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Hinges On State Money - LEGAL FEE CAPS LIKELY HEADED FOR HIGH COURT
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Imagine you're on **death row** for a murder you didn't commit.

How much would you want the state to spend on your appeals?

The state caps legal fees for **death row** appeals at \$84,000, but studies show lawyers put in thousands of unpaid hours. Even billed at a conservative rate of \$200 or \$300 an hour for a private-sector lawyer, it's easy to see how costs could add up quickly.

Critics point at the cost disparity in saying the cap on legal fees threatens the integrity of a justice system that promises to be fair to every defendant.

On the other hand, lawyers' fees could spiral out of control without a cap.

In Florida, lawmakers might resist selling taxpayers on spending millions of dollars helping convicted murderers advance their claims, some not even claims of innocence.

The issue appears headed to the Florida Supreme Court, the result of a lawsuit filed in 2003 by Tallahassee lawyer Mark Olive. Both Olive and attorneys for the state have asked the high court to take up the case.

Olive argues that the caps - 840 hours at \$100 an hour - are too low to ensure quality representation for convicts facing death.

Tampa lawyer Joe McDermott said he favors eliminating the caps, even though he hasn't exceeded the limit in the **death penalty** appeals he has handled.

"The caps haven't bothered me, but I think there are cases that would come along that could really exceed it," he said. "They're pretty arbitrary."

Lawyers handling **death penalty** cases on appeal usually spend 2,700 to 3,300 hours on each case, according to a study conducted by a Massachusetts research firm in 1998. The study, commissioned by Olive's attorneys, examined 188 **death penalty** appeals.

Using the conservative end of that range, billed at \$200 an hour, that means appellate legal fees would cost the state more than \$500,000 for each of the 130 pending death cases being handled by private attorneys.

So it should come as no surprise that for the state, cost ranks as a big concern when it comes to providing adequate representation for **death row** inmates.

"Nobody gets unlimited pay," said Michael Dodson, who is representing the state in Olive's lawsuit. "The Legislature has determined that this is a reasonable amount of money to be paid for those kinds of proceedings."

Under Florida law, every death sentence automatically is appealed to the state Supreme Court. Beyond that, a **death row** inmate has numerous options to challenge a sentence and conviction at the state and federal levels. The process can take years or even decades before a person is executed or freed.

Death row inmates are provided lawyers from the Capital Collateral Regional Council or from a registry of private lawyers qualified to handle **death row** appeals.

Roger Maas, the executive director of the Commission on Capital Cases and a listed defendant in Olive's lawsuit, oversees the registry. His attorney, Dodson, argued that the state fulfilled its duty by providing a sufficient pool of lawyers to represent the inmates.

In March, Leon County Circuit Judge Terry Lewis ruled that an attorney may be paid in excess of the cap if a judge allows it.

In April, Olive's attorney, Stephen Hanlon, and attorneys for the state asked the Supreme Court to take up the case as a matter of statewide importance.

Hanlon and Olive say registry attorneys aren't best-suited for the work, which Hanlon called the "brain surgery of the legal profession."

"In the legal community, this is a matter of great concern," Hanlon said. "The **death penalty**, unfortunately, in many instances appears to have been reserved for those who have wound up with the worst lawyers."

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