

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA, IN AND FOR MIAMI-DADE COUNTY

ROY D. WASSON,  
Plaintiff,

CASE NO. 12-25606 CA 23

vs.

THE HONORABLE PAM BONDI,  
ATTORNEY GENERAL FOR THE  
STATE OF FLORIDA; THE HONORABLE  
JOEL H. BROWN, CHIEF JUDGE OF THE  
COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT OF FLORIDA; THE JUSTICE  
ADMINISTRATIVE COMMISSION; THE  
HONORABLE HARVEY RUVIN, CLERK  
OF COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT OF FLORIDA,  
Defendants.

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**COMPLAINT FOR DECLARATORY JUDGMENT AND  
REQUEST FOR INJUNCTIVE RELIEF**

The Plaintiff, Roy D. Wasson, brings this action against the Honorable Pam Bondi in her official capacity as the Attorney General for the State of Florida; the Honorable Joel H. Brown in his official capacity as the Chief Judge of the Eleventh Judicial Circuit; the Justice Administrative Commission; and the Honorable Harvey Ruvin in his official capacity as Clerk of Court for the Eleventh Judicial Circuit, and alleges:

**OVERVIEW**

1. This is an action seeking the invalidation of chapter 2012-123, Laws of Florida, on grounds of facial constitutional infirmity. Specifically, the Plaintiff seeks a declaration that chapter 2012-123, Laws of Florida, violates the single subject rule contained in Article III, section 6 of the Florida Constitution. The Plaintiff additionally seeks injunctive relief from the implementation of chapter 2012-123.

## JURISDICTION AND VENUE

2. Jurisdiction inheres in this Court pursuant to Article 5, section 20(c)(3) of the Florida Constitution, Florida Statutes section 26.012(3) and section 86.011, *et seq.*, the declaratory judgments act, and Fla. R. Civ. P. 1.610, which governs injunction procedure.

3. Venue lies in Miami-Dade County because the act giving rise to the cause of action occurred in Miami-Dade County and because the declaratory and injunctive relief requested are in Miami-Dade County, as well as other jurisdictions. Defendants Bondi, Brown, the Justice Administrative Commission (hereinafter referred to as the "JAC"), and Ruvin all act in their official capacities in Miami-Dade County with respect to the acts alleged and the relief requested herein.

## STANDING

4. Plaintiff is an attorney practicing in Miami-Dade County who regularly accepts court-appointed cases for indigent defendants in the Eleventh Judicial Circuit of Florida. A limited registry created by Administrative Order 12-02 (hereinafter referred to as "AO 12-02") and authorized by chapter 2012-123, Laws of Florida, will result in a decrease in income to his law practice whether he does or does not become a member of the limited registry because he must either a) sign onto the limited registry and thereby agree to waive compensation beyond the flat fees in every case assigned thereunder, or b) not sign onto the registry and lose the business that normally flows from the existing general registry.<sup>1</sup>

5. Plaintiff has standing to bring this action inasmuch it he is in doubt as to the constitutionality of the chapter law and this action is an attack on the facial unconstitutionality of the resulting statute based on a single subject rule violation; he has an interest in the determination of the validity of the statute as amended; the threatened

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<sup>1</sup>The nature of the registry and indigent appointment cases is set forth more fully in paragraphs 11 through 14. The provisions of chapter 2012-123 are set forth more fully in paragraph 15.

injury as set forth in paragraph 4 fairly can be traced to the challenged action; and the injury is capable of being redressed by favorable court action.

6. All of the amendments contained in chapter 2012-123 are effective on July 1, 2012. *See* Chapter 2012-123, § 8, Laws of Florida.

### **DEFENDANTS**

7. The Honorable Pam Bondi is the Attorney General of the State of Florida and is the chief legal officer for the State of Florida. Pursuant to section 86.091, Florida Statutes, “[i]f the statute . . . is alleged to be unconstitutional, the Attorney General or the state attorney of the judicial circuit in which the action is pending shall be served with a copy of the complaint and be entitled to be heard.”

8. The Honorable Joel H. Brown is the Chief Judge of the Eleventh Judicial Circuit of Florida and is charged under chapter 2012-123 with the responsibility of implementing the limited registry established under that chapter, should he choose to do so. Judge Brown has in fact implemented such a registry pursuant to AO 12-02.

9. The Justice Administrative Commission is the entity responsible for entering into a contract with any attorney who is included on any registry under chapter 2012-123.

10. The Honorable Harvey Ruvin is the Clerk of Court of the Eleventh Judicial Circuit of Florida and is charged with the responsibility of maintaining the registry and providing names of attorneys to the court when an appointed counsel is needed.

### **FACTUAL BACKGROUND**

11. On June 29, 2012, AO 12-02 was issued in the Eleventh Judicial Circuit as authorized by chapter 2012-123, Laws of Florida.

12. Chapter 2012-123 authorizes a chief judge to establish a “limited registry” of attorneys available to represent indigent defendants in cases requiring court appointment of private counsel. The attorneys who volunteer to serve on the limited registry are required to waive any compensation beyond the flat fees set for each type of case as prescribed in Florida Statute section 27.5304. Chapter 2012-123 also requires that, if such a limited registry is established, the court shall appoint attorneys from the limited

registry unless there are no attorneys available to accept the appointment on the limited registry.

This differs from the current general registry system, wherein attorneys who agree to represent indigent clients normally accept the designated flat fee, but are also permitted to seek additional fees when the work required is extraordinary and unusual. The limited registry as authorized by Chapter 2012-123 does not allow for additional fees, no matter how difficult the case turns out to be or how many hours of work it requires.

13. AO 12-02 establishes that a “limited registry” of attorneys shall be created in the Eleventh Circuit and provides for its implementation.

14. Multiple sections of the Florida Statutes were amended by the passage of chapter 2012-123, which becomes effective on July 1, 2012. *See* Ch. 2012-123, §8, Laws of Fla.

15. Chapter 2012-123 is comprised of eight sections. *See* Ch. 2012-123 §§ 1-8.

**Section 1** of the chapter law substantially amends *section 27.40, Florida Statutes*. For example, the Legislature created the option for circuit courts to create a limited registry of attorneys to accept indigent defendants in cases requiring court appointment of private counsel. Those attorneys would accept as full payment the already existing flat fees as currently provided in section 27.5304, Florida Statutes, and would waive the already existing allowance for additional payment depending upon the nature of representation needed in an individual case.

The flat fees are not listed anywhere in the chapter law. To determine the flat fees as referenced in section 1, one must refer to Florida Statute section 27.5304, which provides that the flat fees shall be established annually in the General Appropriations Act. For the fiscal year 2012-2013, the General Appropriations Act is set forth in chapter 2012-118, and section 4 provides, in pertinent part:

*The maximum flat fee to be paid by the Justice Administrative Commission for attorney fees for criminal conflict cases is set as follows:*

<i>POSTCONVICTION - Rules 3.850 and 3.800, Fla.R.Crim. Proc.</i> .....	<i>1,000</i>
<i>CONTEMPT PROCEEDINGS</i> .....	<i>400</i>
<i>CRIMINAL TRAFFIC</i> .....	<i>400</i>
<i>EXTRADITION</i> .....	<i>500</i>
<i>FELONY - LIFE</i> .....	<i>2,500</i>
<i>FELONY - PUNISHABLE BY LIFE</i> .....	<i>2,000</i>
<i>FELONY 1ST DEGREE</i> .....	<i>1,500</i>

FELONY 2ND DEGREE.....	1,000
FELONY 3RD DEGREE.....	750
FELONY OR MISDEMEANOR - NO INFORMATION FILED.....	400
FELONY APPEALS.....	1,500
JUVENILE DELINQUENCY - 1ST DEGREE FELONY.....	600
JUVENILE DELINQUENCY - 2ND DEGREE.....	400
JUVENILE DELINQUENCY - 3RD DEGREE.....	300
JUVENILE DELINQUENCY - FELONY LIFE.....	700
JUVENILE DELINQUENCY - MISDEMEANOR.....	300
JUVENILE DELINQUENCY - DIRECT FILE/ NO PETITION FILED.....	300
JUVENILE DELINQUENCY APPEALS.....	1,000
MISDEMEANOR.....	400
MISDEMEANOR APPEALS.....	750
VIOLATION OF PROBATION - FELONY (INCLUDES VOCC).....	500
VIOLATION OF PROBATION - MISDEMEANOR (INCLUDES VOCC).....	300
VIOLATION OF PROBATION (VOCC) JUVENILE DELINQUENCY.....	300

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*The maximum flat fee to be paid by the Justice Administrative Commission for attorney fees for the following dependency and civil cases is set as follows:*

ADMISSION OF INMATE TO MENTAL HEALTH FACILITY.....	300
ADULT PROTECTIVE SERVICES ACT - Ch. 415, F.S.....	500
BAKER ACT/MENTAL HEALTH - Ch. 394, F.S.....	400
CINS/FINS - Ch. 984, F.S.....	750
CIVIL APPEALS.....	400
DEPENDENCY - Up to 1 Year.....	800
DEPENDENCY - Each Year after 1st Year.....	200
DEPENDENCY - No Petition Filed or Dismissed at Shelter.....	200
DEPENDENCY APPEALS.....	1,000
DEVELOPMENTALLY DISABLED ADULT - Ch. 393, F.S.....	400
EMANCIPATION - Section 743.015, F.S.....	400
GUARDIANSHIP - EMERGENCY - Ch. 744, F.S.....	400
GUARDIANSHIP - Ch. 744, F.S.....	400
MARCHMAN ACT/SUBSTANCE ABUSE - Ch. 397, F.S.....	300
MEDICAL PROCEDURES - Section 394.459(3), F.S.....	400
PARENTAL NOTIFICATION OF ABORTION ACT.....	400
TERMINATION OF PARENTAL RIGHTS - Ch. 39, F.S. - Up to 1 Year.....	1,000
TERMINATION OF PARENTAL RIGHTS - Ch. 39, F.S. - Each Year after 1st Year.....	200
TERMINATION OF PARENTAL RIGHTS - Ch. 63, F.S. - Up to 1 year.....	1,000
TERMINATION OF PARENTAL RIGHTS - Ch. 63, F.S. - Each Year after 1st Year.....	200
TERMINATION OF PARENTAL RIGHTS APPEALS.....	2,000
TUBERCULOSIS - Ch. 392, F.S.....	300

The only fees for indigent criminal defense and dependency cases listed in the entire chapter law are wholly unrelated to and unavailable for attorneys on the limited registry list as authorized by the chapter law. The chapter law (in section 4) lists

only the following maximum capped fees which are allowable under certain circumstances for attorneys on the general registry list, but not the limited registry:

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

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

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

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

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*At the trial level, compensation for representation for dependency proceedings shall not exceed \$1,000 for the first year following the date of appointment and shall not exceed \$200 each year thereafter. Compensation shall be paid based upon representation of a parent irrespective of the number of case numbers that may be assigned or the number of children involved, including any children born during the pendency of the proceeding. Any appeal, except for an appeal from an adjudication of dependency, shall be completed by the trial attorney and is considered compensated by the flat fee for dependency proceedings.*

**Section 2** of the chapter law amends *section 27.511, Florida Statutes*. The section addresses the manner in which an appointed regional counsel may be replaced by the Governor, and requires the Florida Supreme Court Judicial Nominating Commission to take certain timely action upon the vacancy of an appointed regional counsel position.

**Section 3** of the chapter law amends *section 27.52, Florida Statutes*, by renumbering certain sections and providing clarifying language regarding the clerk of court's obligations in making indigent determinations.

**Section 4** of the chapter law amends *section 27.5304, Florida Statutes*, by ordering all circuit judges to select only one judge per circuit to hear and determine motions to exceed fee limits in court-appointed cases, and providing that multicounty circuits and the Eleventh circuit may have up to two such designated judges. The effect of said amendment will frequently be to remove the decision regarding motions to exceed fee limits from the judge presiding over the case,

instead requiring that determination to be made by a specific judge who may not have presided over the matter.

Section 4 also amends the manner in which criminal court orders of payment in excess of flat fees shall be paid in relation to the General Appropriations act; the manner in which payment shall be made in the event that designated funds are exhausted; and creates a requirement that the Justice Administrative Commission provide certain monthly data concerning court-appointed cases, payments in excess of flat fees, and cases where compensation was waived.

**Section 5** of the chapter law amends *section 39.8296, Florida Statutes*, and specifically allows a guardian ad litem to transport a child alleged to be abused, abandoned, or neglected, but specifies that the guardian ad litem may not be required to transport the child.

**Section 6** of the chapter law creates *section 39.8297, Florida Statutes*, which allows a county and the Statewide Guardian Ad Litem Office to enter into an agreement for the purpose of the county providing funds to the local guardian ad litem office in order to employ persons to assist in the operation of the guardian ad litem program in that county. Section 6 establishes the responsibilities the Statewide Guardian Ad Litem Office and the counties under such agreements.

**Section 7** of the chapter law amends *section 318.18, Florida Statutes*, by requiring that the clerk of court submit its annual report on collected surcharges for traffic infractions in an electronic format as developed by the Florida Clerks of Court Operations Corporation; and adding the requirement that said report be submitted to the Florida Clerks of Court Operation Corporation in addition to the current requirement that it be submitted to the Governor, President of the Senate, Speaker of the House, and the board of county commissioners.

**Section 8** of the chapter law provides that the act shall take effect July 1, 2012.

16. The chapter law amends and creates sections of the Florida Statutes regarding subject matters that are not properly connected.

17. The chapter law contains no clause identifying any crisis that the legislature intended to address in a comprehensive fashion.

18. Senate Bill 1960 (“SB 1960”) is the bill that eventually became chapter 2012-123.

19. The original version of SB 1960 as preserved in Florida's public records at <http://www.flsenate.gov/Session/Bill/2012/1960/BillText/Filed/PDF> was filed on February 16, 2012, and contained no reference to a limited registry.

20. Neither the first nor the second amendment to SB 1960 contained any reference to a limited registry.<sup>2</sup>

21. Only in the third amendment to SB 1960 was the creation of a limited registry addressed. The first lines of title of the bill were changed from the original:

*“An act relating to the state judicial system; amending s. 27.511, Fl.S.; revising the procedures by which a regional conflict counsel is appointed by the Governor; . . .”*

to the amended:

*“An act relating to the state judicial system; amending s. 27.40, F.S.; authorizing the chief judge of the circuit to limit the number of attorneys on the circuit registry list; providing criteria in order to qualify for inclusion on a registry; authorizing the chief judge to establish a limited registry that includes only those attorneys willing to waive compensation in excess of a flat fee; requiring the court to appoint attorneys from the flat-fee limited registry unless there are no attorneys available to accept the appointment on the limited registry; . . .”*

22. The limited registry language and the title amendments were both introduced in the bill's third amendment on the single day prior to the vote on the bill. The third amendment was filed at 8:03 a.m. on March 8, 2012.

23. SB 1960 was passed in the Senate the next day, March 9, 2012, at 3:17 p.m. It was adopted in the House and passed in the House on March 9, 2012, at 8:39 p.m., the last day of the legislative session.

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<sup>2</sup> The entire history of SB 1960, including amendments, votes, and related bills, is found at <http://www.flsenate.gov/Session/Bill/2012/1960>.



## COMPLAINT FOR DECLARATORY JUDGMENT

24. The allegations as set forth in paragraphs 1 through 23 are re-alleged and incorporated herein by reference.

25. Article III, section 6 of the Florida Constitution provides, in pertinent part, that "[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."

26. Chapter 2012-123 violates Article III, section 6 of the Florida Constitution because it contains several subjects, including civil and criminal provisions that are not logically connected.

27. Plaintiff requests that this Court declare chapter 2012-123 unconstitutional based on a violation of the single subject rule.

## REQUEST FOR INJUNCTIVE RELIEF

28. The allegations as set forth in paragraphs 1 through 27 are re-alleged and incorporated herein by reference.

29. Plaintiff has suffered or will suffer irreparable harm as a result of the enactment of chapter 2012-123, Laws of Florida, and the ensuing issuance of AO 12-02. As a result of the chapter law and AO 12-02, Plaintiff's ability to accept cases as a court-appointed attorney without waiving compensation beyond the capped fees is jeopardized.

30. The requested relief would provide a remedy for the harm alleged herein.

31. Plaintiff requests that this Court provide injunctive relief in the form of:

(a) Enjoining Defendants, and all persons and entities acting under their direction or in concert with them, from taking any measures to implement chapter 2012-123;

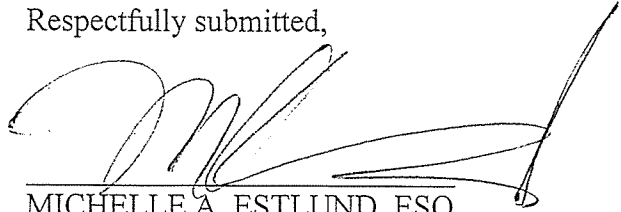
(b) Awarding to Plaintiffs the attorneys' fees, expenses, and costs that are incurred in prosecuting this lawsuit; and

(c) Ordering such other and further relief as this Court may deem appropriate.

32. Plaintiff further requests immediate temporary injunctive relief in the form of enjoining all Defendants, and all persons and entities acting under their direction or in concert with them, from taking any measures to implement chapter 2012-123 until such time as a hearing is set in this matter.

Dated on this 2<sup>nd</sup> day of July, 2012.

Respectfully submitted,



MICHELLE A. ESTLUND, ESQ.

Michelle A. Estlund, P.A.

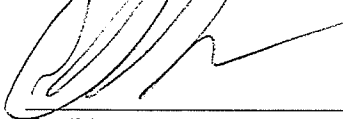
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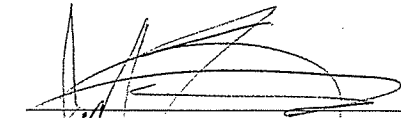
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