigned counsel. The Chief Financial Officer, the Department of Legal Affairs, the Executive Director of the Commission on Capital Cases (Executive Director) or any interested person may advise the court of any circumstance that could affect the quality of representation, including, but not limited to, false or fraudulent billing, misconduct, failure to meet continuing education requirements, solicitation to receive compensation from the capital defendant, or failure to provide appropriate motions in a timely manner. We

were not provided with any information filed by these offices advising the court of any circumstance that could affect the quality of representation. Our discussions with the Department of Legal Affairs, the Executive Director, and registry attorneys disclosed that a system for monitoring the performance of attorneys assigned to capital defendants has not been established and reports of inappropriate behaviors such as those described above on the part of attorneys assigned to capital defendants have not been filed with any entity. The Assistant General Counsel for the Department of Financial Services advised us of two instances in which requests from registry attorneys for payments for capital collateral representation services were excessive or not adequately documented. Both instances are currently being litigated.

One of the performance measures adopted by the Legislature for the 2004-05 and 2005-06 fiscal years was the number of substantiated Florida Bar grievances filed. The CCRCs reported no substantiated Florida Bar grievances filed with respect to CCRC attorneys during the 2004-05 and 2005-06 fiscal years (see item 35 on Appendices A and B of this report). The Executive Director reported one substantiated Florida Bar grievance with respect to a registry attorney during this period.

#### Factual Issues Raised

Factors sometimes suggested as an indicator of performance by attorneys representing capital defendants is the number of issues raised in motions filed with the courts and the number of evidentiary hearings granted as a result of the motions. Legislative performance measures and standards included: number of factual issues that were granted an evidentiary hearing and percent of issues that were granted an evidentiary hearing (see items 36 and 37, respectively, on Appendices A and B of this report). Effective in 2001, the Florida Rule of Criminal Procedure 3.851(f)(5)(A) requires the courts to schedule evidentiary hearings on claims listed by the defendant as requiring a factual determination. The numbers of factual issues raised and granted evidentiary hearings, as reported by the CCRCs and the Executive Director, are summarized below:

TABLE 10

<b>Factual Issues Raised</b>				
<b>Description</b>	<b>CCRC Middle</b>	<b>CCRC Southern</b>	<b>CRRC Combined</b>	<b>Registry</b>
<b>2004-05 Fiscal Year</b>				
Number of Cases	14	13	27	17
Number of Factual Issues Raised	60	258	318	98
Number of Factual Issues Raised per Case	4.3	19.8	11.8	5.8
Number of Factual Issues Granted Evidentiary Hearings	41	136	177	51
Number of Factual Issues Granted Evidentiary Hearings per Case	2.9	10.5	6.6	3
Percent of Factual Issues Granted Evidentiary Hearings	68%	53%	56%	52%
<b>2005-06 Fiscal Year</b>				
Number of Cases	9	3	12	12
Number of Factual Issues Raised	76	6	82	102
Number of Factual Issues Raised per Case	8.4	2.0	6.8	8.5
Number of Factual Issues Granted Evidentiary Hearings	50	6	56	52
Number of Factual Issues Granted Evidentiary Hearings per Case	5.6	2.0	4.7	4.3
Percent of Factual Issues Granted Evidentiary Hearings	66%	100%	68%	51%
<b>2004-05 and 2005-06 Fiscal Years Combined</b>				
Number of Cases	23	16	39	29
Number of Factual Issues Raised	136	264	400	200
Number of Factual Issues Raised per Case	5.9	16.5	10.3	6.9
Number of Factual Issues Granted Evidentiary Hearings	91	142	233	103
Number of Factual Issues Granted Evidentiary Hearings per Case	4.0	8.9	6.0	3.6
Percent of Factual Issues Granted Evidentiary Hearings	67%	54%	58%	52%

As indicated by Table 10, for the two-year period, the CCRCs raised 49 percent more factual issues in the 3.851 motions per case than did the registry attorneys (10.3 for CCRC attorneys compared to 6.9 for registry attorneys) However, these statistics should be viewed cautiously in terms of their usefulness as an indicator of the performance of the attorneys providing the capital collateral representation for several reasons: the method of organizing the issues and sub-issues varies among attorneys making it difficult to determine comparable numbers of issues; issues are often raised in order to preserve the issues for a later point in the case, but with little likelihood of success in the instant proceeding; and evidentiary hearings are required by Rule to be granted for claims listed by the defendant as requiring a factual determination.

Attorney Changes

A change in attorneys typically results in the granting of an extension and additional costs to enable the newly appointed attorney to review the case file, which, for a capital case is quite extensive. It can also result in representation by an attorney who is not as familiar with the details of the case as the attorney who had been representing the inmate. Our

review of the active registry cases disclosed 25 replacement attorneys appointed in 18 registry cases during the 2003-04 fiscal year through November 2006. The CCRCs assign two attorneys to each case, so that when there is a need to replace an attorney, there is typically at least one attorney remaining who is knowledgeable of the details of the case. However, our review of CCRC middle and southern region cases disclosed seven cases with one complete change of attorneys each, and four cases with one complete change of attorney each, respectively, over the same period. Additionally, the CCRCs provide continuing supervision over the cases when attorneys are changed.

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**Conclusion:** The CCRCs achieved a higher incidence of providing relief to death row inmates with 14 instances over 2 years as compared to 5 for the registry; however, due to the length of the appellate processes and limited number of cases, this statistic could vary significantly from year to year. The court's monitoring of the performance of counsel assigned to capital cases, required by Section 27.711(12), Florida Statutes, has not occurred. Legislative performance measures intended to provide an indication as to quality of representation are the number of substantiated Florida Bar grievances filed and the numbers of factual issues raised by the attorneys. The CCRCs reported no substantiated bar grievances during the audit period and the Executive Director reported one Florida Bar grievance related to a registry attorney. As a result, substantiated Florida Bar grievances do not appear to be a significant factor in a comparison of quality of representation between CCRC and registry attorneys. Higher average numbers per case of factual issues raised by the CCRC attorneys indicate a tendency on the part of the CCRCs to raise more factual issues than registry attorneys. According to the Executive Director and the CCRCs for the middle and southern regions, when there is a complete change of attorneys in a capital case, the extensive case file associated with a capital case, often compiled over a period of many years, creates a burden for the new attorney in terms of becoming sufficiently familiar with the extensive case file to provide effective and timely representation. This situation is more prevalent with registry attorneys than with CCRC attorneys.

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#### Follow-up to Management Response

*In their response to Finding No. 3, the CCRCs indicated disagreement with the statement that the number of relief judgments could vary significantly from year to year and provided statistics over the period from 1998 through 2006 to support their conclusion. They did not provide year by year results. Appendices A and B show a 25 percent drop in CCRCs instances of relief from 2004-05 to 2005-06 and a 50 percent increase in registry instances over that period. The point of this statement is that the small number of cases will likely produce significant increases or decreases from year to year.*

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#### **Finding No. 4: Capital Collateral Representation in Other States**

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Our review of death row inmate populations throughout the United States disclosed that as of July 1, 2006, Florida had the third highest death row population at 396 inmates, with only California and Texas having higher death row inmate populations, with 657 and 401 inmates, respectively. We surveyed the processes in effect in the States with death row populations over 100 to determine how many were using either a state funded CCRC-type office or registry attorneys to provide capital collateral representation to death row inmates. Our survey disclosed the following:

TABLE 11

State	Death Row Inmates	Provider of Capital Collateral Representation
California	657	Combination of a State counsel for State postconviction appeals and registry of private attorneys for Federal habeas corpus
Texas	401	Private attorneys assisted by a centralized non-profit agency
Pennsylvania	228	Private attorneys for State postconviction appeals; centralized nonprofit agency for Federal appeals
Ohio	195	State agency handles postconviction appeals in State and Federal courts
Alabama	193	Private attorneys and nonprofits used without State involvement
North Carolina	188	Private attorneys (2 per case) appointed by State agency
Arizona	125	Combination of public defender and private attorneys; planning to implement a statewide post conviction system in June 2007
Tennessee	107	Combination of public defender and private attorneys
Georgia	107	Private attorneys and nonprofits used without State involvement

As indicated in Table 11, five of the nine states with the largest death row populations (excluding Florida) have implemented some form of a centralized agency to provide capital collateral representation services to death row inmates. The form of such agency varies and includes state agencies and not-for-profit organizations. As in Florida, many of these states combine such an agency with a registry of private attorneys to handle certain cases or phases of the capital representation process. In each instance, these systems have been in place for several years. Arizona is planning to implement a statewide postconviction system organized within a state agency in June 2007. Where there is no state agency responsible for providing postconviction representation in collateral proceedings, there is typically a non-profit organization that provides assistance to the private attorneys.

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**Conclusion:** The various states with significant death row populations have a variety of systems for representation of death row inmates in postconviction appeal proceedings, ranging from no state involvement to a centralized state agency providing counsel for such purpose. Most states utilize a combination of state employed counsel and private attorneys. There is no specific model for providing postconviction capital collateral representation that has been consistently applied in states with significant death row populations, except that the use of private attorneys is generally combined with the use of a state agency or nonprofit organization to provide counsel or to assist the private counsel.

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**SCOPE AND OBJECTIVES**

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The scope of this performance review included transactions and activities of the Commission on Capital Cases (Commission) and the Capital Collateral Regional Councils (CCRCs), with assessments of the efficiency and effectiveness of the CCRC and registry methods for accomplishing collateral representation for death row inmates. Our objectives were:

- To document our understanding of management controls relevant to the operations of CCRCs and the registry maintained by the Commission.
- To evaluate CCRC and Commission' managements' performance in administering their 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 provision of collateral representation to death row inmates.
- To provide the Legislature with information to assist in a determination as to whether to convert the pilot program to a permanent program.

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**METHODOLOGY**

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The methodology used to develop the findings in this report included the examination of pertinent records of CCRCs and the Commission on Capital Cases in connection with the application of procedures required by applicable standards contained in Generally Accepted Government Auditing Standards.

Our audit included examinations of various transactions (as well as events and conditions) occurring during the period July 1, 2003, through June 30, 2006, and selected actions through November 30, 2006.

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**AUTHORITY**

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

*William O. Monroe*

William O. Monroe, CPA  
Auditor General



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**MANAGEMENT RESPONSES**

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We provided our preliminary and tentative findings to the Executive Director of the Commission on Capital Cases and the Capital Collateral Regional Councils for the middle and southern regions for their responses and explanations. The preliminary and tentative findings were also provided to the Chief Justice of the Florida Supreme Court, the Chief Financial Officer, the Office of the Attorney General, and the Justice Administrative Commission, for a response from each, should they choose to provide one. The Executive Director of the Commission on Capital Cases, the Capital Collateral Regional Councils for the middle and southern regions, and the Chief Financial Officer provided written responses to our preliminary and tentative findings. These letters may be viewed in their entirety in Appendix C.

This performance review 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](mailto: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

**APPENDIX A  
PERFORMANCE MEASURE RESULTS, 2004-05 FISCAL YEAR**

Performance Measure (Legislative Performance Measures in Red)		Legislative Standard	CCRC Middle	CCRC South	CCRC Combined	Registry
<b>COST AND RESOURCES</b>						
1	Annual Legislative Appropriation		\$3,951,107	\$3,316,921	\$7,268,028	\$2,453,825
2a	Total Annual Expenditures		3,548,487	3,030,132	6,578,619	2,448,443
2b	Annual Expenditures for Legal Representation		1,050,247	1,152,623	2,202,870	1,393,099
3	<b>Average Cost Per Case (Legal Representation)</b>	19,511	12,356	16,009	14,031	19,349
4	Attorney Per Hour Average Costs		38.16	34.20		100
5	Investigator Per Hour Average Costs		25.28	25.18		40
6	Average Cost for Filing a 3.851		10,639	11,435	11,037	17,612
7	Average Cost for Legal Representation in State Courts (Evidentiary Hearings)		14,721	18,781	17,016	21,206
8	Average Cost for Appellate Representation in State Courts (Briefs and Orals)		8,671	10,338	9,690	15,251
9	Average Cost for Legal Representation in State and Federal Courts (after Death Warrant)		N/A	N/A	N/A	5,000
10	No. of Active CCRC Attorney Positions		14.0	15.0	29	137
11	No. of Registry Attorneys with at Least 1 Case		N/A	N/A	N/A	58
<b>LEVEL OF EFFORT</b>						
12	<b>No. of Active Cases</b>	176	91	75	166	149
13	No. of Cases Closed During the Fiscal Year		3	6	9	3
14	<b>No. of Cases Provided Legal Counsel</b>	176	91	75	166	149
15	<b>No. of Witness and Experts Interviewed</b>	2,500	3,738	1,521	5,259	227
16	No. of Experts Used per Case		2.4	2.4	2.4	1.6
17	<b>No. of Cases with Public Records Requests</b>	57	68	37	105	15
18	<b>No. of 3.851 Motions Filed</b>	18	19	24	43	35
19	<b>No. of Evidentiary Hearings Held</b>	19	14	13	27	20
20	<b>No. of State Appellate Actions</b>	82	46	54	100	45
21	<b>No. of Federal Appellate Actions</b>	54	47	22	69	31
22	<b>No. of Death Warrants Signed</b>	8	0	0	0	0
<b>TIMELINESS</b>						
23	Average Time from Trial Court Sentencing or New Sentencing to Completion in Circuit Court		1,879	2,133	1,988	1885
23a	Average Time from Assignment to Attorney to Completion in Circuit Court		928	1,085	906	860
23b	Average Time from Court Sentencing to Assignment to CCRC or Registry		951	1,048	993	1025
23c	Average Time of Assignment of Case to Filing of 3.851		384	554	392	434
23d	Average Time from Filing of 3.851 to Evidentiary Hearing		435	399	523	314
23e	Average Time from Evidentiary Hearing to 3.851 Ruling		185	132	110	116
24	Average Time from Beginning of State Collateral Appellate Process to Completion		766	982	885	698
24a	Average Time from Circuit Court Order to Notice of Appeal		23	25	24	60
24b	Average Time from Notice of Appeal to Filing of Collateral Record with Florida Supreme Court		80	219	150	53
24c	Average Time from Filing of Collateral Record to Filing Initial Brief		98	70	83	133
24d	Average Time from Filing Initial Brief to Filing Answer Brief		82	95	89	92
24e	Average Time from Filing Answer Brief to Filing Reply Brief		63	50	56	91
24f	Average Time from Filing Reply Brief to Oral Argument		102	89	95	86
24g	Average Time from Oral Argument to Court Mandate		381	617	508	279
24h	Average Time from Court Mandate to to Filing Certiorari Petition		78	none	78	92
24i	Average Time from Filing Certiorari Petition to US Supreme Court Mandate		111	none	111	93

Performance Measure (Legislative Performance Measures in Red)		Legislative Standard	CCRC Middle	CCRC South	CCRC Combined	Registry
<b>TIMELINESS (Continued)</b>						
25	Average Time from Beginning of Federal District Court Process to Completion		610	N/A	610	416
25a	Average Time from Florida or US Supreme Court Mandate to Filing Habeas Petition		45	N/A	45	19
25b	Average Time from Habeas Petition to Federal Evidentiary Petition Hearing and/or Final Decision of Federal District Court		515	N/A	515	432
25c	Average Time from Federal Evidentiary Hearing to Federal District Court Decision		N/A	N/A	N/A	N/A
25d	Average Time from Federal District Court Decision to Filing Certificate of Appealability (COA) in Federal District Court		28	N/A	28	31
25e	Average Time from Filing COA to Denial or Granting of COA		25	N/A	25	12
26	Average Time from Denial of COA by Federal District Court to Completing the Federal 11th Circuit Court Process		N/A	N/A	N/A	395
26a	Average Time from Granting or Denying of COA by Federal District Court to Filing COA in Federal 11th Circuit Court		N/A	N/A	N/A	46
26b	Average Time from Filing Federal 11th Circuit COA to Setting Briefing Schedule		N/A	N/A	N/A	15
26c	Average Time from Setting Briefing Schedule to Completing Briefs		N/A	N/A	N/A	124
26d	Average Time from Completing Briefs to Granting or Denying COA		N/A	N/A	N/A	210
26e	Average Time from Federal District Court Order to Filing Certiorari Petition with US Supreme Court		N/A	N/A	N/A	23
26f	Average Time from Filing Certiorari Petition to Final US Supreme Court Decision		N/A	N/A	N/A	125
<b>DELAYS TO CASE PROGRESS</b>						
27	No. of Cases Pending Circuit Court Orders or Hearing Dates		5	7	12	46
28	No. of Cases Pending Florida Supreme Court Rulings or Oral Argument Date		5	2	7	5
29	No. of Extensions Granted Due to Record on Appeal not Prepared		1	8	9	4
30	No. of Extensions Granted Due to Transcripts not Prepared		1	5	6	2
31	No. of Requested Extensions Granted After Court Consideration	15	5	18	23	32
32	Percent of Requested Extensions Granted After Court Consideration	80	100%	100%	100%	94%
33	No. of Post-conviction Actions Containing A Request for Court to Grant Leave to Amend Post-conviction Motion	21	0	0	0	0
34	No. of State Extensions Requested by State		15	9	24	5
<b>OTHER PERFORMANCE MEASURES</b>						
35	No. of Substantiated Bar Grievances Filed	0	0	0	0	0
36	No. of Factual Issues Raised Granted Evidentiary Hearings	95	41	136	177	55
37	Percent of Factual Issues Raised Granted Evidentiary Hearings	TBD	68%	50%		52%
38	Time Saved in Each Fiscal Year Compared to 1997		N/A	N/A	N/A	55.2 yrs.
	Percent of Cases in Which Post-conviction Motion is Filed Timely Without Extension	80%	94%	78%	86%	71%
39	Percent of Cases in Which State Post-conviction Motion is Filed Timely Without Extension		93%	76%	83%	71%
40	Percent of Cases in Which Federal Motion or Appeal is Filed Timely Without Extension		95%	86%	93%	73%
41	Number of Court Decisions to Release Inmate or Grant New Trial, New Sentencing, or Other Relief	6	4	4	8	2

**APPENDIX B  
PERFORMANCE MEASURE RESULTS, 2005-06 FISCAL YEAR**

Performance Measure (Legislative Performance Measures in Red)		Legislative Standard	CCRC Middle	CCRC South	CCRC Combined	Registry
<b>COST AND RESOURCES</b>						
1	Annual Legislative Appropriation		\$4,018,100	\$3,332,181	\$7,350,281	\$2,705,887
2a	Total Annual Expenditures		3,469,178	3,024,217	6,493,395	2,393,906
2b	Annual Expenditures for Legal Representation		1,074,801	1,192,684	2,267,485	1,374,862
3	<b>Average Cost Per Case (Legal Representation)</b>	19,511	13,107	17,539	15,117	18,579
4	Attorney Per Hour Average Costs		38	38		100
5	Investigator Per Hour Average Costs		26	26		40
6	Average Cost for Filing a 3.851		21,460	12,605	17,033	18,359
7	Average Cost for Legal Representation in State Courts (Evidentiary Hearings)		17,475	16,926	17,325	24,589
8	Average Cost for Appellate Representation in State Courts (Briefs and Orals)		10,976	15,010	12,237	17,263
9	Average Cost for Legal Representation in State and Federal Courts (after Death Warrant)		N/A	N/A	N/A	N/A
10	No. of Active CCRC/Registry Attorney Positions		15.0	15.0	30.0	139
11	No. of Registry Attorneys with at Least 1 Case		N/A	N/A	N/A	56
<b>LEVEL OF EFFORT</b>						
12	<b>No. of Active Cases</b>	176	93	76	169	153
13	No. of Cases Closed During the Fiscal Year		7	2	9	5
14	<b>No. of Cases Provided Legal Counsel</b>	176	93	76	169	153
15	<b>No. of Witness and Experts Interviewed</b>	2,500	3,561	1,563	5,124	175
16	No. of Experts Used per Case		3.0	2.2	2.6	2.3
17	<b>No. of Cases with Public Records Requests</b>	57	80	43	123	17
18	<b>No. of 3.851 Motions Filed</b>	18	20	15	35	21
19	<b>No. of Evidentiary Hearings Held</b>	19	11	3	14	19
20	<b>No. of State Appellate Actions</b>	82	63	52	115	75
21	<b>No. of Federal Appellate Actions</b>	54	42	25	67	44
22	<b>No. of Death Warrants Signed</b>	8	0	0	0	2
<b>TIMELINESS</b>						
23	Average Time from Trial Court Sentencing or New Sentencing to Completion in Circuit Court		2,184	N/A	2,184	1,939
23a	Average Time from Assignment to Attorney to Completion in Circuit Court		1,048	N/A	868	932
23b	Average Time from Court Sentencing to Assignment to CCRC or Registry		1,136	N/A	1,136	1,113
23c	Average Time of Assignment of Case to Filing of 3.851		427	N/A	364	412
23d	Average Time from Filing of 3.851 to Evidentiary Hearing		487	N/A	487	420
23e	Average Time from Evidentiary Hearing to 3.851 Ruling		135	N/A	135	101
24	Average Time from Beginning of State Collateral Appellate Process to Completion		761	985	821	784
24a	Average Time from Circuit Court Order to Notice of Appeal		25	26	26	61
24b	Average Time from Notice of Appeal to Filing of Collateral Record with Florida Supreme Court		69	152	82	102
24c	Average Time from Filing of Collateral Record to Filing Initial Brief		102	147	109	173
24d	Average Time from Filing Initial Brief to Filing Answer Brief		125	113	121	64
24e	Average Time from Filing Answer Brief to Filing Reply Brief		52	35	45	58
24f	Average Time from Filing Reply Brief to Oral Argument		99	120	107	156
24g	Average Time from Oral Argument to Court Mandate		334	644	403	258
24h	Average Time from Court Mandate to to Filing Certiorari Petition		70	145	120	47
24i	Average Time from Filing Certiorari Petition to US Supreme Court Mandate		64	132	110	61

Performance Measure (Legislative Performance Measures in Red)		Legislative Standard	CCRC Middle	CCRC South	CCRC Combined	Registry
<b>TIMELINESS (Continued)</b>						
25	Average Time from Beginning of Federal District Court Process to Completion		1,060	1,071	1,062	1,243
25a	Average Time from Florida or US Supreme Court Mandate to Filing Habeas Petition		248	99	227	138
25b	Average Time from Habeas Petition to Federal Evidentiary Petition Hearing and/or Final Decision of Federal District Court		743	972	776	704
25c	Average Time from Federal Evidentiary Hearing to Federal District Court Decision		N/A	N/A	N/A	N/A
25d	Average Time from Federal District Court Decision to Filing Certificate of Appealability (COA) in Federal District Court		32	28	32	41
25e	Average Time from Filing COA to Denial or Granting of COA		37	7	32	15
26	Average Time from Denial of COA by Federal District Court to Completing the Federal 11th Circuit Court Process		315	364	340	223
26a	Average Time from Granting or Denying of COA by Federal District Court to Filing COA in Federal 11th Circuit Court		14	N/A	14	N/A
26b	Average Time from Filing Federal 11th Circuit COA to Setting Briefing Schedule		28	5	16	11
26c	Average Time from Setting Briefing Schedule to Completing Briefs		110	103	106	95
26d	Average Time from Completing Briefs to Granting or Denying COA		164	257	239	117
26e	Average Time from Federal District Court Order to Filing Certiorari Petition with US Supreme Court		73	119	96	71
26f	Average Time from Filing Certiorari Petition to Final US Supreme Court Decision		77	52	65	61
<b>TIMELINESS (Continued)</b>						
27	No. of Cases Pending Circuit Court Orders or Hearing Dates		4	4	8	37
28	No. of Cases Pending Florida Supreme Court Rulings or Oral Argument Date		6	3	9	10
29	No. of Extensions Granted Due to Record on Appeal not Prepared		0	0	0	5
30	No. of Extensions Granted Due to Transcripts not Prepared		0	6	6	11
31	No. of Requested Extensions Granted After Court Consideration	15	7	13	20	41
32	Percent of Requested Extensions Granted After Court Consideration	80	100%	100%	100%	95%
33	No. of Post-conviction Actions Containing A Request for Court to Grant Leave to Amend Post-conviction Motion	21	N/A	N/A	N/A	N/A
34	No. of State Extensions Requested by State		10	8	18	6
<b>OTHER PERFORMANCE MEASURES</b>						
35	No. of Substantiated Bar Grievances Filed	0	0	0	0	1
36	No. of Factual Issues Raised Granted Evidentiary Hearings	95	50	6	56	52
37	Percent of Factual Issues Raised Granted Evidentiary Hearings	TBD	66%	100%	68%	51%
38	Time Saved in Each Fiscal Year Compared to 1997		N/A	N/A	N/A	63 yrs
	Percent of Cases in Which Post-conviction Motion is Filed Timely Without Extension		87%	77%	82%	64%
39	Percent of Cases in Which State Post-conviction Motion is Filed Timely Without Extension		86%	83%	84%	63%
40	Percent of Cases in Which Federal Motion or Appeal is Filed Timely Without Extension	80%	88%	63%	76%	68%
41	Number of Court Decisions to Release Inmate or Grant New Trial, New Sentencing, or Other Relief	6	3	3	6	3

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APPENDIX C  
MANAGEMENT RESPONSES

**KEN PRUITT**  
President of the Senate



Senator Victor D. Crist, Chair  
Representative Juan-Carlos "J.C." Planas, Vice Chair  
Senator Dave Aronberg  
Representative Dan Gelber  
Judge Paul M. Hawkes, First District Court of Appeal  
Judge Leslie B. Rothenberg, Third District Court of Appeal

**MARCO RUBIO**  
Speaker of the House  
of Representatives



Roger Maas, Executive Director  
402 South Monroe Street  
Tallahassee, Florida 32399-1300  
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The Florida Legislature  
**COMMISSION ON CAPITAL CASES**

January 26, 2007

James M. Dwyer  
Audit Manager  
Office of the Auditor General  
Local Government Audits/342  
401 Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

Dear Mr. Dwyer:

Attached is the Commission on Capital Cases' Response to the Auditor General's Revised 2006 Preliminary and Tentative Findings for the CCRC Pilot Project.

Sincerely,

Roger R. Maas  
Executive Director

Attachment



**COMMISSION ON CAPITAL CASES' RESPONSE TO THE AUDITOR  
GENERAL'S REVISED 2006 PRELIMINARY AND TENTATIVE  
FINDINGS FOR THE CCRC PILOT PROJECT**

Finding No. 1:

While the Commission staff agrees that the CCRC system is “significantly more costly than the use of the Registry of attorneys,” the staff disagrees with the assertion that “the higher cost of delivery by the CCRCs can also be attributed to significantly more effort applied by the CCRC attorneys on a per-case basis.” This assertion is flawed on many levels, including the measurements of cost and effort:

1. Federal Reimbursement – The methodology in Table 1 and Table 2 is flawed because costs associated with federal pleadings are subtracted from the total legal costs incurred by the CCRCs. The federal contribution is additional revenue, not a cost reduction.
2. Administrative Costs – The administrative costs of the CCRCs were excluded from the calculation of legal costs. The administrative costs, which amount to almost ½ of the total CCRC expenditures, should be included in the calculation of total legal costs.
3. Commission on Capital Cases Budget – In Tables 1 and 2, the full budget of the Commission on Capital Cases is included in the Administrative Costs of the Registry. This cost inclusion is inappropriate and results in a skewed result. The research staff of the Commission (Legislative Research Assistants and the Legislative Analyst) does not work for, nor aid, the Registry; rather, they maintain a database and website that monitors and tracks the progress of all death row inmates through the system. The administrative staff of the Commission, while not working directly for the Registry, does work related to the CCRCs and the Registry, which is estimated to be 50 percent.
4. Private Counsel – Several CCRC attorneys (all CCRC-S) also work under contract for the CCRC as private attorneys, but it is not apparent that their legal costs are included in the total legal costs of the CCRCs.
5. Education & Miscellaneous Costs – Tables 1 and 2 show the Education & Miscellaneous Expenses for the Registry, yet it would appear that the CCRCs did not incur ANY such expenses for either fiscal year of the report. CCRC attorneys likely attended educational seminars (as required to maintain their status as death-qualified attorneys) and likely incurred some miscellaneous expenses throughout the two fiscal years, yet these figures are not included.

Page Two  
January 22, 2007

6. "Effort" – Tables 4 and Table 5 each claim to measure "effort" by the CCRC and Registry attorneys. This report assumes that the "level of effort" is analogous to quality of representation. "Quality of representation" is a qualitative concept that cannot be measured quantitatively. The Registry attorneys have significantly more experience than CCRC attorneys and are less likely to spend "effort" on issues that are procedurally barred or superfluous. Again, the legal costs for CCRCs do not include administrative costs (which are almost ½ of their budgets), thus giving the impression that the CCRCs are cheaper, yet exert more "effort" in their legal representation. By using exclusively quantitative measures, the performance measures in Tables 4 and 5 cannot be more detailed or descriptive of the "effort" used in each case; therefore, falls into the trap of quantity--not quality.

Finding No. 2:

While the Commission staff agrees that the time to complete the capital process "is not significantly impacted by the decision to use Registry attorneys as opposed to CCRC attorneys," this conclusion may be skewed by several methodological and statistical discrepancies, which merit consideration and comment:

1. Percentages – In Table 9, percentages are used to demonstrate the rate at which requested extensions are granted by a court. The use of percentages for such small amounts is statistically inappropriate. The percentage is greatly affected by even a small flux in the raw numbers; thus, a reduction from 100 percent to 95 percent can be accomplished with only 2 of 32 extensions not being granted.

Miscellaneous:

1. In several tables (6, 7, 8, 10), the figures under "CCRC Combined" are neither totals nor averages in many cases—nor is any methodological explanation given.

**Capital Collateral Regional Councils: South and Middle****Response to the Auditor General's Office  
CCRC and Registry Pilot Comparison Report  
Preliminary and Tentative Findings  
of January 25, 2007**

**To:** Mr. Jim Dwyer

**From:** Bill Jennings (CCRC Middle) and Neal Dupree (CCRC South)

**Date:** January 26, 2007

Thank you for the opportunity to comment on the January 25, 2007 Preliminary Report. We truly appreciate the professional and fair approach that you and your staff used in compiling and discussing the data and information for this Report.

<b>PAGE 1: Summary Section</b>
--------------------------------

**Finding # 1: Related to the costs for operating the CCRCs compared to the Registry**CCRC points recommended for inclusion:

1. The average cost for cases when considering just attorney related costs were lower for CCRCs (\$ 14,031) than for the Registry (\$ 19,349) in FY 2004-05 and \$ 15,117 vs. \$ 18,579 respectively in FY 2005-06. This reflects the fact that CCRC attorneys are paid an average of \$ 41 an hour compared to \$ 100 per hour for Registry attorneys, and it includes attorney time and effort associated with the CCRCs working an average of 355 hours per case compared to the 196 hours worked on average by the Registry.
2. The average cost for cases when including total costs of operating CCRCs was greater than the Registry because the CCRCs spent funds to work 143 more cases (please see Tables 1 and 2) than the Registry over the two years studied.

It also reflected that CCRCs work an average of 355 hours per case compared to 196 hours per case by the Registry. These extra hours were dedicated to more thorough investigations typically resulting in more issues being raised. Since the CCRCs had a higher percentage of its issues approved by the Courts for evidentiary hearings than did the Registry, there are additional court hearing related costs compared to the Registry.

In addition, the CCRCs met all accountability and administrative requirements of law (e.g. maintained extensive financial and operating performance measures; participated in the Legislative Budget Request and Long Range Program Planning processes and responded to many requests for information about CCRC roles, responsibilities and results from the Governor, Legislature and Commission on Capital Cases.)

The CCRCs were and are highly accountable. They use credible administrative systems to keep and make available significant amounts of valid and reliable data on their operations and results for periodic audits, for managing their operations and for meeting accountability expectations.

We are still concerned that average case cost numbers may need additional consideration regarding the calculation methodology. The time to think more critically regarding this concern is not available at this point. We hope to analyze this more thoroughly as soon as possible after the Report is completed.

**Finding # 3: Related to CCRC vs. Registry “results”** (when courts agree that one or more issues raised by the CCRCs or Registry attorneys are valid and they rule to provide “relief” from the sentence of death).

The Report indicates that the statistics related to the number of “relief” judgments over the two years studied (14 for the CCRCs and 5 for the Registry) “could vary significantly from year to year.”

CCRC comment:

The CCRCs respectfully disagree. The data covering 1998 - 2006 indicates the number of court rulings of relief based on CCRC representation is 54. For the Registry, the number is 6. The numbers are from the Commission on Capital Cases’ February 20, 2003 Report with the FY 2004-05 and FY 2005-06 numbers added to it. There have not been significant annual differences in the results achieved by the CCRCs. The Registry results are annually consistent also.

<p><b>PAGE 3: Measures agreed to by the CCRCs and the CCC Executive Director</b></p>
--

Measure 2a = total costs to operate the CCRC and Registry Models  
 Measure 2b = just the total legal/attorney related costs

CCRC comment:

The agreement to separate 2b (legal/attorney related costs) from 2a (all costs) was based on being able to show the truest legal service comparison of the post conviction legal representation parts of both operations. The attorney related efforts and costs provide a better “apples to apples” comparison than does including all administrative costs due to many differences in planning, budgeting and accountability requirements for the CCRCs compared to the Registry law firms. It is likely that the administrative costs to handle the typically one or two cases in a Registry firm are minimal compared to handling about 166 cases a year in the CCRC operations.

Measure #23 = Average Time from Trial Court Sentencing to Completion in Circuit Court

CCRC Comment:

The agreement between the Executive Director and the CCRC’s regarding measure # 23 was to include all cases sentenced after January 1, 1999 that completed the Post-conviction process in the Circuit court during the 2004-2005 and 2005-2006 fiscal years. In discussions as to the cases


to be included in performance measure #23, all parties agreed to include cases during the applicable fiscal years which were the result of new rules of procedure, new statutes, or newly announced court decisions from either the United States Supreme Court or Florida Supreme Court.

Appendix "A" and Appendix "B" attached to the Auditor Generals Report shows that CCRC-South had three (3) cases during the 2004-2005 fiscal year that were included, and two additional cases that were erroneously excluded by CCRC-South. During the 2005-2006 fiscal year CCRC-South should have had four cases included in the report. Those four cases would have changed the numbers reported in Table six (6) dramatically. Instead of no number being reported by CCRC-South in the assignment of case to filing of 3.851 motion category, there would have been 336 days reported. Filing of 3.851 to the evidentiary hearing would have been 208 days, and evidentiary hearing to the circuit court ruling would have been 19 days.

The change in CCRC-South's responsibility for the cases noted in Table six (6) drops from 554 days (a number carried over from the previous fiscal year) to 336 days. A combination of the two fiscal years shows that CCRC-South's average number from assignment of case to completion of the 3.850/51 from 554 days to 256 days (2308 days/ 9 cases). It would have also resulted in a reduction of the time CCRC-South had responsibility for the cases in the state court system. Instead of a total of 853 days of CCRC-South responsibility noted in Table six, the actual number of days CCRC-South was responsible for cases drops from 853 days to 555 days (853-298). The 298-day difference is reached by subtracting the reported number of 554 days from assignment to completion of the 3.851 by the actual number of 256 days. (554-256 = 298).

The total amount of time reported by the auditor for CCRC-South in state court would also have to be reduced from 2544 to 2246 days (2544-298 = 2246). Therefore the percentage of time CCRC-South is responsible for the cases in the state court would be reduced to 24%, instead of the reported 33%.

Similarly, for Performance Measure #23 for CCRC-M, the Auditor General's Report struck (3) cases from Appendix A and (3) cases from Appendix B. This resulted in Performance Measure #23(c) changing from 280 days to 384 days in Appendix A and from 364 days to 427 in Appendix B. As noted above for CCRC-South, had the Auditor General's Report left the original numbers, CCRC-Middle would have shown a similar drop in percentages.

  
John W. (Bill) Jennings  
CCRC-Middle

LAW OFFICE OF THE  
CAPITAL COLLATERAL REGIONAL COUNSEL-SOUTH

State of Florida



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Capital Collateral Regional Counsel

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Jim Dwyer  
Office of the Auditor General  
G74 Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida  
32399-1450

January 26, 2007

Dear Mr. Dwyer,

Enclosed please find a signed copy of CCRC-South's response to the audit prepared by your office regarding the CCRC-Registry Pilot Project commissioned by the Florida Legislature. As you know, we have previously discussed each of these concerns with you and members of your staff on many occasions, and we appreciate your efforts in preparing this report.

If you need anything further from my office, please do not hesitate to contact me at any time. Once again, many thanks to you, Hardee and Beau for your courtesy and professionalism making a very demanding task much easier.

Sincerely,

A handwritten signature in black ink, appearing to read "Neal Dupree".

Neal A. Dupree  
CCRC-South



**Capital Collateral Regional Councils: South and Middle**

**Response to the Auditor General's Office  
CCRC and Registry Pilot Comparison Report  
Preliminary and Tentative Findings  
of January 25, 2007**

**To:** Mr. Jim Dwyer

**From:** Bill Jennings (CCRC Middle) and Neal Dupree (CCRC South)

**Date:** January 26, 2007

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2. The average cost for cases when including total costs of operating CCRCs was greater than the Registry because the CCRCs spent funds to work 143 more cases (please see Tables 1 and 2) than the Registry over the two years studied.

It also reflected that CCRCs work an average of 355 hours per case compared to 196 hours per case by the Registry. These extra hours were dedicated to more thorough investigations typically resulting in more issues being raised. Since the CCRCs had a higher percentage of its issues approved by the Courts for evidentiary hearings than did the Registry, there are additional court hearing related costs compared to the Registry.

In addition, the CCRCs met all accountability and administrative requirements of law (e.g. maintained extensive financial and operating performance measures; participated in the Legislative Budget Request and Long Range Program Planning processes and responded to many requests for information about CCRC roles, responsibilities and results from the Governor, Legislature and Commission on Capital Cases.)



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The Report indicates that the statistics related to the number of “relief” judgments over the two years studied (14 for the CCRCs and 5 for the Registry) “could vary significantly from year to year.”

CCRC comment:

The CCRCs respectfully disagree. The data covering 1998 - 2006 indicates the number of court rulings of relief based on CCRC representation is 54. For the Registry, the number is 6. The numbers are from the Commission on Capital Cases’ February 20, 2003 Report with the FY 2004-05 and FY 2005-06 numbers added to it. There have not been significant annual differences in the results achieved by the CCRCs. The Registry results are annually consistent also.

**PAGE 3: Measures agreed to by the CCRCs and the CCC Executive Director**

Measure 2a = total costs to operate the CCRC and Registry Models  
Measure 2b = just the total legal/attorney related costs

CCRC comment:

The agreement to separate 2b (legal/attorney related costs) from 2a (all costs) was based on being able to show the truest legal service comparison of the post conviction legal representation parts of both operations. The attorney related efforts and costs provide a better “apples to apples” comparison than does including all administrative costs due to many differences in planning, budgeting and accountability requirements for the CCRCs compared to the Registry law firms. It is likely that the administrative costs to handle the typically one or two cases in a Registry firm are minimal compared to handling about 166 cases a year in the CCRC operations.

Measure #23 = Average Time from Trial Court Sentencing to Completion in Circuit Court

CCRC Comment:

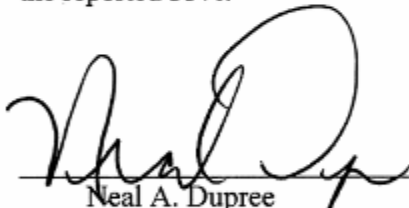
The agreement between the Executive Director and the CCRC’s regarding measure # 23 was to include all cases sentenced after January 1, 1999 that completed the Post-conviction process in the Circuit court during the 2004-2005 and 2005-2006 fiscal years. In discussions as to the cases

to be included in performance measure #23, all parties agreed to include cases during the applicable fiscal years which were the result of new rules of procedure, new statutes, or newly announced court decisions from either the United States Supreme Court or Florida Supreme Court.

Appendix "A" and Appendix "B" attached to the Auditor Generals Report shows that CCRC-South had three (3) cases during the 2004-2005 fiscal year that were included, and two additional cases that were erroneously excluded by CCRC-South. During the 2005-2006 fiscal year CCRC-South should have had four cases included in the report. Those four cases would have changed the numbers reported in Table six (6) dramatically. Instead of no number being reported by CCRC-South in the assignment of case to filing of 3.851 motion category, there would have been 336 days reported. Filing of 3.851 to the evidentiary hearing would have been 208 days, and evidentiary hearing to the circuit court ruling would have been 19 days.

The change in CCRC-South's responsibility for the cases noted in Table six (6) drops from 554 days (a number carried over from the previous fiscal year) to 336 days. A combination of the two fiscal years shows that CCRC-South average number from assignment of case to completion of the 3.850/51 from 554 days to 256 days (2308 days/ 9 cases). It would have also resulted in a reduction of the time CCRC-South had responsibility for the cases in the state court system. Instead of a total of 853 days of CCRC-South responsibility noted in Table six, the actual number of days CCRC-South was responsible for cases drops from 853 days to 555 days (853-298). The 298-day difference is reached by subtracting the reported number of 554 days from assignment to completion of the 3.851 by the actual number of 256 days. (554-256 = 298).

The total amount of time reported by the auditor for CCRC-South in state court would also have to be reduced from 2544 to 2246 days (2544-298 = 2246). Therefore the percentage of time CCRC-South is responsible for the cases in the state court would be reduced to 24%, instead of the reported 33%.



Neal A. Dupree  
CCRC-South



CHIEF FINANCIAL OFFICER  
STATE OF FLORIDA

ALEX SINK

January 19, 2007

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

RE: Auditor General Preliminary Report - Capital Collateral Regional Counsel Pilot Program

Dear Mr. Monroe:

Thank you for the opportunity to comment on the Auditor General's Preliminary Report regarding the Capital Collateral Regional Counsel Pilot Program.

Section 27.702(4)(b), Florida Statutes (2006), requires registry lawyers to provide quarterly performance reports to the President of the Senate, Speaker of the House of Representatives, and the Commission on Capital Cases. This statute does not require that these performance reports be submitted to the Chief Financial Officer. These performance reports are different from the billings and supporting documentation that registry lawyers must submit to the Chief Financial Officer as a condition of payment for services under Section 27.711(13), Florida Statutes (2006). Thus, the documentation upon which the Chief Financial Officer may condition State payment of bills for fees and expenses submitted by a registry lawyer does not include the submission of quarterly performance reports by the lawyer in question pursuant to s. 27.702(4)(b).

The Department wants to apprise the Auditor General of one additional item. The Department's Office of Fiscal Integrity investigated complaints against the Capital Collateral Regional Counsels between 2004 and 2006. Our investigation found State funds were used for lobbying and unauthorized expenditures. The conclusions of the investigation were challenged and are being litigated in appellate court. These investigative findings may be relevant to your analysis of the CCRCs.

Once again, thank you for the opportunity to comment. Please contact Douglas Darling, Director, Accounting and Auditing at [Doug.Darling@fldfs.com](mailto:Doug.Darling@fldfs.com) or (850)413-5510 for additional information.

Sincerely,

A handwritten signature in cursive script that reads "Alex Sink". The signature is written in dark ink and is positioned above the printed name.

Alex Sink