



**FLORIDA LAWS PERTINENT TO A DISCRIMINATION CASE
CHAPTER 27:
STATE ATTORNEYS; PUBLIC DEFENDERS; RELATED OFFICES**

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TABLE OF CONTENTS | CHAPTER 27: STATE ATTORNEYS; PUBLIC DEFENDERS...

ID	Statute	Title	Page
C01	27.01	State Attorneys; Number, Election, Terms	4
C02	27.02	Duties Before Court	5
C03	27.14	Assigning State Attorneys to Other Circuits	6
C04	27.52	Determination of Indigent Status	7

-	n/a	Appendix	18
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CHAPTER 27 FLORIDA STATUTES | FLORIDA

TITLE: V JUDICIAL BRANCH

CHAPTER: 27 STATE ATTORNEYS; PUBLIC DEFENDERS...

PART: III

SECTIONS: §27.01, §27.02, §27.14, and §27.52 only

NOTE:



§27.01 FS | STATE ATTORNEYS; NUMBER, ELECTION, TERMS

There shall be a state attorney for each of the judicial circuits, who shall be elected at the general election by the qualified electors of their respective judicial circuits as other state officials are elected, and who shall serve for a term of 4 years.

History - (s. 1, ch. 5120, 1903; GS 1796; ss. 1, chs. 6197, 6198, 1911; RGS 3026; CGL 4769; ss. 1, 5-A, ch. 17085, 1935; s. 1, ch. 26761, 1951.)



§27.02 FS | DUTIES BEFORE COURT

(1) The state attorney shall appear in the circuit and county courts within his or her judicial circuit and prosecute or defend on behalf of the state all suits, applications, or motions, civil or criminal, in which the state is a party, except as provided in chapters 39, 984, and 985. The intake procedures of chapters 39, 984, and 985 shall apply as provided therein. The state attorney shall appear in the circuit and county courts within his or her judicial circuit for the purpose of prosecuting violations of special laws and county or municipal ordinances punishable by incarceration if the prosecution is ancillary to a state prosecution or if the state attorney has contracted with the county or municipality for reimbursement for services rendered in accordance with s. 27.34(1).

(2) The state attorney, when complying with the discovery obligation pursuant to the applicable rule of procedure, may charge the defendant fees as provided for in s. 119.07(4), not to exceed 15 cents per page for a copy of a noncertified copy of a public record. However, these fees may be deferred if the defendant has been determined to be indigent as provided in s. 27.52.

History - (s. 3, ch. 1661, 1868; RS 1344; GS 1779; RGS 3005; CGL 4739; s. 5, ch. 72-404; s. 7, ch. 90-208; s. 116, ch. 95-147; s. 4, ch. 98-280; s. 6, ch. 2003-402; s. 4, ch. 2004-265; s. 31, ch. 2004-335.)



§27.14 FS | ASSIGNING STATE ATTORNEYS TO OTHER CIRCUITS

(1) If any state attorney is disqualified to represent the state in any investigation, case, or matter pending in the courts of his or her circuit or if, for any other good and sufficient reason, the Governor determines that the ends of justice would be best served, the Governor may, by executive order filed with the Department of State, either order an exchange of circuits or of courts between such state attorney and any other state attorney or order an assignment of any state attorney to discharge the duties of the state attorney with respect to one or more specified investigations, cases, or matters, specified in general in the executive order of the Governor. Any exchange or assignment of any state attorney to a particular circuit shall expire 12 months after the date of issuance, unless an extension is approved by order of the Supreme Court upon application of the Governor showing good and sufficient cause to extend such exchange or assignment.

(2) If the statewide prosecutor in charge of the Office of Statewide Prosecution determines that he or she is not qualified to represent the state in any investigation, case, or matter pending in the courts of the state or if a court of competent jurisdiction disqualifies him or her from representing the state, the Governor may, by executive order filed with the Department of State, order an assignment of any state attorney to discharge the duties of such prosecutor with respect to one or more specified investigations, cases, or matters, generally described in the order. The assignment of any state attorney shall expire 12 months after the date of issuance, unless an extension is approved by order of the Supreme Court upon application of the Governor showing good and sufficient cause to extend such assignment.

(3) Whenever a state attorney is exchanged or assigned, he or she may designate one or more of his or her assistant state attorneys and state attorney investigators to perform the duties assigned under the executive order.

History - (s. 2, ch. 5399, 1905; RGS 3009; CGL 4743; s. 1, ch. 69-1736; s. 4, ch. 73-334; s. 1, ch. 74-627; s. 1, ch. 75-193; s. 1, ch. 83-111; s. 2, ch. 85-179; s. 3, ch. 87-224; s. 123, ch. 95-147; s. 1, ch. 96-256.)



§27.52 FS | DETERMINATION OF INDIGENT STATUS

(1) APPLICATION TO THE CLERK. – A person seeking appointment of a public defender under s. 27.51 based upon an inability to pay must apply to the clerk of the court for a determination of indigent status using an application form developed by the Florida Clerks of Court Operations Corporation with final approval by the Supreme Court.

(a) The application must include, at a minimum, the following financial information:

1. Net income, consisting of total salary and wages, minus deductions required by law, including court-ordered support payments.
2. Other income, including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public or private employee pensions, reemployment assistance or unemployment compensation, dividends, interest, rent, trusts, and gifts.
3. Assets, including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or in other tangible property.
4. All liabilities and debts.
5. If applicable, the amount of any bail paid for the applicant's release from incarceration and the source of the funds. The application must include a signature by the applicant which attests to the truthfulness of the information provided. The application form developed by the corporation must include notice that the applicant may seek court review of a clerk's determination that the applicant is not indigent, as provided in this section.



(b) An applicant shall pay a \$50 application fee to the clerk for each application for court-appointed counsel filed. The applicant shall pay the fee within 7 days after submitting the application. If the applicant does not pay the fee prior to the disposition of the case, the clerk shall notify the court, and the court shall:

1. Assess the application fee as part of the sentence or as a condition of probation; or
2. Assess the application fee pursuant to s. 938.29.

(c) Notwithstanding any provision of law, court rule, or administrative order, the clerk shall assign the first \$50 of any fees or costs paid by an indigent person as payment of the application fee. A person found to be indigent may not be refused counsel or other required due process services for failure to pay the fee.

(d) All application fees collected by the clerk under this section shall be transferred monthly by the clerk to the Department of Revenue for deposit in the Indigent Criminal Defense Trust Fund administered by the Justice Administrative Commission, to be used as appropriated by the Legislature. The clerk may retain 2 percent of application fees collected monthly for administrative costs from which the clerk shall remit \$0.20 from each application fee to the Department of Revenue for deposit into the General Revenue Fund prior to remitting the remainder to the Department of Revenue for deposit in the Indigent Criminal Defense Trust Fund.

(e)1. The clerk shall assist a person who appears before the clerk and requests assistance in completing the application, and the clerk shall notify the court if a person is unable to complete the application after the clerk has provided assistance.



2. If the person seeking appointment of a public defender is incarcerated, the public defender is responsible for providing the application to the person and assisting him or her in its completion and is responsible for submitting the application to the clerk on the person's behalf. The public defender may enter into an agreement for jail employees, pretrial services employees, or employees of other criminal justice agencies to assist the public defender in performing functions assigned to the public defender under this subparagraph.

(2) DETERMINATION BY THE CLERK.—The clerk of the court shall determine whether an applicant seeking appointment of a public defender is indigent based upon the information provided in the application and the criteria prescribed in this subsection.

(a) An applicant, including an applicant who is a minor or an adult tax-dependent person, is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income (SSI).

1. There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000.



2. Notwithstanding the information that the applicant provides, the clerk may conduct a review of the property records for the county in which the applicant resides and the motor vehicle title records of the state to identify any property interests of the applicant under this paragraph. The clerk may evaluate and consider the results of the review in making a determination under this subsection. If the review is¹conducted, the clerk shall maintain the results of the review in a file with the application and provide the file to the court if the applicant seeks review under subsection (4) of the clerk's determination of indigent status.

(b) Based upon its review, the clerk shall make one of the following determinations:

1. The applicant is not indigent.
2. The applicant is indigent.

(c)1. If the clerk determines that the applicant is indigent, the clerk shall submit the determination to the office of the public defender and immediately file the determination in the case file.

2. If the public defender is unable to provide representation due to a conflict pursuant to s. 27.5303, the public defender shall move the court for withdrawal from representation and appointment of the office of criminal conflict and civil regional counsel.

(d) The duty of the clerk in determining whether an applicant is indigent shall be limited to receiving the application and comparing the information provided in the application to the criteria prescribed in this subsection. The determination of indigent status is a ministerial act of the clerk and not a decision based on further investigation or the exercise of independent judgment by the clerk. The clerk may contract with third parties to perform functions assigned to the clerk under this section.



(e) The applicant may seek review of the clerk's determination that the applicant is not indigent in the court having jurisdiction over the matter at the next scheduled hearing. If the applicant seeks review of the clerk's determination of indigent status, the court shall make a final determination as provided in subsection (4).

(3) APPOINTMENT OF COUNSEL ON INTERIM BASIS.—If the clerk of the court has not made a determination of indigent status at the time a person requests appointment of a public defender, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender, the office of criminal conflict and civil regional counsel, or private counsel on an interim basis.

(4) REVIEW OF CLERK'S DETERMINATION.—

(a) If the clerk of the court determines that the applicant is not indigent, and the applicant seeks review of the clerk's determination, the court shall make a final determination of indigent status by reviewing the information provided in the application against the criteria prescribed in subsection (2) and by considering the following additional factors:

1. Whether the applicant has been released on bail in an amount of \$5,000 or more.
2. Whether a bond has been posted, the type of bond, and who paid the bond.
3. Whether paying for private counsel in an amount that exceeds the limitations in s. 27.5304, or other due process services creates a substantial hardship for the applicant or the applicant's family.
4. Any other relevant financial circumstances of the applicant or the applicant's family.

(b) Based upon its review, the court shall make one of the following determinations and, if the applicant is indigent, shall appoint a public defender, the office of criminal conflict and civil regional counsel, or, if appropriate, private counsel:



1. The applicant is not indigent.
2. The applicant is indigent.

(5) INDIGENT FOR COSTS.—A person who is eligible to be represented by a public defender under s. 27.51 but who is represented by private counsel not appointed by the court for a reasonable fee as approved by the court or on a pro bono basis, or who is proceeding pro se, may move the court for a determination that he or she is indigent for costs and eligible for the provision of due process services, as prescribed by ss. 29.006 and 29.007, funded by the state.

(a) The person must file a written motion with the court and submit to the court:

1. The completed application prescribed in subsection (1).
2. In the case of a person represented by counsel, an affidavit attesting to the estimated amount of attorney's fees and the source of payment for these fees.

(b) The person shall arrange for service of a copy of the motion and attachments on the Justice Administrative Commission. The commission has standing to appear before the court to contest any motion to declare a person indigent for costs and may participate in a hearing on the motion by use of telephonic or other communication equipment.

(c) If the person did not apply for a determination of indigent status under subsection (1) in the same case and is not already liable for the application fee required under that subsection, he or she becomes liable for payment of the fee upon filing the motion with the court.

(d) In reviewing the motion, the court shall consider:

1. Whether the applicant applied for a determination of indigent status under subsection (1) and the outcome of such application.
2. The extent to which the person's income equals or exceeds the income criteria prescribed in subsection (2).



3. The additional factors prescribed in subsection (4).
4. Whether the applicant is proceeding pro se.
5. When the applicant retained private counsel.
6. The amount of any attorney's fees and who is paying the fees. There is a presumption that the applicant is not indigent for costs if the amount of attorney's fees exceeds \$5,000 for a noncapital case or \$25,000 for a capital case in which the state is seeking the death penalty. To overcome this presumption, the applicant has the burden to show through clear and convincing evidence that the fees are reasonable based on the nature and complexity of the case. In determining the reasonableness of the fees, the court shall consider the amount that a private court-appointed attorney paid by the state would receive for providing representation for that type of case.

(e) Based upon its review, the court shall make one of the following determinations:

1. The applicant is not indigent for costs.
2. The applicant is indigent for costs.

(f) The provision of due process services based upon a determination that a person is indigent for costs under this subsection must be effectuated pursuant to a court order, a copy of which the clerk shall provide to counsel representing the person, or to the person directly if he or she is proceeding pro se, for use in requesting payment of due process expenses through the Justice Administrative Commission. Private counsel representing a person declared indigent for costs shall execute the Justice Administrative Commission's contract for counsel representing persons determined to be indigent for costs. Private counsel representing a person declared indigent for costs may not receive state funds, either directly or on behalf of due process providers, unless the attorney has executed the contract required under this paragraph.

(g) Costs shall be reimbursed at the rates established under ss. 27.425 and 27.5305. To receive reimbursement of costs, either directly or on behalf of due process providers, private counsel representing a person declared indigent for costs shall comply with the procedures and requirements under this chapter governing billings by and compensation of private court-appointed counsel.

(h) The court may not appoint an attorney paid by the state based on a finding that the defendant is indigent for costs if the defendant has privately retained and paid counsel.

(i) A defendant who is found guilty of a criminal act by a court or jury or enters a plea of guilty or nolo contendere and who received due process services after being found indigent for costs under this subsection is liable for payment of due process costs expended by the state.

1. The attorney representing the defendant, or the defendant if he or she is proceeding pro se, shall provide an accounting to the court delineating all costs paid or to be paid by the state within 90 days after disposition of the case notwithstanding any appeals.

2. The court shall issue an order determining the amount of all costs paid by the state and any costs for which prepayment was waived under this section or s. 57.081. The clerk shall cause a certified copy of the order to be recorded in the official records of the county, at no cost. The recording constitutes a lien against the person in favor of the state in the county in which the order is recorded. The lien may be enforced in the same manner prescribed in s. 938.29.



3. If the attorney or the pro se defendant fails to provide a complete accounting of costs expended by the state and consequently costs are omitted from the lien, the attorney or pro se defendant may not receive reimbursement or any other form of direct or indirect payment for those costs if the state has not paid the costs. The attorney or pro se defendant shall repay the state for those costs if the state has already paid the costs. The clerk of the court may establish a payment plan under s. 28.246 and may charge the attorney or pro se defendant a one-time administrative processing charge under s. 28.24(26)(c).

(6) DUTIES OF PARENT OR LEGAL GUARDIAN.—A nonindigent parent or legal guardian of an applicant who is a minor or an adult tax-dependent person shall furnish the minor or adult tax-dependent person with the necessary legal services and costs incident to a delinquency proceeding or, upon transfer of such person for criminal prosecution as an adult pursuant to chapter 985, a criminal prosecution in which the person has a right to legal counsel under the Constitution of the United States or the Constitution of the State of Florida. The failure of a parent or legal guardian to furnish legal services and costs under this section does not bar the appointment of legal counsel pursuant to this section, s. 27.40, or s. 27.5303. When the public defender, the office of criminal conflict and civil regional counsel, a private court-appointed conflict counsel, or a private attorney is appointed to represent a minor or an adult tax-dependent person in any proceeding in circuit court or in a criminal proceeding in any other court, the parents or the legal guardian shall be liable for payment of the fees, charges, and costs of the representation even if the person is a minor being tried as an adult. Liability for the fees, charges, and costs of the representation shall be imposed in the form of a lien against the property of the nonindigent parents or legal guardian of the minor or adult tax-dependent person. The lien is enforceable as provided in s. 27.561 or s. 938.29.



(7) FINANCIAL DISCREPANCIES; FRAUD; FALSE INFORMATION. –

(a) If the court learns of discrepancies between the application or motion and the actual financial status of the person found to be indigent or indigent for costs, the court shall determine whether the public defender, office of criminal conflict and civil regional counsel, or private attorney shall continue representation or whether the authorization for any other due process services previously authorized shall be revoked. The person may be heard regarding the information learned by the court. If the court, based on the information, determines that the person is not indigent or indigent for costs, the court shall order the public defender, office of criminal conflict and civil regional counsel, or private attorney to discontinue representation and revoke the provision of any other authorized due process services.

(b) If the court has reason to believe that any applicant, through fraud or misrepresentation, was improperly determined to be indigent or indigent for costs, the matter shall be referred to the state attorney. Twenty-five percent of any amount recovered by the state attorney as reasonable value of the services rendered, including fees, charges, and costs paid by the state on the person's behalf, shall be remitted to the Department of Revenue for deposit into the Grants and Donations Trust Fund within the Justice Administrative Commission. Seventy-five percent of any amount recovered shall be remitted to the Department of Revenue for deposit into the General Revenue Fund.

(c) A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.



(History.—s. 3, ch. 63-409; s. 1, ch. 70-57; s. 4, ch. 73-334; s. 1, ch. 77-99; s. 1, ch. 77-378; s. 8, ch. 79-164; s. 3, ch. 80-376; s. 1, ch. 81-273; s. 139, ch. 95-147; s. 1, ch. 96-232; s. 4, ch. 97-107; s. 28, ch. 97-271; s. 6, ch. 98-280; s. 3, ch. 2001-122; s. 16, ch. 2003-402; s. 9, ch. 2004-265; s. 3, ch. 2005-236; s. 6, ch. 2007-62; s. 4, ch. 2008-111; s. 8, ch. 2010-162; s. 31, ch. 2012-30; s. 1, ch. 2012-100; s. 3, ch. 2012-123; s. 5, ch. 2019-58; s. 4, ch. 2020-2.)

(¹Note.—As amended by s. 3, ch. 2012-123. The amendment by s. 1, ch. 2012-100, used the words “completed by the clerk” instead of the word “conducted.”)



APPENDIX



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